

SexPolitics: Trends & Tensions in the 21st Century - Critical Issues

Editors: Sonia Corrêa and Richard Parker



SEXUALITY
POLICY
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Editors: Sonia Corrêa and Richard Parker

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ABIA - Brazilian Interdisciplinary AIDS Association

Presidente Vargas, 446 / 13th floor

Rio de Janeiro/RJ – 20.071-907 – Brazil

Phone: +55.21.2223-1040

Webpage: <http://www.sxpolitics.org>



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Prologue

With great pleasure, Sexuality Policy Watch (SPW) launches the second publication resulting from its most recent round of transnational analysis. SPW was created in 2002 under the name Working Group on Sexuality and Social Policy, which would be changed to our current denomination in 2006. At that point in time, the dynamics prevailing in our field of work remained connected with undercurrents of previous decades – democratization in the global South, the unexpected effects of HIV and AIDS, and the intense global debates on social issues and human rights that ensued at the end of the Cold War Era – which had stimulated a significant increase in both public discourses and research on gender and sexuality matters as well as their rapid transnationalization. But we had already entered the times when gender and sexuality frays were no longer played at the periphery, but rather in battles fought at the core of power dynamics, or of what we called “global sex wars”. As we know, since then these tendencies have not exactly relented in pace, but rather have amplified in their scale and effects. The aim of this new series of SPW publications is therefore to critically assess the transnational state of sexual politics in the mid 2010s.

The new series started with the launching of *Sex at dusk and the mourning after: sexuality policy in the United States in the years of Obama*, authored by Susana T. Fried and Cynthia Rothschild, in May 2018.¹ We now present a first edited volume – *SexPolitics: Trends and Tensions in the 21st Century – Critical Issues* – comprising four articles: “Desert, Rainforest or Jungle: Navigating the Global Sexual Rights Landscape” by Sofia Gruskin, Alice Miller, Jane Cottingham and Eszter Kismodi; “Legal Developments in the Domain of Sexual Rights” by Laura Saldívia and Ryan Thoreson; “Legal and safe abortion: a global view as seen from Latin America by Maria José Barajas e Sonia Corrêa and “Mapping Trends: Power Imbalances and the Circulation of Information on Sex Work” by Laura Murray, Elsa Oliveira and Debolina Dutta.

One main theme running through the volume is the evolving conceptualization and application of sexual rights as derived from the definition adopted at the IV World Conference on Women (Beijing, 1995): the right to a

¹ Accessible at <http://sxpolitics.org/trendsandtensions/uploads/trends&tensions-wp1.pdf>

safe and full sex life, as well as the right to take free, informed, voluntary and responsible decisions on their sexuality, sexual orientation and gender identity, without coercion, discrimination or violence. While the concept is not directly addressed in all four papers, as SPW has expressed for many years, abortion and sex work could and should be placed under the sexual rights umbrella. A polymorphous and plastic understanding of sexual rights is, in fact, what has inspired the transversal lens used by SPW to map out sexual politics since ever. In this respect the first and second chapters of this volume constitute a vivid illustration of the kaleidoscopic and contradictory ways in which sexual rights have been conceptually and politically articulated and practically applied since their invention twenty five years ago.

Beneath this overarching affinity in relation to the conceptualization of sexual rights, a number of transversal themes, dimensions and political concerns are also glaringly palpable across the articles. The first three articles explore the normative dimensions and interpretation of rights in relation to sexuality and abortion in law, but also other institutional normative parameters as well as discourses. These three papers also offer historical reconstructions of how norms are created and evolve. Although the focus of the fourth paper is research production on prostitution and sex work, it remains haunted by the specter of criminalization of commercial sex between adults, which amongst other effects has led to vast streams of knowledge production to be centered on HIV and AIDS in detriment of other key dimensions of policy making that also deserve to be researched.

When read together, the first two chapters – in which the evolving conceptualization, interpretation and application of sexual rights are examined – chart the key pieces of the complicated puzzle that emerges from the circulation, interpretation, application, but also contestation of the articulation of rights and sexuality that we have witnessed in recent decades. Sofia Gruskin, Alice Miller, Jane Cottingham and Eszter Kismodi critically peruse the political, the technical and the legal as key domains in which to identify and analyze not only advances but also pitfalls of the conceptual development and applications of sexual rights in international arenas. Subsequently, Saldívia and Thoreson assess legal outcomes in multiple domains of rights claims – same-sex marriage and adoption, discrimination in the case of sexual orientation, gender identity, abortion and sex work – through the charting of national legislative and judiciary bodies, the international human rights system laws and norms but also other institutional agencies that are usually left outside strictly legal and juridical analyses of how rights and sexuality have increasingly intertwined in the last twenty five years. Saldívia and Thoreson emphasize the normative potential of sexual rights by recapturing and re-interpreting a number of recent law reforms as sexual rights gains. Gruskin and co-authors, in contrast, underline the semantic instability

of sexual rights language that often leads to contradictory interpretations of its contents, depending on the institutional body or agency deploying it. Instead of suggesting that the meaning of sexual rights is to be fixed in stone, they propose a heuristic roadmap to identify and clarify its nodes and fault lines in order to facilitate codification and inform activism and advocacy.

Another merit of the four articles is to openly address the political obstacles and regressions at play in the environments in which sexual rights discourses and legal developments are evolving. These are not triumphalist analyses. Barajas and Corrêa, while reminding us that the modern criminalization of abortion was fundamentally secular and biopolitical, also underline that in contemporary conditions political battles around abortion rights cannot be fully apprehended without reference to vicious politics of the religious in the form of dogmatism, in particular on the part of the Catholic Church. Saldívia and Thoreson provide a bird's eye view on anti-“gender ideology” crusades as novel formations whose aim is the containment of transformations propelled by sexual and reproductive rights, which depending on contextual conditions may not be exclusively religious.² Gruskin and co-authors correctly underline that today these forces resort to human rights language to contest sexual and reproductive rights. While the regressive manifestations of the politics of the religious are not prominent in the chapter by Murray, Oliveira and Dutta, the weight of stigma related to criminalization they analyze in the lived experience of sex work and assumptions informing research frames cannot be entirely detached from longstanding effects of religious doctrines.

Finally, but not less importantly, none of the articles refrain from naming and exploring thorny aspects and faultlines, such as the limits of the law and the implications of engaging with states. These insights are more than welcome after so many years during which the outcomes of sexual politics research and activism have been predominantly measured in terms of legal achievements and no serious interrogations have been made with respect to “dating the state”.

Along the same line, albeit in distinctive ways, all four exercises critically examine the geopolitical imbalances, complexities and traps of sexual politics today. In that respect, the elaborations developed by Murray, Oliveira and Dutta on the sharp North-South discrepancies in research capacity and symbolic resource distribution is

2 See The globalization of anti-gender campaigns by Sonia Corrêa, David Patternote and Roman Kuhar (May, 2018- International Politics and Society) at <http://www.ips-journal.eu/topics/human-rights/article/show/the-globalisation-of-anti-gender-campaigns-2761/>

especially illuminating. The article also revisits difficult questions about the relations between researchers and their sexual subjects – which are all too often characterized by imaginaries of exoticism or victimization – and it reminds us of the political nature and inequalities in which all forms of knowledge production are embedded.

As a last word, a comment about timing. It was our original plan to have this volume published in early June of 2018, but for reasons that entirely escaped our control, this was not possible and we were inevitably anxious with this delay. Unexpectedly, however, this postponement has made it possible for the analyses that follow to include three very significant events in the shifting landscape of sexual and reproductive rights and gender politics, more broadly. On May 25th, in Ireland, a referendum calling for the premise of right to life from conception to be erased from the national constitution was successful and opened the path for a legal reform expanding abortion rights. On June 14th, in Argentina, a new law allowing termination until the 14th week of pregnancy was approved by the House of Representatives that although not reconfirmed by the Senate two months later is to be read as political and legal breakthrough for the country and Latin America as a whole. Then on June 18th, the World Health Organization released Version 11 of the International Classification of Diseases that erases the remaining category of ego-dystonic homosexuality, deletes all trans-related categories from the Chapter on Mental and Behavioral Disorders, and creates new trans-related categories now included in a new Chapter number 17 on Conditions related to Sexual Health (the revision will be presented to the WHO Assembly in May of 2019). These remarkable events are not just meaningful for the overall content of this volume, but also offer very auspicious signs of light in otherwise shadowy times.

Good reading!

Sonia Corrêa and Richard Parker
Co-Chairs, Sexuality Policy Watch

Desert, Rainforest or Jungle: Navigating the Global Sexual Rights Landscape

Sofia Gruskin, Alice Miller, Jane Cottingham and Eszter Kismodi

Introduction

The world has seen unprecedented openings around sexual rights, both societally and legally, in the past few years. A record number of countries are accepting gay marriage, sexual assault [of anyone] as a serious crime is recognised by many governments, and functional de-criminalization of heterosexual sex outside of marriage for persons over 18 in most places are just some of the advances that attest to this. At the same time, there is also a huge and growing backlash against many aspects of sexual rights from all corners of the world, ranging from unpunished violence because of people's real or perceived sexual orientation, accepted articulations of homophobia and transphobia by government officials, as well as retrenchment on commitments to comprehensive sexuality education by a host of governments. Alongside these developments sits increased conservatism, populist anger and an increase in state actions justified in the name of security in the so-called global war against terror.

To begin to untangle what is good or bad about today's landscape for sexual rights therefore requires attention to how sexual rights denote very different things, depending on the actor and the context; and how the nature of the concern with specific topics (ranging from abortion to sex work) influences the extent to which different actors engage in expansive or restrictive approaches. While resistance to sexual rights in many cases stems from claims to radically different understandings (and fears) of what 'sexual rights' includes, and therefore for states and others what it might bind them to, what is apparent in current debates is the way in which even those with an ostensibly expansive view of sexual rights in one domain may not have that same expansive perspective when it comes to other issues.

The landscape of sexual rights – their definitions as well as the standards promulgated by health and development organizations, human rights bodies, political spaces, political actors and advocates – therefore requires attention to political currents and social movements within countries as well as at the global level, as these impact political, technical and legal standards.

This paper sets out to begin to clarify these issues with a focus on actions occurring at the global level. After briefly reviewing the current context of sexual rights, specifics are explored with respect to the political context, the technical, the legal, and finally the quasi-legal. The second half of the paper explores 10 crucial questions reflecting the current state of affairs that must be addressed if sexual health and rights programmes and policies are to be strengthened going forward. The paper concludes that those engaging in actions to advance sexual rights must not only examine the questions raised, but recognize that each of these articulations is important in different contexts.

History and Current Context

Some General Background

As with any issue where politics are involved, the current environment for sexual rights can only be understood with attention to history and the development and articulation of sexual rights to this point. Three overlapping streams, each with their own histories, can be seen to shape much of the current global landscape around sexual rights. These can loosely be defined as the political, the technical, and the legal. The political stream includes international, regional and national government processes, with particular emphasis on global conferences and the articulations of states as these play out at the global level.

As used here, the technical stream covers approaches and material developed by international agencies such as the World Health Organisation (WHO) and United Nations Population Fund (UNFPA).

Within the legal stream fall the formal parts of the human rights system including the Office of the High Commissioner for Human Rights (OHCHR), the United Nations treaty monitoring bodies and other formal

mechanisms such as special rapporteurs, as well as international, regional and national court decisions. Also of relevance are the Human Rights Council and other quasi-political processes.

These streams have a significant influence on one another, but they are sufficiently distinct in orientation, practices and priorities that by naming them in this way we hope to show how these distinctions influence the how and why of the advances and retrenchments that occur in recognizing and realizing sexual rights. At the most basic level are the differences in approach taken with regard to the purpose (and therefore the content) of sexual rights in these distinct streams. Fundamentally, these differences can be seen in determining whether sexual rights are primarily understood to be important for their own sake or simply as a tool necessary to achieve (sexual) health and well-being.

In the international ‘legal’ arena, the focus of what are called sexual rights tends to be on the respect, protection, fulfilment – and violation – of specifically articulated human *rights*, with emphasis on nondiscrimination and the right to be free from violence, as well as the importance of law as it connects to sexuality, with minimal attention given to specific topical areas in sexual health (such as HIV).

Those on the ‘technical’ side like WHO tend to bring human rights and law into their work on sexual *health* because human rights and law matter for health outcomes. The focus is not on rights per se but because the promotion of, or impediment to, sexual rights have an impact on health outcomes.

The political space is confused and in many ways the least progressive. Frequently, the way to strengthen standards with governments has been to rely on evidence framed by the ‘technical’; political articulations of sexual rights have tended to be grounded within a (sexual) health framework, thus confusing – and to some extent limiting – sexual rights protections within the political sphere to their links with health.

Any systematic attention to sexual rights, therefore, needs to consider the interactions between these three streams.

Defining sexual rights

The section below presents how sexual rights have been defined as advances are made in the political, technical and legal domains.

The Political

Sexual rights at the global political level starts from sexual health as derivative of reproductive health, and is grounded in the 1994 International Conference on Population and Development (ICPD), (also referred to as 'Cairo') which was, amongst other things, the first intergovernmental agreement that attempted to define sexual health. Importantly this *political* articulation drew on a WHO technical report on human sexuality, published in 1975, which provided the following definition:

Sexual health is the integration of the somatic, emotional, intellectual, and social aspects of sexual being, in ways that are positively enriching and that enhance personality, communication, and love... the notion of sexual health implies a positive approach to human sexuality, and the purpose of sexual healthcare should be the enhancement of life and personal relationships and not merely counselling and care related to procreation or sexually transmitted diseases. (WHO, 1975, p. 6-7)¹

Worthy of note, this 1975 WHO technical report, although not consistent with international human rights standards in its use of rights language, nonetheless noted rights as essential for the sexual health all human beings: 'Fundamental to this concept are the right to sexual information and the right to pleasure.' (WHO, 1975, p. 6). While certainly forward looking, this technical document was anything but technical in its articulation of rights in being the first to name not only a right to sexual information but a right to pleasure (which to date has still not been recognized internationally!).

¹ WHO (1975) 'Education and treatment in human sexuality: the training of health professionals,' WHO Technical Report Series No. 572, Geneva: World Health Organisation, p. 6-7, available at http://apps.who.int/iris/bitstream/10665/38247/1/WHO_TRS_572_eng.pdf

And while the Cairo Programme of Action (POA) (1994) also enjoined governments and others to give full attention to meeting the 'educational and service needs of adolescents...to deal...with their sexuality' and to the promotion of 'mutually respectful and equitable gender relations,' it did not further elaborate on the various dimensions of sexuality, sexual health or sexual rights (p. 60).²

With respect to sexual rights, arguably no language has been as important as the political articulation in the Beijing Platform for Action from the Fourth World Conference on Women which was agreed to one year later in 1995. Paragraph 96 states: 'The human rights of women include their right to decide freely and responsibly on all matters related to their sexuality, free of coercion, discrimination and violence,' (p. 36).³ It is important not to forget that gender inequality was a point of origin for many early attempts to define sexual rights and therefore this focus on the health and rights of women, while problematic now, was essential in providing for the first time an international mandate to focus on, and invest in, women's reproductive and sexual health beyond the need for them to control their fertility as part of a demographic agenda.

While limited to women, focused on health in its application and scope, and containing several other areas of concern (e.g. use of the term 'responsibly' as well as a primary focus on freedom from discrimination and violence rather than any sort of positive potential), this statement represents the first inter-governmentally-agreed articulation of what have become known as sexual rights. Importantly, it not only builds on Cairo, basing its recognition of human rights in relation to sexual health and reproductive health in the ICPD Programme of Action (1994), but grounds its articulation within the internationally agreed legal human rights framework.

Both the Cairo and Beijing conferences to this day remain touchstones underpinning sexual rights in all spheres. Interestingly, these political definitions, perhaps because they are ostensibly endorsed by a majority of the governments of the world, represent an agreed-to, lowest common denominator, and therefore continue to be given space as the ultimate voice on the content, extent and existence of sexual rights more than 20 years later despite their obvious limitations.

2 ICPD (1994) 'Programme of Action of the International Conference on Population Development,' Cairo: United Nations Population Fund, p. 60, available at: http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf

3 UN (1995) 'Report of the Fourth World Conference on Women,' New York: United Nations, p.36, available at: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>

Political consensus documents still rarely use the term sexual rights, although at times they use terms like ‘the right to sexual and reproductive health,’ which not only explicitly links sexuality to reproduction, but makes clear that rights protections in the political sphere exist only in so far as they concern health. It is also common for political actors to name rights that elsewhere could be considered to fall under the general rubric of ‘sexual rights,’ but that in the political context, even when dealing with matters connected to sexuality, are not described as such.

The references to Cairo and Beijing in political negotiations are important to note because of their implications regarding how governments understand sexual and reproductive rights. Because Cairo first and foremost established reproductive rights while Beijing’s emphasis is on sexuality and rights, distinguishing between which of these conference definitions is most heavily referenced and by which collection of countries offers important insights into how countries, and organisations, may understand and wish to address human rights related to sexuality (and reproduction).

Perhaps the most forward-looking political articulations of sexual rights occur at the regional level, and are worth some attention. For example, in 2013 the inter-governmental Latin American and Caribbean review of 20 years of ICPD implementation by the United Nations Economic Commission for Latin America and the Caribbean concluded that states must:

promote policies that *enable persons to exercise their sexual rights*, which embrace the right to a safe and full sex life, as well as the right to take free, informed, voluntary and responsible decisions on their sexuality, sexual orientation and gender identity, without coercion, discrimination or violence, and that guarantee the right to information and the means necessary for their sexual health, and reproductive health. (ECLAC, 2013, p. 15)⁴

This remains the first and only intergovernmental political document to outline sexual rights as extending beyond women’s human rights, even as similar developments have happened at the European level through the articulation of the Council of Europe, and at the African Commission.

4 ECLAC (2013), ‘Montevideo Consensus on Population and Development,’ Montevideo: Economic Commission for Latin America and the Caribbean, p.15

Ultimately the Sustainable Development Goals (SDGs) are key to setting the development agenda for the years to come. It is worth recognizing the rather awkward formulation that can be found in the 2030 Agenda for Sustainable Development (adopted at the United Nations Sustainable Development Summit on 25 September 2015). It contains strong commitments related to sexual and reproductive health and human rights, including to ensure universal access to sexual and reproductive health-care services, and universal respect for human rights and human dignity (UN, 2015).⁵ However, whether as a result of fear, reluctance and/or politics there is an inconsistent use of all relevant terminology. For example ‘sexual’ and ‘reproductive’ in the text of Goal 3.7 ‘ensure universal access to *sexual* and *reproductive* health-care services, including for family planning, information and education, and the integration of *reproductive* health’ (italics ours) ‘into national strategies and programmes,’ (UN, 2015, p. 16). Likewise Goal 5.6 refers to ‘universal access to *sexual and reproductive health* and *reproductive rights* as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences,’ (UN, 2015, p. 18).

In June of 2016, states at the United Nations General Assembly High-Level Meeting on Ending AIDS adopted a Political Declaration on Ending AIDS which includes a set of specific, time-bound targets that must be reached by 2020 within the framework of the Sustainable Development Goals.⁶ On the one hand, the Declaration sets a very strong human rights framework for what is to occur (human rights are mentioned more than 30 times over 79 paragraphs) (UN, 2016). On the other hand, the Declaration is deficient in a number of ways that go beyond the scope of this analysis. Of direct relevance is the way in which its introductory paragraphs, despite very heavy lobbying, do not use the language of sexual rights, let alone the language of ‘sexual and reproductive rights.’ Instead calling for universal access to sexual and reproductive health and reproductive rights (para14) (UN, 2016, p. 6). In other words, it sticks strictly to the ICPD language only.

5 UN (2015), ‘Transforming our world: the 2030 Agenda for Sustainable Development,’ New York: United Nations, pp. 16, 18

6 UN (2016), ‘Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030,’ New York: United Nations

As countries increasingly move in more conservative directions, it is unlikely that global consensus documents in the next few years will help to advance sexual rights protections. In this respect, it is also true that in 2017 sexual rights, particularly in relation to sexual orientation and gender identity but also in terms of violence and adolescent sexuality, have become increasingly entangled in North-South politics, a situation not helped by political leaders of governments such as the US under Obama and the UK, which have claimed in their foreign policy that their approach to sexual rights (for example, in relation to sexual orientation) should be mirrored elsewhere,⁷ nor more recently in the claims made by the United States that human rights in other countries are not a concern of this administration.⁸ Of particular interest in determining the sexual rights terrain, therefore, are the specific positions taken by states in international fora.

Country Positions

At the global level, sexual rights have a number of champions amongst the governments of the world, even though they may not be such champions within their own countries! Of most concern, however, are countries and groups of countries that work together to block advances from taking place at political and other levels. As a historical matter, sexual rights were discussed at the ICPD but not adopted in the final consensus document due to the overt actions of the Vatican and its allies. In Beijing, a year later, however, language on sexual rights was approved. But a number of countries took an explicit reservation to the sexual rights paragraph: Argentina, Ecuador, Egypt, the Holy See, Honduras, Iran, Iraq, Kuwait, Lebanon, Libya, Malaysia, Maldives, Mali, Malta, Nicaragua, Niger, Oman, Pakistan, Peru, Philippines, Qatar, Sudan, Syria, Togo, United Arab Emirates, Venezuela, and Yemen. Interestingly enough, many but not all of these same countries continue to raise objections to sexual rights this way, and often cite the lack of international agreement on the definition for sexual rights as their reason for doing so. In this respect, and as concerns our interests now in 2018, it is also worth recalling that Bolivia, Cambodia, Cameroon, Colombia, El Salvador, India, Panama, South Africa, and Tanzania are all countries that put on the record their support for sexual rights as set forth in the Beijing document.

7 Chase, A. T. (2016), 'Human rights contestations: sexual orientation and gender identity,' *The International Journal of Human Rights*, 20(6), pp. 703-723

8 Human Rights Watch (2017) 'United States Events of 2016,' New York: Human Rights Watch, available at <https://www.hrw.org/world-report/2017/country-chapters/united-states>

Growing protections for sexual rights in international political forums, as noted earlier, must often rely on the limits of what has been politically agreed to previously, with Cairo and Beijing serving as crucial touchstones. A simple but telling example are the country statements found in relation to the 2013 Asia and Pacific Declaration on Population and Development. The final definition of sexual (and reproductive) rights in the Declaration was:

Recognize that sexual and reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents and rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, the right to attain the highest standard of sexual and reproductive health, the right to make decisions concerning reproduction free of discrimination, coercion or violence, and the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence (ESCAP, 2013, p. 80).⁹

While this outlines a definition of sexual rights embracing other human rights, and describes specific rights that are included within the term sexual rights, even country statements in support of an expanded definition were often couched in the political limits of what could be accomplished. The breakdown of countries and of objections and support here is quite telling. Thirty-eight countries endorsed this definition,¹⁰ even as some of these countries nonetheless raised objections for the record. An interesting mix of countries expressed support for the ICPD Cairo definition as the default foundation for sexual rights, and resisted this ‘new’ attempt to define sexual rights. These included India, Indonesia, Iran, Malaysia, Nepal, and the United States. Nepal was the only country to explicitly reaffirm support for the Beijing definition in acknowledging the overlapping relevance of Beijing and Cairo. Not surprisingly, Azerbaijan, Iran and the Russian Federation explicitly voted against, and Afghanistan abstained.

9 ESCAP (2013), ‘Asian and Pacific Ministerial Declaration on Population and Development,’ Bangkok: Economic and Social Commission for Asia and the Pacific and the United Nations Population Fund, p. 80

10 Australia, Bangladesh, Bhutan, Cambodia, China, Democratic People’s Republic of Korea, Fiji, France, India, Indonesia, Japan, Kiribati, Lao People’s Democratic Republic, Malaysia, Maldives, Marshall Islands, Micronesia, Mongolia, Myanmar, Nauru, Nepal, Netherlands, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Sri Lanka, Thailand, Timor-Leste, Tonga, Tuvalu, United Kingdom of Great Britain and Northern Ireland, United States of America, Vanuatu, Viet Nam.

Confused Positions: The United States as a key example

The inconsistency on the part of states in how they understand and work with sexual rights is of prime importance for assessing the current sexual rights landscape at the global level. Nowhere is the confusion more apparent than in the statement put forward by the US government under the Obama administration in September 2015 at the UN Women Executive Board. Heralded by many, the US said they would begin using the term ‘sexual rights’ (along with the phrase ‘sexual and reproductive health and rights’) in human rights and development discussions (Erdman, 2015).¹¹ Of interest is that in doing so the US drew explicitly on part of paragraph 96 from the Beijing Platform for Action extending it to all people, stating that its understanding of sexual rights included ‘all individuals’ rights to have control over and decide freely and responsibly on matters related to their sexuality...’ (Erdman, 2015). But the US then goes on to say that the terms sexual rights or sexual and reproductive health and rights ‘*express rights that are not legally binding. Sexual rights are not human rights and they are not enshrined in international human rights law...*’ (Erdman, 2015). This may be interpreted as a prime example of a government cherry picking part of a definition to suit their purposes, but it may also lead to immense confusion as to what is actually being endorsed around sexual rights in political spaces, even when the US government is not an active participant. That said, while such specific concerns were raised during the Obama administration, it is clear that sexual rights protections, which rely on a United States position, will not improve during the Trump Administration.

The Technical

The technical agencies of the United Nations play an important role in defining sexual rights at the global level, in particular because of their need to rely on evidence, including legal standards, in any documents they produce. The focus of this section will primarily draw on the work of the WHO as a case example. Interestingly, a 1987 WHO European region technical document, not drawn upon in Cairo, was the first in any domain to flag the importance of the legal and policy environment as relevant to the rights and health of individuals related to sexuality, and notes:

11 Erdman, R. (2015) ‘Remarks at the UN Women Executive Board,’ New York: United States Mission to the United Nations, available at: <https://2009-2017-usun.state.gov/remarks/6831>

Some positive concept of individual needs, responsibilities and rights in the area of sexuality needs to be established in order that laws that repress human rights can be changed (such as those against homosexuality or abortion) and that policies may be implemented to reduce restrictions on sexual expression and enable services to be established to deal with sexual problems. (WHO, 1987)¹²

It also affirmed *'the rights and needs of individuals to be free from sexual exploitation and oppression by others'* (WHO, 1987).

More than a decade later, in 2000 the Pan American Health Organisation (PAHO, which also serves as the WHO Regional Office for the Americas) and the World Association for Sexology (WAS) convened a regional consultation to examine how best to promote sexual health. Elaborated from an advocacy and policy standpoint, and very much fuelled by the HIV pandemic, it describes three terms related to sexual health: sex, sexuality and sexual rights (PAHO, 2000). It goes on to state that, *'since protection of health is a basic human right, it follows that sexual health involves sexual rights'* (PAHO, 2000, p. 10).¹³ This being the first clear articulation of how human rights are thought to be relevant to sexual health, the orientation of this statement in a WHO document is of prime importance, and in many ways this engagement with health still drives the approach taken not only by WHO but actors in all other realms seeking to grow sexual rights protections.

In 2002 WHO convened an international consultation to examine barriers to the promotion of sexual health. Participants at the consultation drew on the PAHO-WAS report and agreed upon working definitions of the four inter-related terms: sex, sexuality, sexual health and sexual rights, which were then posted on the WHO website. This working definition of sexual rights was expanded in 2006 and again in 2010, and is anchored in human rights documents, including UN human rights treaties and the consensus documents of Cairo and Beijing (mentioned above).

12 WHO (1987) 'Concepts of sexual health. Report of a meeting in Copenhagen, May 1987. Copenhagen: World Health Organisation

13 PAHO (2000), 'Promotion of sexual health: recommendations for action: proceedings of a regional consultation convened by the Pan American Health Organisation and the World Health Organisation in Collaboration with the World Association for Sexology.' Guatemala: PAHO, p. 10, available at <http://www1.paho.org/hq/dmdocuments/2008/PromotionSexualHealth.pdf>

WHO 2010 working definition:

There is a growing consensus that sexual health cannot be achieved and maintained without respect for, and protection of, certain human rights. The working definition of sexual rights given below is a contribution to the continuing dialogue on human rights related to sexual health (1).

“The fulfillment of sexual health is tied to the extent to which human rights are respected, protected and fulfilled. Sexual rights embrace certain human rights that are already recognized in international and regional human rights documents and other consensus documents and in national laws.

Rights critical to the realization of sexual health include:

- the rights to equality and non-discrimination
- the right to be free from torture or to cruel, inhumane or degrading treatment or punishment
- the right to privacy
- the rights to the highest attainable standard of health (including sexual health) and social security
- the right to marry and to found a family and enter into marriage with the free and full consent of the intending spouses, and to equality in and at the dissolution of marriage
- the right to decide the number and spacing of one’s children
- the rights to information, as well as education
- the rights to freedom of opinion and expression, and
- the right to an effective remedy for violations of fundamental rights.

The responsible exercise of human rights requires that all persons respect the rights of others.

The application of existing human rights to sexuality and sexual health constitute sexual rights.

While forward looking, it is worth noting that this often cited technical definition has an explicit connection to health thus rendering sexual rights in the majority of technical and political spaces a means towards improving health, rather than an end in and of itself. Also worth noting is the fact that even as it appears on the WHO

website, it is specifically called a “working definition” rather than simply a “definition”, thus limiting its legitimacy if ever challenged.¹⁴

The Legal

There is an interesting trend in legal protections for sexual rights at the global level. Entities within the Office of the High Commissioner for Human Rights (OHCHR) have greatly increased their efforts to protect people from discrimination and violence on the basis of sexual orientation and gender identity, but the term ‘sexual rights’ is rarely used in these efforts. When the term sexual (and reproductive) rights is used in this arena it is primarily about women, and women implicitly assumed to be in heterosexual sexual relationships, and their ‘sexual and reproductive health and rights,’ or ‘sexual and reproductive health rights,’ with a particular emphasis on these rights/health connections as they pertain to women (OHCHR, n.d.).¹⁵ The choice by the OHCHR to attempt to expand human rights protections for populations based on their sexual orientation or gender identity without tying these efforts to the terminology of sexual rights, while using sexual rights as a frame for protections that seem only for presumed heterosexual women, is a disjunction worthy of exploration in the sexual rights landscape.

Health has again been a strategic entry point within the international legal sphere, particularly in the wake of the HIV pandemic, with some major advances for sexual rights being made through key international and national rulings justified as necessary for public health. The Toonen case before the Human Rights Committee in the early 1990s is a prime example of this, but there are many examples both internationally and nationally [15].¹⁶

14 WHO. (2010). “Sexual and reproductive health: Defining sexual health.” Geneva: WHO. Available at http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/

15 OHCHR (n.d.) ‘Sexual and reproductive health and rights,’ Geneva: OHCHR. Available at <https://www.ohchr.org/en/issues/women/wrgs/pages/healthrights.aspx>

16 HRC (1992), ‘Toonen v. Australia: Communication No. 488/1992,’ New York: Human Rights Committee, available at <http://hrlibrary.umn.edu/undocs/html/vws488.htm>

Likewise, unsafe abortion has been increasingly addressed by Special Rapporteurs¹⁷ and the human rights treaty bodies as a matter of sexual and reproductive health and rights¹⁸. But the topical areas tend to move and change as a result of political and advocacy currents.

Of importance also are which rights within the human rights framework are considered to make up the orbit of sexual rights within the legal sphere. The UN Treaty Monitoring Bodies (e.g. the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Discrimination against Women, and Committee on the Rights of the Child) give attention to the application of international human rights law to various dimensions of sexuality (autonomy, non-discrimination and equality, accountability, participation and empowerment and international cooperation in particular are singled out), even though none use the term sexual rights per se. Most relevant, perhaps, is the new General Comment put out by the UN Committee on Economic, Social and Cultural Rights that does not name sexual rights but names a right to sexual and reproductive health and states that the right is *'fundamentally linked to the enjoyment of many other human rights, including the rights to education, work and equality, as well as the rights to life, privacy and freedom from torture, and individual autonomy'* (CESCR, 2016).¹⁹

The Legal and Overtly Political: The Human Rights Council

The Human Rights Council (HRC) while addressing human rights concerns must nonetheless be primarily seen as a political body. The HRC primarily negotiates language on a political basis. As the world grows more conservative, it is very unlikely that the Human Rights Council, as an inter-governmental body made up of 47 States, will any time soon adopt a resolution with direct language on sexual rights. However, the HRC continues

17 Grover, A. (2011) 'Right of everyone to the enjoyment of the highest attainable standard of physical and mental health A/66/254,' New York: United Nations. Available at http://repository.un.org/bitstream/handle/11176/290255/A_66_254-EN.pdf?sequence=3&isAllowed=y

18 CEDAW (2011) 'Communication No. 22/2009, L. C. v. Peru,' New York: CEDAW. Available at http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_en.pdf

19 OHCHR (2016) 'Right to sexual and reproductive health indivisible from other human rights - UN experts,' Geneva: OHCHR, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17168&LangID=E>

to adopt resolutions that are directly related to various aspects of sexual rights and sexual health. Worthy of some attention in this respect are the three recent resolutions on preventable maternal mortality and morbidity.²⁰ They address maternal mortality within a very comprehensive understanding of sexual and reproductive health and human rights, including in relation to comprehensive sexuality education, access to sexual and reproductive health (SRH) information and services, unsafe abortion, contraception, and sexual violence.

While there have been HRC sessions since, the June 2016 session is particularly instructive for the ways in which it both supported and undermined sexual rights in the resolutions adopted.²¹ In keeping with its focus on discrimination and violence, the HRC adopted a strong resolution on violence and discrimination against women and created a UN Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity.²² Particular attention to the process highlights the tensions that exist between ways of claiming sexual rights and gender rights, and in terms of how the links between fixed and fluid gender expressions and identities are understood not only by states but between allies engaged in work on sexual rights and gender diversity. A group of Latin American countries (Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay) brought the resolution to the HRC calling for an Independent Expert to increase protection from discrimination and violence based on sexual orientation and gender identity, which was adopted with 23 in favour, 18 against and 6 abstentions. Opponents of the resolution, led by Pakistan on behalf of all but one members of the Organisation for Islamic Cooperation (OIC), succeeded in adding several amendments that in many ways framed the proposal as a cultural imposition intending to override local values and sovereignty, and reiterating ‘the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues,’ (HRC, 2016, p. 1).²³ Albania, which is a co-sponsor of the resolution, was the sole member of

20 HRC (2016), ‘Preventable maternal mortality and morbidity and human rights: Resolution 33/18,’ New York: United Nations Human Rights Council. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/229/08/PDF/G1622908.pdf?OpenElement> ; HRC (2014), ‘Preventable maternal mortality and morbidity and human rights: Resolution 27/11,’ New York: United Nations Human Rights Council, accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/178/65/PDF/G1417865.pdf?OpenElement>

21 HRC (2016) 32nd Session of the Human Rights Council (13 to 30 September 2016), New York: United Nations Human Rights Council.

22 HRC (2016), ‘Protection against violence and discrimination based on sexual orientation and gender identity: Resolution 32/2,’ New York: United Nations Human Rights Council. Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2

23 HRC (2016), ‘Protection against violence and discrimination based on sexual orientation and gender identity,’ Resolution 32/2, New York: United Nations Human Rights Council, p.1

the OIC to break from the bloc. One of the most surprising votes, without attention to this history, was South Africa's decision to abstain when the resolution came up for final passage, having for years sponsored sexual orientation and gender identity (SOGI) resolutions on the floor of the Human Rights Council. And finally, given the political nature of the Human Rights Council it is worth recalling that despite these advances a resolution on the 'protection of the family' was adopted, but with amendments to recognize the diversity of family forms rejected.²⁴

How do the Technical, Legal, and Political Realms intersect?

The work of WHO, OHCHR and international non-governmental organisations such as the World Association for Sexual Health among others, has led to a technical and increasingly legal understanding that sexual rights are both relevant to all populations and grounded in universal human rights that are already recognized in international and regional human rights documents, and in national constitutions and laws (WAS, 2014 ; WHO, 2015).²⁵ The political environment nonetheless plays a critical role in which issues are taken up and which are left aside in all spheres, including the technical and the legal. It is worth recalling that the emphasis on health in the developments described above has been, and is for almost all actors in the global space, used as a legitimizing way to address sexual rights, because it is difficult for opposing forces to argue against improving people's health. The flip side of this situation is that almost none of these actors have dealt with sexual rights as pertaining to sexuality for all people for their own sake.

At a global level, actors in each sphere often rely on the definitions in one of the others to give legitimacy to the definition they put forth. Thus, for example, WHO relies on ICPD and Beijing to give legitimacy to its working definition of sexual rights and NGOs involved in lobbying global political processes will rely on the WHO working definition as the basis for their advocacy. Likewise, national governments often privilege ICPD and to some extent Beijing in matters pertaining to sexual rights, while NGOs and other technical actors tend to give more

24 HRC (2016), 'Protection of the family: role of the family in supporting the protection and promotion of human rights of persons with disabilities: Resolution 32/23,' New York: United Nations Human Rights Council

25 WAS (2014), 'Declaration of Sexual Rights,' Prague: World Association for Sexual Health; WHO (2015), 'Sexual health, human rights and the law,' Geneva: World Health Organization

weight to the WHO working definition, and to standards elaborated by the UN human rights system. It may be fair to say that while the political represents the lowest common denominator across all spheres, the technical, which is most apparent in the work of the WHO, uses 'evidence' including legal definitions to give shape and support to the importance of sexual rights as necessary for sexual health; while legal definitions use the political and the technical to underpin the legitimacy of any positions they stake out particularly concerning the links between sexual rights, sexuality and human rights more generally.

Considerable variety between and within different topical areas reveals that sexual rights continue to be defined in myriad ways, and rarely is the same definition used by all relevant stakeholders. Consequently, in 2018 no universal political standards have yet been established that recognize anyone who is not an adult woman (including men and transgender populations) has sexual rights, nor are sexual rights, at least at a political level, yet recognized as valid for reasons other than health.

Conundrums in Advancing Sexual Rights

Within this complex mesh of definitions and actors, those who want to see growth in programmes and policy that further the enjoyment of sexual rights are facing new challenges. A variety of questions are raised below, to which no clear answers can be given at this point. Rather, they are questions to be used to help actors in this space reflect and strategize about what issues might be raised and might be most appropriate in any particular situation, in order to advance sexual rights.

Is there a need for agreement on the terminology of sexual rights if actionable commitments can continue to grow?

Many countries express support for at least some aspects of statements put forth in the name of sexual rights, including rights in relation to sexual orientation and/or gender identity, but refuse to agree to the usage of the term 'sexual rights', citing the legal and political ambiguity surrounding the term. Other countries declare that they do not support the term sexual rights because they do not agree with the content of sexual rights, at times justifying this position based upon how the term sexual rights has been used in other political contexts.

The result of this systematic position by some states to ensure that the language of ‘sexual rights’ does not appear in global commitments, including at the UN General Assembly, has still allowed substantive protections to grow with strong, actionable political and legal commitments in relation to sexual health and sexual rights. How important is the wording if the protections are there? Is it fair to say at this point in time that worrying about terminology is a political cosmetic issue but does not necessarily influence what is actionable? Or, in the increasingly conservative global political space, is there something to be gained in working towards achieving global consensus on sexual rights?

What are the implications of linking sexual rights to reproductive rights and reproductive health?

Today, the distinctions between sexual rights, reproductive rights, sexual and reproductive rights, and sexual and reproductive health and rights continues to be an area of ambiguity. Many actors use these formulations interchangeably with no clear rationale for their differentiation nor what this means (UNFPA, 2014²⁶; Asia and Pacific Declaration of Population and Development, 2013). In cases where ‘sexual and reproductive rights’ are lumped together in one term, the boundaries between these two areas are often defined differently by different actors. Sometimes this ambiguity is the result of careful thought but sometimes it is not. Some attention may be needed to the differences in content and approach between: a) sexual and reproductive health and rights; b) sexual and reproductive health rights; c) sexual and reproductive rights; or simply d) sexual rights. Determining which terms one prefers, in which situations and why, is an ongoing element to be dealt with.

At this point in time do we want to make the links between sexual rights and reproductive rights more overt?

The parameters of sexual rights can be defined, using the WHO draft definition, as the full range of existing human rights that have been applied to public and private aspects of sexuality and sexual health. This can

26 UNFPA (2014), International Conference on Population and Development. Program of Action: 20th anniversary edition. New York: UNFPA. Available at: <http://www.unfpa.org/publications/international-conference-population-and-development-programme-action>

be a way of saying that the scope of ‘sexual rights’ is linked to, though distinct from, reproductive rights, and recognizing sexuality and its diverse forms and meanings, including its link to reproduction.

While for many years sexual rights advocates pushed for distinguishing sexual rights from reproductive rights, increasingly progressive voices are seeing important linkages between them (e.g. in relation to both sex work and abortion). Insofar as different aspects of reproduction and sexuality are linked, this is reflected both in the naming of some sexual rights as also reproductive rights and in the common application of certain human rights principles to certain issues. For example, the decision to carry or terminate a pregnancy can be seen as an aspect of a woman’s capacity to decide to link or delink sexual activity from the decision to become a parent, and engages the rights to health, privacy and non-discrimination, amongst other rights. What is to be gained or lost, given the current political climate, by making the linkages more explicit?

Are sexual rights legally binding? Should they be?

How one sees the relationship between sexual rights and human rights is critical for any number of reasons. Most importantly, it distinguishes whether sexual rights are considered implicit in existing human rights law and therefore enforceable regardless of how the term sexual rights is defined, or whether they are not yet established internationally and therefore not yet legally enforceable. Some actors consider sexual rights to include aspects of human rights but would like to go further than what the traditional human rights frame will allow (e.g. sexual pleasure), whereas others describe sexual rights as being within the larger continuum of human rights (WHO, 2006²⁷; UN Women, 2014²⁸; WAS, 2008²⁹; IPPF, 2011³⁰; Choice for Youth, 2011³¹; European

27 WHO (2006) ‘Defining sexual health,’ Geneva: WHO, Available at http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/

28 UN Women (2014), ‘Beijing Declaration and Platform for Action: Beijing+5 Political Declaration and Outcome.’ New York: UN Women. Available at http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf?v=1&d=20160316T150800

29 WAS (2008) ‘Sexual Health for the Millennium: A declaration and technical document.’ Prague: World Association for Sexual Health. Retrieved from: <http://176.32.230.27/worldsexology.org/wp-content/uploads/2013/08/millennium-declaration-english.pdf>

30 IPPF (2011) ‘Exclaim! Young people’s guide to “Sexual Rights: An IPPF Declaration,”’ London: International Planned Parenthood Federation. Available at http://www.ippf.org/sites/default/files/ippf_exclaim_lores.pdf

31 Choice for Youth (2011) ‘Official definitions of sexual and reproductive health and rights,’ St. John’s: Choice for Youth. Available at <https://www.youthdoit.org/themes/sexual-and-reproductive-healthand-rights-are-human-rights/>

Humanist Federation, (2015)³²; Amnesty International, (n.d.)³³; Center for Reproductive Rights, (2006)³⁴; Asia and Pacific Declaration of Population and Development, (2013); General Comment on Article 12, (2000)³⁵; General Comment on the Right to Sexual and Reproductive Health, (2016)³⁶.

At a legal level, in many ways the fight over whether ‘sexual rights are human rights’ has become a diversionary tactic: for example no one doubts that there are ‘fair trial rights’ just because the words ‘fair trial rights’ do not appear as the unique text of an article the International Covenant on Civil and Political Rights (ICCPR) or some other treaty explicitly proclaiming them.³⁷ Everyone agrees that such rights are constructed from the protections offered by bringing together a number of different and related rights. The term ‘sexual rights’ likewise can be seen as a convenient shorthand to encompass the many existing rights that can be found across a wide range of treaties, and which have been applied by authoritative international, regional and national human rights bodies to ensure protections related to sexuality as an aspect of the human person and as they concern sexual health.

Nonetheless, there are distinct and obvious reasons why one would want to ground the definition of sexual rights in the legal framework. Some rights which are often present in sexual rights discussions, such as the right to decide to be sexually active or not and the right to sexual pleasure, go beyond the normative standards. Does this matter? Is consistency in approach needed?

32 European Humanist Federation (2015) ‘What are Sexual and Reproductive Health and Rights?’ Brussels: European Humanist Federation. Available at <https://humanistfederation.eu/wp-content/uploads/What-are-sexual-and-reproductive-health-and-rights-EHF-briefing-F.pdf>

33 Amnesty International (n.d.) ‘Sexual and Reproductive Health Rights,’ London: Amnesty International. Available at <https://www.amnestyusa.org/pdfs/SexualReproductiveRightsFactSheet.pdf>

34 Center for Reproductive Rights (2006) ‘The Protocol on the Rights of Women in Africa,’ New York: Center for Reproductive Rights. Available at https://www.reproductiverights.org/sites/default/files/documents/pub_bp_africa.pdf

35 CESCR (2000), ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),’ Geneva: CESCR. Available at <https://goo.gl/FbpsB5>

36 OHCHR (2016) ‘General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights),’ Geneva: OHCHR, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Sza-b0oXTdlmsJZZVQfQejF41Tob4CvljeTiAP6sGFQktiae1vlbb0AekmaOwDOWsUe7N8TLm%2bP3HJPzjHySkUoHMavD%2fpyfcp3Ylzg>

37 Miller, A. M., Gruskin, S., Cottingham, J., Kismödi, E. (2015) ‘Sound and Fury - engaging with the politics and the law of sexual rights,’ London; Reproductive Health Matters

Bringing sexual rights claims: Which specific human rights best offer support?

If one takes the understanding of ‘sexual rights’ that is reflected in the WHO working definition, sexual rights ‘embrace *certain* human rights that are already recognized in international and regional human rights documents and other consensus documents and in national laws,’ (WHO, 2010). The nature of how rights claims are brought to authoritative bodies, however, influences which rights are privileged in making the links to sexuality even if the rights claims deal with the same topic. Take for example sexuality education. A number of rights would seem to be relevant, not least of which the right to education. And yet sexuality education is increasingly recognized as a part of the right to health by those Treaty Monitoring Bodies that monitor the implementation of relevant treaties. For example, the CRC³⁸ called for sexuality education in the context of children’s and adolescents’ right to health, CESCR³⁹ has been calling for sexuality education in the context of the right to health and the right to sexual and reproductive health, and CEDAW⁴⁰ has been addressing sexuality education in the context of women’s right to health.

As a different approach, the European Committee of Social Rights brought the right to health and the right to education together, establishing that for the promotion of health the state’s obligation to provide education includes the right to non-discriminatory sexuality education and that states have a positive obligation under the Charter to ensure non-discriminatory sexual and reproductive health information (European Commission, 2015).⁴¹

The European Court of Human Rights, on the other hand, operating under the European Convention of Human Rights that does not explicitly enshrine the right to health, has addressed the obligation of the state to provide comprehensive sexuality education by upholding children’s rights to objective and scientifically supported

38 OHCHR (1989), ‘Convention on the Rights of the Child,’ Geneva: Office of the United Nations High Commissioner for Human Rights

39 OHCHR (1966), ‘International Covenant on Economic, Social and Cultural Rights,’ Geneva: Office of the United Nations High Commissioner for Human Rights

40 OHCHR (1979), ‘Convention on the Elimination of All Forms of Discrimination against Women,’ Geneva: Office of the United Nations High Commissioner for Human Rights

41 European Commission (2015), ‘European equality law review,’ Brussels: European Commission. Available at <https://www.equalitylaw.eu/downloads/2935-european-equality-law-review-1-2015-pdf-1-579-kb>

information (commensurate with their evolving capacity) in a pluralistic manner. Claims concerning compulsory sexuality education have mainly been brought by parents to the European Court of Human Rights as concerning their parental rights. The Court repeatedly concludes that compulsory scientifically accurate sexual education for children does not violate state obligations to respect the religion or the philosophical convictions of their parents.

Additionally, certain rights are advanced as sexual rights because they have resonance within particular country contexts because of political, historical, societal and/or legal tradition. Legal gender identity recognition, for example, has been successfully and very comprehensively addressed by Argentinian legislators in the context of the right to identity, as the right to identity has great historical relevance within the country. In Germany, given its historical and political context, the right to be free from forceful medical interventions has great relevance, hence the right to self-determination and to bodily integrity has been evoked comprehensively in the case of forced sterilizations of transgender people. And to note again here, human rights protections are being legally supported by different rights in different contexts. How best to work with this going forward?

How relevant is HIV to the continued development of sexual rights standards?

While health has framed much of the development of sexual rights, it is HIV that has played the major role in allowing this to happen. Mostly these have begun as soft standards by the technical agencies, with UNAIDS leading the way, but this has been and remains important in terms of recognition of non-discrimination and rights claims in relation to sex work, sexual orientation and gender identity, forced sterilization, violence etc. And for obvious reasons the rights protections that have been developed around these topics are all in the context of HIV and not broader. Just as one example, forced sterilization and forced abortion are potentially an issue for lots of populations. What about the development of sexual rights standards for people on these issues outside the HIV context? What will it take to generate sufficient momentum? And while sexual rights concerning sex work are to some degree affirmed by UNAIDS and the other technical agencies, this certainly has not translated into the legal or political arena. The question remains: what does HIV mean for the development of sexual rights protections, let alone in relation to other sexual health issues that have no explicit connection to HIV? Basically the question about HIV is what will its privileged place in the development of sexual rights, standards mean over the long term in terms of the orientation of standards that are not HIV related?

Will diverse understandings of gender always be at issue in advancing sexual rights?

Diverse understandings of gender, particularly connected to the varied streams of sexual rights work, continue to bedevil the landscape surrounding political, technical and legal developments around sexual rights.

Many relevant actors come from cultural systems that treat gender non-conformity as though it is the same thing as sexual non-conformity—such that, for example, an effeminate man is a man who is sexually penetrated is therefore a man who is ‘gay’; while other actors, and the contemporary human rights system, at global and regional levels define sexuality primarily by orientation, i.e. by the gender of the person to whom erotic attraction attaches, so that what defines ‘gay’ or homosexuality or straight and heterosexuality is the gender of your partners not your gender presentation (masculine or feminine) or sexual practices (penetration/non-penetration). This matters for sexual rights because it means that attention is needed to the fact that gender and sexual systems are linked, but not identical. In practice, this means of course not confusing the gender expression of an individual with their sexual partner choice: effeminate men can be heterosexual, transwomen can have heterosexual or homosexual orientations, and lesbians can look conventionally feminine etc.

Moreover, while the rights and health concerns of persons associated with inter-sex conditions are often analogous or connected to sexual and gender concerns arising in the context of diverse sexual orientation and gender identity and expression more generally, they are not fully encompassed by them. Rights respecting responses of states and other actors to inter-sex people require specific attention throughout the life cycle, and cannot be buried under ‘sogi’ or sexual rights language.

These distinctions matter for rights work in many ways but worthy of particular note is the fact that legal and policy work to end restrictions on sexual behaviour (including same sex behaviour) is not identical to the legal and policy changes needed to defend various gendered behaviours and identities. Rights must be understood to attach in both domains (the gender and the sexual) but different rights, different approaches and different policies may be needed to respond.

A new place where sexual rights issues are coming into play is the troubling development in the practice of donors seeking to remove attention to 'gender specificity' with a concept of 'gender neutrality' in the work of humanitarian organisations engaged in SRH work. While likely laudable in concept, in practice this often means that service providers who have developed SRH services for women as an aspect of their gender violence work are asked (often without additional funds) to cover the other 'gendered' populations – LGBT and men affected by sexual assault in conflict – without additional training or support. No person's sexual health and rights are well served by this form of gender 'neutral' umbrella.

It would be useful for everyone's sexual rights to be understood to encompass a broader and more open-ended concept of gender that recognizes that gender is for all persons embodied within a social and relational context. This could also support the identification of gendered human rights abuses, including sexual rights violations, that are not wholly intelligible within specific identity frameworks.

What to do about people under 18?

As international efforts to address adolescent sexual, gender and reproductive rights grow, we now see attention to hetero, homosexual, transgender and intersex rights debates as they concern young people. Where there are positive advances, and there are some, these tend to be in the areas of rights relating to access and use of health and social services, with some attention to participation. And on the negative, of course, are the putative harms of sexual and gender decision-making and conduct. Not surprisingly, we see far less in terms of actionable rights affirming the sexual rights of those under 18.

Deployment of prosecution (as well as censorship, surveillance and other repressive activities) ostensibly to protect 'the child' appears to be remarkably useful for all states to assert legitimate power. Most often this deployment is used to delineate specific regimes of sexuality, reproduction and gender. Contemporary nation states currently criminalize a wide range of actions (by adults) deemed harmful to children with remarkably little interrogation of the sexual rights and interests of the children themselves and often justify criminalization or de facto penalization of some actual children/adolescents, whose conduct – coupled with their race or class – moves them outside the protective realm of idealized childhood.

In practice what plays out for people under 18 is that rights discourse is increasingly circling around their rights of action: ensuring access to certain health services and information to accurate and comprehensive sexuality education, including but not limited to information on contraception, HIV transmission and diversity of sexualities and bodies.

Yet we have somewhere between a ‘head in the sand’ and a ‘harm reduction’ approach to the sexual conduct itself. The international system has, for example, agreed on the need to equalize ages of consent to sexual conduct (including both heterosexual and homosexual consent) for females and males but it has not yet agreed on the age. While we can infer that sexual conduct can involve some appropriately aged adolescents, the fact that the appropriate age is inchoate, (hovering around 15 and 16) means that there are many national level – and some international level – pressures to keep pushing the age to 18, while others focus on the provision of legal guarantees to access SRH services according to the needs of under 18 individuals.

Ironically one of the forces pushing the age to 18 is the desire to regulate against early marriage – fully conflating sexual activity and married sexual activity. Some of the pressures comes from states and advocates working in settings where the age of marriage is 12 or 13, so moving up *both* the age of marriage *and* the age of consent may seem like both a progressive tactic and a necessary lock-step. As marriage ages rise so must the age of consent but to legitimize independent sexual agency of unmarried girls and young women so that they have legal support to both say ‘no’ and ‘yes’ does not appear to be on the horizon any time soon. What is to be done about this?

What about dealing with conservative forces?

While using human rights to support work on sexuality and sexual health has often been attacked as an affront to morality or culture, what is new and worth discussing is the way attacks on sexual rights have changed. While some attacks on sexual rights continue to mobilize claims of ‘tradition,’ ‘morality,’ ‘religion’ or ‘culture’ to resist legal obligations, opposition to sexual rights in some settings now combines these arguments with the language of rights. This means the attacks no longer reject human rights but rather use the language and principles of rights, including attention to treaty interpretation, universalism, and the need to limit some rights to protect

other rights, in order to minimize sexual rights protections. This, alongside larger national and geopolitical conservative trends noted earlier, is an area requiring further thought and attention.

And finally: Who gets counted?

As we find ourselves fully engaged with the 2030 Agenda and the 'SDGs' as the global framework for development, how best can a diverse sexual rights agenda be supported in the work of IGOs, multilateral and bilateral funding and state agencies tasked with its implementation? First we encounter the question of how to measure progress on sexual rights in this new global programmatic and policy context. Despite several forward-looking issues of relevance to progress in sexual rights, there is the problem of normative inclusion: only some sexual rights, as linked to reproductive rights and 'conventional women' are included. Issues, topics and rights that address the diversity of sexualities, the intersection of sexual and gender diversity, let alone sexual rights at its most basic are not visible.

Second, there is some promise in the gender inclusion in the SDGs: at least as far as it signals attention to interventions that will improve equality between women and men. Gender equality and women's empowerment is recognized as "a crucial contribution to progress across all the goals and targets," and is reflected as both a cross-cutting theme and a stand-alone goal (UN, 2015). Yet it is fairly clear that the 'gender' intended in the SDGs is the static gender of male-female binaries, and there has been very little interest in assessing how progress is made in relation to gender variant persons. Equally important, it is not clear how measurement of changes in dominant gender norms would best be done (how do we, for example, measure the differences in gendered norms of child rearing for men?).

Additionally, can these measurement exercises be used to promote shifts in gendered sexualities that tend not toward health, or higher income, but towards more tolerant states of mind and changes in the material culture that are required for gendered and sexual equality and rights to flourish?

Third, for many, the cross cutting commitment to 'leave no one behind' offers an opportunity to capture sexually diverse persons. However, here the question is even if resources are made available, how does one determine

who is the who that is being left behind? To the extent that some people claim a fixed identity, such as transgender or gay or 'inter-sexed' or sex worker, one can try to present numbers and show discriminatory features of exclusion of such persons vis a vis HIV risk and status, violence, etc. This is hard enough, as few countries have credible ways of doing it; but also very difficult to do in ways that assure people will not experience further discrimination because of the visibility they achieve by 'being counted.' Further, what of people whose practices do not constitute their identity—married men who also have sex with men? Married women who sell sex on the side? What of the transgender person who identifies as a woman? Or people in the sex trade who do not use the identity 'sex worker' but are affected by policing under prostitution or more likely still, under vagrancy laws? Or women who seek to resist sex with their husbands? How do we begin to collect information across countries with respect to practices that have great effects on sexual rights, but for which as yet no 'identity' is counted, even among the most progressive indices (such as UNDP's LGBT index)? And what about statistical significance? Given the overwhelming focus on quantitative data, how do we ensure the lived realities of the many gender diverse and sexually variant people whose percentage numbers will never be statistically significant are taken seriously?

Conclusions

This paper has demonstrated how, in the past two decades, there has been an unprecedented expansion in both understanding and standard-setting related to sexual rights at the global level, in the political, technical and legal spheres. With these developments, however, huge complexities have emerged, so that the current landscape of sexual rights is fraught with conundrums and sometimes unanswerable questions.

Among the most pressing for attention is the question of terminology and whether there is need for a global consensus on the definition of sexual rights in order for actionable commitments to grow. Related to this is the use of confused terminology such as ‘sexual and reproductive health and rights’, ‘sexual and reproductive health rights’ and ‘sexual and reproductive rights’, all of which are deployed – deliberately or not – by different actors for different (often political) purposes.

There is the question of whether it matters that some aspects of the definition of sexual rights are grounded in the legal framework, while others, such as the right to pleasure, are not – at least for the time being. Allied to this is the fact that human rights protections are being legally supported by different rights in different contexts, and while this variation of approach may be a good thing, it may also result in weaknesses at the global level.

Critical to the whole development of sexual rights protections and standards is the explicit link to health, and more specifically the role that HIV has played in the development of these standards. Whether this will have an ultimately limiting effect on sexual rights is another question to grapple with.

Conundrums surrounding understandings of gender – the fact that gender identity and sexual orientation are often conflated, with inter-sex simply tacked on without specific attention – and the sexual rights of people under 18 whose gender identity and sexual orientation (amongst other things) are often ignored, are among the most difficult to deal with in global spaces. Both present ‘catch 22’ type questions where there are seemingly no solutions.

Keeping track of the ever-growing conservative forces and their use of the human rights language to counter gains made is an on-going area for attention, as is the question about how to move beyond currently accepted

categories of people to ensure that those who are usually invisible actually get counted, whether or not their numbers are small.

Finally, there are questions that have not been covered here, but that surely require attention and analysis. A potential first step is undertaking a mapping to make explicit not only the inconsistencies among the technical, legal and political areas, but also where there are gaps in standards relating to populations or topics in sexual rights that remain to be addressed. Such a mapping would make it easier to analyse in situations where it would help to ensure consistency and where it might be strategic to let things be. Where standards do exist, there is a clear need to document the difference they have made to people's lived realities.

Those engaging in actions to advance sexual rights must not only examine these conundrums and questions, but also recognize that each of these articulations is important in different contexts, taking into account current North/South, North/North and South/South politics at a governmental level, as well as what is happening with the opposition in all forums.

Legal Developments in the Domain of Sexual Rights

Laura Saldivia Menajovsky and Ryan Thoreson

In sexual rights movements, advocates around the globe have engaged with, reshaped, and deployed laws and regulations as tools for liberation. Often, their attempts have met with strong resistance and aggressive pushback. In many instances, however, engagement with legal structures has reshaped domestic, regional, and international law to generate new possibilities for thinking about sex, gender, and sexuality.

In this article, we take stock of the ways that law generates new possibilities for sexual rights as well as some of the complexities and costs that accompany the use of law. We first canvass the domains where advocates have sought to harness the power of law to advance sexual liberation, giving a general overview of some of the more notable engagements with law over the past fifteen years. We then turn to the limits of law, noting ways in which the pursuit of sexual liberation might be dampened or marred by pitfalls that are intrinsic to the law itself. We finally offer preliminary thoughts about what this general overview of legal developments might suggest for sexual rights advocacy in the future.

Sexual Regulation, Sexual Rights

It is impossible to provide any comprehensive overview of the legal battles that have been fought globally over the past decade, but some key trends have animated battles across various geographical regions. In domestic contexts, sexual rights advocates have sought rights and recognition through legislatures, judiciaries, and agencies, and globally, they have launched concerted efforts to bolster protections in regional and international law.

Legislation

Activists have productively engaged with legislatures to repeal restrictive provisions, negotiate regulatory regimes, and establish affirmative protections. Among the most immediate targets are restrictions on sexual rights, which continue to exist in various forms. Whether through criminal or civil prohibitions, laws around the globe meaningfully restrict access to contraception and abortion, prohibit sex work and same-sex activity, impose invasive and onerous requirements for legal gender recognition, and curtail sexual rights advocacy from civil society.

Efforts to repeal restrictive laws through legislative advocacy have met with some success in recent years. In sub-Saharan Africa, lawmakers were successfully persuaded to repeal prohibitions on same-sex activity in Cape Verde in 2004, Lesotho and Sao Tome and Principe in 2012, Mozambique in 2015, and Seychelles in 2016.¹ In the Asia-Pacific region, Palau decriminalized same-sex activity in 2014. By the 2000s, Nicaragua and Panama were the only countries in Latin America to prohibit homosexuality. This changed in 2006 and 2008, respectively, when each country abrogated laws criminalizing same-sex activity. Laws criminalizing sex work have come under legislative scrutiny as well. Although such laws have at times been replaced by problematic alternatives – consider, for example, Sweden's adoption of a “Nordic Model” that purports to decriminalize sex work but criminalize those who purchase sex – they have also resulted in strong precedents like the decriminalization of sex work in New Zealand.²

Although gains have been particularly hard fought in the realm of contraception and abortion, they have been evident as well. In 2002, Nepal abandoned its criminal prohibition on abortion – for which dozens of women had been imprisoned – legalizing abortion in the first twelve weeks of pregnancy and in the first eighteen

1 BBC, “Mozambique Decriminalises Gay and Lesbian Relationships,” July 1, 2015, <http://www.bbc.com/news/world-africa-33342963>; Sharon Uranie, Patsy Athanase & Rassin Vannier, “Seychelles Parliament Passes Bill to Decriminalize Sodomy,” Seychelles News Agency, May 18, 2016, <http://www.seychellesnewsagency.com/articles/5198/Seychelles+parliament+passes+bill+to+decriminalize+sodomy>.

2 Fraser Crichton, “Decriminalizing Sex Work in New Zealand: Its History and Impact,” Open Democracy, Aug. 21, 2015, <https://www.opendemocracy.net/beyondslavery/fraser-crichton/decriminalising-sex-work-in-new-zealand-its-history-and-impact>.

weeks in cases of rape or incest.³ In 2007, Mexico City enacted a law legalizing abortion in the first twelve weeks of pregnancy, which was subsequently upheld in an 8-3 decision by the Mexican Supreme Court.⁴ In 2012, Uruguay legislatively legalized abortion, with some limitations – abortion became legal upon request within twelve weeks of gestation, and after a five-day reflection period.⁵ In Portugal, a majority of voters in a referendum approved a proposal to permit abortion in the first ten weeks of pregnancy, which lawmakers subsequently enacted into law.⁶ In 2015, Mozambique eased colonial-era abortion restrictions in an effort to reduce maternal mortality, permitting access to abortion in the first twelve weeks of pregnancy and sixteen weeks in cases of rape or threats to a woman's life.⁷ In 2017, Chile – where abortion was fully prohibited – reformed its penal code to allow abortion under specific circumstances,⁸ and Bolivia expanded the grounds for legal abortion.⁹ In late May 2018, a referendum in Ireland repealed a constitutional provision prohibiting abortion in almost all circumstances, opening the road for a full abortion reform.¹⁰

Despite these recent gains, legal restrictions are not the only obstacle to sexual and reproductive rights; the absence of positive rights and public policy and lack of implementation can also be formidable. In addition to repealing restrictive laws, activists have used legislative channels to expand sexual rights guarantees. Activists have lobbied lawmakers to embrace reproductive autonomy, for example, with the passage of the long-awaited

3 Susan A. Cohen, "Nepal Reforms Abortion Law to Reduce Maternal Deaths, Promote Women's Status," Guttmacher Policy Review, May 1, 2002, <https://www.guttmacher.org/gpr/2002/05/nepal-reforms-abortion-law-reduce-maternal-deaths-promote-womens-status>.

4 James C. McKinley, Jr., "Mexico City Legalizes Abortion Early in Term," *New York Times*, April 25, 2007, <http://www.nytimes.com/2007/04/25/world/americas/25mexico.html>; Human Rights Watch, "Mexico: Supreme Court Upholds Mexico City Abortion Law," Aug. 28, 2008, <https://www.hrw.org/news/2008/08/28/mexico-supreme-court-upholds-mexico-city-abortion-law>.

5 Patrick Adams, "From Uruguay, a Model for Making Abortion Safer," June 28, 2016, <http://www.nytimes.com/2016/06/28/opinion/from-uruguay-a-model-for-making-abortion-safer.html>.

6 BBC, "Portugal Will Legalise Abortion," Feb. 12, 2007, <http://news.bbc.co.uk/2/hi/europe/6350651.stm>.

7 Benjamin Durr, "Mozambique Loosens Anti-Abortion Laws," *Al Jazeera*, Jan. 26, 2015, <http://www.aljazeera.com/indepth/features/2015/01/mozambique-loosens-anti-abortion-laws-150120081246992.html>.

8 Piotr Kozak, "'A Triumph of Reason': Chile Approves Landmark Bill to Ease Abortion Ban," *The Guardian*, Aug. 22, 2017, <https://www.theguardian.com/global-development/2017/aug/22/chile-abortion-bill-michelle-bachelet-a-triumph-of-reason-ease-abortion-ban>.

9 IPAS, "Legal Abortion Access Greatly Expanded in Bolivia," Dec. 15, 2017, <http://www.ipas.org/en/News/2017/December/Legal-abortion-access-greatly-expanded-in-Bolivia.aspx>.

10 Henry McDonald, Emma Graham-Harrison & Sinead Baker, "Ireland Votes by Landslide to Legalise Abortion," *The Guardian*, May 26, 2018, <https://www.theguardian.com/world/2018/may/26/ireland-votes-by-landslide-to-legalise-abortion>.

Reproductive Health Law in the Philippines.¹¹ In many countries, legislative efforts led to marriage equality – for example, in the Netherlands, Belgium, Spain, Canada, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, France, Uruguay, New Zealand, the United Kingdom, Luxembourg, Finland, Germany, Malta, and Australia. In South Africa, where same-sex practicing people won significant victories through the courts, transgender and intersex people have secured protections primarily through legislative and administrative channels. In 2003, the Alteration of Sex Description and Sex Status Act permitted individuals to alter their sex in the National Population Register, and in 2005, an amendment to the Promotion of Equality and Prevention of Unfair Discrimination Act clarified that the constitutional prohibition on sex discrimination encompassed intersex individuals.¹²

The most ambitious and successful efforts to create rights-affirming legal systems for transgender and intersex people have been in Argentina and Malta, respectively. In 2012, Argentina became the first country to pass an act recognizing self-perceived gender identity as the only way to determine somebody's gender identity. Argentine activists fought for an expansive law that permits legal gender recognition without psychiatric, medical, judicial, or administrative intervention and facilitates free access to medical interventions for those who want them.¹³ Another novel aspect of the statute is its recognition of children's right to decide their own gender.¹⁴ In Malta, a groundbreaking law passed in 2015 not only permits legal gender recognition based on self-determination, but prohibits normalizing genital surgeries on intersex infants.¹⁵ From 2015 to 2018, Brazil, Colombia, Mexico, Nepal, Bolivia, Ireland, and Norway have also followed, with some differences, this depathologizing and dejudicializing path.¹⁶

11 Floyd Whaley, "Bill to Expand Birth Control is Approved in Philippines," *New York Times*, Dec. 17, 2012, <http://www.nytimes.com/2012/12/18/world/asia/philippine-lawmakers-pass-reproductive-health-bill.html>; BBC, "Uruguay Legalises Abortion," Oct. 17, 2012, <http://www.bbc.com/news/world-latin-america-19986107>; BBC, "Chile Lawmakers Lift Abortion Ban Introduced by Pinochet," Mar. 18, 2016, <http://www.bbc.com/news/world-latin-america-35838760>.

12 Ryan Thoreson, "Beyond Equality: The Post-Apartheid Counternarrative of Trans and Intersex Movements in South Africa," *African Affairs*, 112:449 (2013): 646-665.

13 Transgender Europe, "Argentina Gender Identity Law," trans. Alejandra Sardá-Chandiramani and Radhika Chandiramani, Sept. 12, 2013, <http://tgeu.org/argentina-gender-identity-law>.

14 See article 5 of Statute N° 26.743, May 9, 2012.

15 Transgender Europe, "Malta Adopts Ground-Breaking Trans and Intersex Law," Apr. 1, 2015, <http://tgeu.org/malta-adopts-ground-breaking-trans-intersex-law>.

16 Laura Saldivia Menajovsky, *Subordinaciones Invertidas: Sobre el Derecho a la Identidad de Género*, Universidad Nacional Autónoma de México (UNAM) and Universidad Nacional de General Sarmiento (UNGS), Chapter 6, 2017.

Of course, legislative advocacy has its pitfalls as well. In addition to the passage of hostile laws like the Anti-Homosexuality Act in Uganda, the Same-Sex Marriage (Prohibition) Act in Nigeria, and laws restricting gay “propaganda” in Russia,¹⁷ attempts to favorably amend laws can open the door to changes that render them more rights-restricting. One example is Nicaragua; the same reforms to the criminal code that decriminalized same-sex activity also imposed an absolute prohibition on abortion. In other instances, legislators who review discriminatory provisions criminalizing same-sex activity between men alone have expanded rather than eliminated them by criminalizing same-sex activity between women as well. Invoking gender equality as a rationale, lawmakers thus expanded laws against same-sex activity in Botswana in 1998, the Gambia and Zambia in 2005, and Malawi in 2011.¹⁸

Another pitfall is backlash and resistance in response to laws advancing sexual and reproductive rights. In both France and Mexico, for example, efforts to legalize same-sex marriage triggered fierce public protest and contestation as opponents sought to rally popular opposition and overtake legislative efforts. In Slovenia, opponents of same-sex marriage legislation passed by the National Assembly led a referendum campaign that ultimately succeeded, defeating the bill. As we discuss in the next section, where legislatures have proven unwilling or unable to recognize sexual rights or popular movements circumvent legislative progress, judicial avenues have at times provided a compelling alternative.

Judiciaries

In many countries, judicial systems have generated powerful rulings affirming the rights of women, LGBTI people, sex workers, and other claimants. Such rulings not only vindicate aggrieved individuals and offer some modicum of recognition and recourse, but can also more generally affirm the shared citizenship and belonging of marginalized populations.

17 Anti-Homosexuality Act, 2014, on file with authors; Same-Sex Marriage (Prohibition) Act, 2013, [http://www.placng.org/new/laws/Same%20Sex%20Marriage%20\(Prohibition\)%20Act,%202013.pdf](http://www.placng.org/new/laws/Same%20Sex%20Marriage%20(Prohibition)%20Act,%202013.pdf).

18 Human Dignity Trust, *Breaking the Silence*; for more on the movement in Botswana, see Monica Tabengwa with Nancy Nicol, “The Development of Sexual Rights and the LGBT Movement in Botswana,” in *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change*, ed. Corinne Lennox and Matthew Waites (London: Institute of Commonwealth Studies, 2013): 339-358; for more on the movement in Malawi, see Undule Mwakasungula, “The LGBT Situation in Malawi: An Activist Perspective,” in *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change*, ed. Corinne Lennox and Matthew Waites (London: Institute of Commonwealth Studies, 2013): 359-379

One of the clearest and most effective judicial campaigns for sexual rights has been in South Africa, where activists worked before, during, and after the adoption of the post-apartheid constitution to confront discrimination on the basis of sexual orientation. By expressly including the phrase “sexual orientation” in the constitution’s Equality Clause, activists laid the groundwork for a string of victories invalidating South Africa’s prohibition on same-sex activity and recognizing same-sex partnerships for the purposes of immigration, benefits, adoption, parenting, and marriage.¹⁹

South Africa provides an especially strong example of a clear constitutional guarantee faithfully enforced by the courts, but other courts have also delivered strong judgments in favor of sexual rights by construing constitutional texts. The Supreme Court of Canada, for example, cited the right to security of the person in the Canadian Charter of Rights and Freedoms to hold that laws criminalizing keeping a brothel, living on the avails of prostitution, and solicitation in public infringed upon the rights of sex workers.²⁰ The Constitutional Court of Colombia similarly looked to the rights to life and health in the Colombian Constitution, in conjunction with international human rights commitments, to hold that an absolute ban on abortion violated women’s rights.²¹ In the so-called “F.A.L.” ruling issued in 2012, the Argentine Supreme Court confirmed that abortion cannot be criminalized in cases in which pregnancy is the result of rape or when a woman’s health is at risk, and in the “ALITT” decision in 2006, it found transgender people had a right to organize and advocate for their rights, laying the groundwork for later victories like marriage equality and legal gender recognition. In 2015, the Constitutional Court of Colombia adopted several cases recognizing the rights of sexual minorities – for example, Sentence T- 478 of 2015 regarding sexual orientation and gender identity discrimination in schools, Sentence C-683 of 2015 regarding adoption for same-sex couples, and Sentence T-063/15 of 2015 regarding legal gender recognition²² – and upheld the validity of same-sex marriage on April 28, 2016.²³ Brazil’s Supreme

19 Neville Hoad, Karen Martin, and Graeme Reid, eds., *Sex and Politics in South Africa* (Cape Town: Double Storey Books, 2005), 172-223; Ryan Thoreson, “Somewhere Over the Rainbow Nation,” *Journal of Southern African Studies* 34.3 (2008), 681-82.

20 *Canada v. Bedford*, 2013 SCC 72, [2013] 3 SCR 1101, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>.

21 *Sentencia C-355/06*, <http://www.corteconstitucional.gov.co/relatoria/2006/c-355-06.htm>.

22 *La Sentencia T-063/15*, Sala primera de Revisión de la Corte Constitucional, decisión del 13 de febrero 2015.

23 Human Rights Watch (HRW), “Colombia: Constitutional Court Upholds Same-Sex Marriage,” Apr. 28, 2016, <https://www.hrw.org/news/2016/04/28/colombia-constitutional-court-upholds-same-sex-marriage>.

Federal Tribunal has also been active in advancing sexual rights. It decided that a civil union (*união civil* – a form of legal union that is different from civil marriage) between persons of the same sex constitutes a family and therefore ought to be fully recognized, according to article 226 of the Federal Constitution of 1988. A year later, it eased restrictive abortion legislation by affirming that a woman pregnant with an anencephalic fetus can interrupt gestation with medical assistance. In 2018, the Court abolish granted the right of trans persons to social identity abolishing the requirement of medical diagnosis or intervention. And in Nepal, a landmark 2007 ruling by the Supreme Court ordered the government to end discriminatory practices against the LGBT community, paving the way for both equal rights legislation and the inclusion of “gender and sexual minorities” in the Nepali Constitution.²⁴

Yet even in places where sexual rights remain heavily circumscribed by criminal laws, legal advocacy has at times succeeded in setting a baseline of treatment and affirming shared membership in the nation-state. Courts in Uganda, for example, have recognized LGBTI people’s rights to liberty, dignity, privacy, and protection from cruel, inhuman, and degrading treatment even though same-sex activity remains criminalized.²⁵ Where civil society is concerned, courts in Botswana and Kenya have similarly stressed the criminalization of same-sex activity does not preclude freedoms of expression, association, and assembly for LGBTI organizations.²⁶ In Belize, years of persistent judicial advocacy led to a resounding victory for activists seeking to repeal the nation’s law against same-sex activity with the court strongly affirming the constitutional and human rights of the plaintiffs. Advocates in Trinidad and Tobago won a similar case in 2018.²⁷ A brief but important victory

24 Kyle Knight, “How Nepal’s Constitution Got Queered,” *Los Angeles Review of Books*, Oct. 14, 2015, <https://lareviewofbooks.org/article/how-nepals-constitution-got-queered>.

25 Victor Juliet Mukasa and Yvonne Oyo v. Attorney General, High Court of Uganda at Kampala, Civil Division, Misc. Cause No. 247/06 (2008), <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/07/Mukasa-and-Oyo-v.-Attorney-General-High-Court-of-Uganda-at-Kampala.pdf>; Kasha Jacqueline v. Rolling Stone Ltd. and Giles Muhame, High Court of Uganda at Kampala, Civil Division, Misc. Cause No. 163 (2010), <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/07/Kasha-Jacqueline-David-Kato-Kisule-and-Onziema-Patience-v.-Rolling-Stone-Ltd-and-Giles-Muhame-High-Court-of-Uganda-at-Kampala.pdf>.

26 Benjamin Shapi, “Botswana: Court of Appeal Upholds Legabibo Ruling,” *Botswana Daily News*, March 16, 2016, <http://allafrica.com/stories/201603170122.html>; *In the Matter of an Application for Judicial Review Orders and In the Matter of Non-Governmental Organization Co-Ordination Act, 1990 of Kenya*, High Court of Kenya at Nairobi, Milimani Law Courts, Jr. Miscellaneous Application No. 308A of 2013 (2014), on file with author; *Eric Gitari v. Non-Governmental Organizations Co-ordination Board and Four Others*, High Court of Kenya at Nairobi, Constitution and Judicial Review Division, Petition No. 440 of 2013 (2015), <http://kenyalaw.org/caselaw/cases/export/108412/pdf>.

27 Jason Jones, “We Won in Trinidad. Now It’s Time to End All Homophobic Laws in the Commonwealth,” *The Guardian*, Apr. 13, 2018, <https://www.theguardian.com/commentisfree/2018/apr/13/trinidad-homophobic-laws-win-case-commonwealth>.

took place in 2009 when the Delhi High Court read down Section 377 of the Indian Penal Code with respect to sex between consenting adults.²⁸ Just four years later, the Delhi High Court's decision was overturned by the Supreme Court of India, with the Court holding that amending or repealing Section 377 should be a matter left to the legislature and not the judiciary. Then, in July 2018, the case was re-examined by the Supreme Court with strong prospects of a positive outcome.²⁹

In this case and others, seeking respite from the judiciary has not been a foolproof strategy. Some courts have proven highly deferential to legislative or popular opinion, using their reading of that opinion as a justification to deny or defer action in favor of sexual rights. Such a stance has led to judicial defeats for activists challenging laws against same-sex activity, for example, in courts in Zimbabwe,³⁰ Botswana,³¹ India,³² and Singapore.³³ As discussed in greater detail below, the larger social context in which courts, like legislatures and agencies, operate inevitably colors their perception and resolution of sexual rights claims.

Judges may also draw distinctions that allow some rights to proceed while others stall or regress. An example of this is the “*NALSA*” case in India over the recognition of the rights of transgender persons.³⁴ Relying on the definition provided by the Yogyakarta Principles on gender identity and sexual orientation, the Indian Supreme Court issued a decision recognizing Indians' right to choose their gender and created a “third gender” category for those who don't identify as either male or female.³⁵ *NALSA* was delivered just a few months after *Koushal*, the case in which the Supreme Court recriminalized LGBT persons and upheld the constitutionality of section

28 Section 377, introduced in India under British colonial occupation, criminalizes sexual activities “against the order of nature,” a phrase authorities have interpreted to include same-sex activity.

29 See <https://thewire.in/lgbtqia/wire-special-377-supreme-court-decriminalise-homosexuality>

30 *Banana v. State*, Supreme Court of Zimbabwe (2000) (opinion of McNally, J.A.).

31 *Kanane v. State*, High Court of Botswana (1995); *Kanane v. State*, Court of Appeal of Botswana (2003).

32 *Koushal v. Naz Foundation*, Supreme Court of India (2013).

33 Human Rights Watch, “Singapore: Court Ruling a Major Setback for Gay Rights,” Oct. 29, 2014, <https://www.hrw.org/news/2014/10/29/singapore-court-ruling-major-setback-gay-rights>.

34 *National Legal Services Authority v. Union of India & Ors.* [Writ Petition (Civil) No. 400 of 2012 (“*NALSA*”)] by a division bench of Justices K.S. Radhakrishnan and A.K. Sikri, April 15, 2014.

35 The judgment recognizes ‘transgender’ broadly to encompass various prominent regional and trans-regional communities/identities like Hijras, Kothis, Aravanis, Jogappas, Shiv Shaktis, etc., “*NALSA*”: paras. 11, 56, 109, 110.

377 of the Indian Penal Code. The Court acknowledged this, but made clear that while it recognized that section 377 is used to harass and discriminate against transgender persons, their judgment left *Koushal* undisturbed, and instead focused specifically on the legal recognition of the transgender community. In a similar manner, many countries have rapidly embraced LGBTI rights in recent years, but remain hostile to the right to access abortion.³⁶

A final pitfall to note is hostility and popular mobilization against judicial rulings in favor of sexual and reproductive rights. Colombia offers a striking example of this. Reactionary sectors with close ties to the Catholic Church mobilized against the judicial decisions in favor of LGBT rights described above.³⁷ In the United States, too, a 2003 ruling by the Massachusetts Supreme Judicial Court identifying a right to marry in the state's constitution prompted aggressive backlash across the country, with eleven states amending their constitutions to prohibit same-sex marriage in elections the following year. Another key example is Mexico, where Mexico City's successful abortion liberalization prompted a series of state-level constitutional reforms that preempted liberalization efforts by codifying the understanding that the right to life begins at conception. Today, seventeen states' constitutions include the right to life provision.

Agencies

A perhaps underappreciated form of legal advocacy that activists have utilized is engagement with administrative agencies. When agencies are familiar with the issues at hand, invested in following best practices, and somewhat insulated from populist pressures, they have at times proven highly responsive to activist demands.

In Chile, for example, the Ministry of Health recently issued groundbreaking administrative guidance instructing hospitals to stop “normalizing” genital surgeries on intersex infants and children.³⁸ In Colombia, it was an

36 For some reasons why this is so, see Sonia Ariza and Laura Saldivia Menajovsky, “Matrimonio igualitario e identidad de género sí, aborto no,” *Derecho y Crítica Social* 1.1 (2015), 181-209.

37 Catalina Erazo, “Mi Sexo, Mi Cédula, yo Decido,” *Diario El Espectador*, Oct. 30, 2015, <http://www.elespectador.com/noticias/bogota/mi-sexo-mi-cedula-yo-decido-articulo-596196>.

38 Organization Intersex International, “Chilean Ministry of Health Issues Instructions Stopping “Normalizing” Interventions on Intersex Children,” Jan. 11, 2016, <https://oii.org.au/30250/chilean-ministry-stops-normalising>.

executive decree that allowed individuals to self-identify their gender identity.³⁹ In Brazil, administrative ordinances at various levels now ensure the right of social identity to transgender persons as well as access to gender-neutral toilets. After the Supreme Federal Tribunal's 2011 decision recognizing same-sex civil unions, people began requesting authorization to marry, and notaries in various states have accepted these requests. Provoked by a request of the national association of notaries, the National Council of Justice (a regulatory board of the judiciary) issued an administrative ordinance that has "legalized" same-sex marriages even when the text of the constitution says that marriage is a union between a man and woman. In the United States, where the Affordable Care Act requires insurers to cover preventive health services, implementing agencies extended access to reproductive health care by defining contraceptive methods and sterilization procedures as "preventive health services."⁴⁰ In the Philippines, the Anti-Bullying Act of 2013 prohibits bullying on the basis of sexual orientation and gender identity by virtue of implementing rules and regulations promulgated by the Department of Education that specify "sexual orientation and gender identity" as a prohibited ground.⁴¹

In many parts of the world, Ministries of Health have been especially crucial points of entry for advocates working on issues of sexual and reproductive health, including contraception, pregnancy, abortion, sexually transmitted infections, and HIV. Similarly, Ministries of Health and Ministries of Home Affairs have been crucial advocacy targets for trans and intersex advocates seeking to promote rights-respecting medical services and facilitate access to legal gender recognition. Advocates have also turned to census bureaus to ensure that LGBT people are counted and included in social welfare programs. In a groundbreaking change in 2011, "third gender" was recognized as a new category in Nepal's census.⁴² India and Pakistan have followed suit, recognizing a third gender in national census data.⁴³ Furthermore, Nepal, India, and Bangladesh have taken

39 Executive Decree 1227 (2015).

40 See "Coverage of Certain Preventive Services Under the Affordable Care Act," Federal Register, Vol. 78 No. 127, July 2, 2013, <https://www.gpo.gov/fdsys/pkg/FR-2013-07-02/pdf/2013-15866.pdf>.

41 See "Implementing Rules and Regulations of Republic Act No. 10627," Dec. 13, 2013, <http://www.gov.ph/2013/12/13/implementing-rules-and-regulations-of-republic-act-no-10627>.

42 Manesh Shrestha, "Nepal Census Recognizes 'Third Gender,'" CNN, May 31, 2011, <http://edition.cnn.com/2011/WORLD/asiapcf/05/31/nepal.census.gender>.

43 Rema Nagarajan, "First Count of Third Gender in Census: 4.9 Lakh," Times of India, May 30, 2014, <http://timesofindia.indiatimes.com/india/First-count-of-third-gender-in-census-4-9-lakh/articleshow/35741613.cms>; Waqar Mustafa, "Pakistan Counts Transgender People in National Census for First Time," Reuters, Jan. 9, 2017, <http://www.reuters.com/article/us-pakistan-transgender-census-idUSKBN14T1XK>.

steps to ensure access to education, employment, and other social goods for hijras or those who identify within the third gender category, although implementation of those efforts has been uneven.⁴⁴ Australia, New Zealand, Nepal, and Germany have allowed individuals to obtain passports with a gender marker other than “male” or “female,” and advocates in other countries are increasingly calling for the same.

In these and other cases, advocates have maintained pressure on agencies to ensure that the promises of statutory victories are being fully implemented and fulfilled. This was the case in Argentina with Luana, a six-year-old transgender child who demanded recognition of her self-perceived gender identity in her identity documents, invoking the recently passed gender identity statute. Although she initially encountered administrative resistance to such recognition, LGBT activists’ pressure ultimately forced political actors to intervene and the agency to change its position and grant her request.⁴⁵

At the international level, a remarkable illustration of successful engagement with technocratic agencies to call for the revision of their gender and sexuality norms and regulations was the systematic effort developed by trans and intersex advocates and communities to influence the reform of the International Classification of Diseases (ICD) – which determines public health frameworks and access to services worldwide – in order to eliminate its ingrained biases toward pathologization, including in relation to gender diversity in childhood.⁴⁶ The ICD-11, released in June 2018, removes trans-related diagnoses from the section on mental and behavioral disorders and creates two new categories – Gender Incongruence of Adolescence and Adulthood and Gender Incongruence of Childhood – in a section on conditions related to sexual health. While depathologization advocates continue to work for further reform, these changes in the ICD-11 are a landmark in recognizing that being transgender is not a mental health disorder.⁴⁷

44 Kyle Knight, “Nepal’s Civil Service Increasingly Transgender-Inclusive,” Human Rights Watch, Feb. 16, 2017, <https://www.hrw.org/news/2017/02/16/nepals-civil-service-increasingly-transgender-inclusive>; Human Rights Watch, “I Want to Live With My Head Held High”: Abuses in Bangladesh’s Legal Recognition of Hijras (2016), <https://www.hrw.org/report/2016/12/23/i-want-live-my-head-held-high/abuses-bangladeshs-legal-recognition-hijras>.

45 See Valeria Pavan (comp.), *Niñez Trans. Experiencia de reconocimiento y derecho a la identidad*, Editorial Universidad Nacional de General Sarmiento, 2016.

46 Further information on these engagements can be found at the website of Global Action for Trans Equality (GATE) at <https://transactivists.org/?s=ICD+Reform>. See also Amets Suess Schwend et al., “Depathologising Gender Diversity in Childhood in the Process of ICD Revision and Reform,” *Global Public Health*, January 24, 2018, <https://doi.org/10.1080/17441692.2018.1427274>.

47 World Health Organization, “WHO Releases New International Classification of Diseases (ICD 11),” June 18, 2018, [http://www.who.int/news-room/detail/17-06-2018-who-releases-new-international-classification-of-diseases-\(icd-11\)](http://www.who.int/news-room/detail/17-06-2018-who-releases-new-international-classification-of-diseases-(icd-11)).

Regional and International Law

In addition to developments in domestic law, activists have turned their attention to regional and international institutions to affirm and expand sexual rights. At times, these initiatives have taken the form of soft law interventions. One groundbreaking example was Paul Hunt's report articulating the link between sexual and reproductive health and human rights during his tenure as the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health.⁴⁸ Hunt's successor, Anand Grover, issued two reports that affirmed the importance of sexual rights, the first on the criminalization of same-sex conduct, sex work, and HIV transmission and the second on the criminalization and restriction of sexual and reproductive health.⁴⁹ Both reports highlight how the criminalization of the behaviors and services discussed adversely affects the right to health.

A second soft law example is the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity, a set of non-binding principles elaborated by advocates, academics, and other experts that underscore that LGBT people are entitled to universal human rights by virtue of their humanity. Since 2007, when the Principles were promulgated, they have been used and cited as guidelines for rights-respecting interventions nationally and internationally around the globe.⁵⁰ In 2017, a supplement of the Principles was published that expands previous conceptual and normative definitions in various ways including, amongst others, by adding sexual characteristics as another critical dimension to be looked at when addressing and redressing the violations of the rights of intersex persons. By crafting soft law instruments to guide regional and international work, sexual rights activists set the terms of their demands in advance of more politicized processes where compromises and agreed-upon language must be negotiated by states.

48 Report of the Special Rapporteur, Paul Hunt, "The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," Commission on Human Rights, U.N. Doc. E/CN.4/2004/49/Add.2 (Feb. 19, 2004), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/110/79/PDF/G0411079.pdf>.

49 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, Anand Grover," U.N. Doc. A/HRC/14/20 (April 27, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/131/18/PDF/G1013118.pdf>; UN Human Rights Council, "Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," U.N. Doc. A/66/254, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf>.

50 The Yogyakarta Principles (2007), <http://www.yogyakartaprinciples.org>; Michael O'Flaherty & John Fisher, "Sexual Orientation, Gender Identity and International Human Rights Law: Contextualizing the Yogyakarta Principles," *Human Rights Law Review* 8.2 (2008): 207-248.

At the same time, sexual rights activists have sought formal recognition and redress in regional and international forums. At the European Court of Human Rights (ECHR), activists have met with varying degrees of success, as the court has declined to recognize a right to abortion or a right to same-sex marriage as part of its regional jurisprudence,⁵¹ and has only recently clarified that transgender persons are protected from discrimination on the basis of gender identity.⁵² In early 2018, an advocate general at the European Court of Justice recommended that European countries should extend residency rights to same-sex couples even if they do not recognize same-sex marriage.⁵³ In the “Atala” case, the Inter American Court of Human Rights (IACtHR) held the Chilean government responsible for the discriminatory treatment and arbitrary interference in the applicant’s private and family life due to her sexual orientation, setting an important precedent in the Americas. In the case, following a similar opinion by the Inter American Commission on Human Rights (IACHR), the IACtHR established that discrimination based on sexual orientation is prohibited under the textual ban on discrimination under based on “any other social condition”.⁵⁴ Following this trend, activists working with the IACHR have successfully fought for a Special Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons, which became operational in 2014, and which joined the Special Rapporteur on the Rights of Women, which became operational in 1994.⁵⁵ In early 2018, in response to a petition from Costa Rica, the IACtHR issued an advisory opinion stating that signatories to the American Convention on Human Rights must extend the right to marry to same-sex couples without discrimination and permit transgender individuals to alter their documents to reflect their name and gender identity.⁵⁶ At the African Commission on Human and People’s Rights (ACHPR), women’s rights activists successfully fought for passage of the Protocol to the African Charter on Human and Peoples’ Rights on the

51 A, B, and C v. Ireland (2010), <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-102332&filename=001-102332.pdf>; Schalk and Kopf v. Austria (2010), http://www.menschenrechte.ac.at/uploads/media/Schalk_und_Kopf_gg_OEsterreich_Urteil_01.pdf.

52 Transgender Europe, “European Court of Human Rights: ‘Gender Identity’ Protected Against Discrimination,” May 15, 2015, <http://tgeu.org/european-court-of-human-rights-gender-identity-protected-against-discrimination>.

53 Reuters, “EU Court Adviser Backs EU-Wide Recognition of Same-Sex Spouses,” January 11, 2018, <https://www.reuters.com/article/us-eu-rights-lgbt/eu-court-adviser-backs-eu-wide-recognition-of-same-sex-spouses-idUSKBN1F010D>.

54 Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239.

55 Inter-American Commission on Human Rights, “The Rights of Women,” <http://www.oas.org/en/iachr/women/default.asp> (last accessed June 30, 2016); Inter-American Commission on Human Rights, “Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons,” <http://www.oas.org/en/iachr/lgtbi> (last accessed June 30, 2016).

56 BBC, “Inter-American Human Rights Court Backs Same-Sex Marriage,” January 10, 2018, <http://www.bbc.com/news/world-latin-america-42633891>.

Rights of Women in Africa, which stresses health and reproductive rights among a range of other guarantees.⁵⁷ More recently, activists at the ACHPR secured passage of Resolution 275, which expresses concern about violence and human rights abuses on the basis of sexual orientation and gender identity and urges states to take action to curb them.⁵⁸ Efforts to protect sexual orientation and gender identity in an Asian human rights system have been more complex, but activists have continued working to craft regional guarantees as a regional human rights system takes shape.

At the international level, various arms of the United Nations have proven receptive to certain claims by sexual rights advocates working on a range of different issues. Again, the most prominent example of rapid adoption over the past fifteen years is LGBT – and increasingly, LGBTI – rights. The right to privacy and non-discrimination on the basis of sexual orientation were recognized by the Human Rights Committee in *Toonen v. Australia* as early as 1994, and statements from special procedures and treaty bodies began to reflect concerns with SOGI in the years that followed. In 2005, a statement on sexual orientation and human rights garnered support from 32 states at the Commission on Human Rights, and in 2006, a statement on sexual orientation and gender identity garnered support from 54 states at the reorganized Human Rights Council. At the UN General Assembly in 2008, a statement on SOGI and human rights delivered by Argentina evinced even stronger support – and considerable division – with 66 states in support, a similarly sized group joining a statement in opposition delivered by Syria, and a similarly sized group abstaining from both statements. In 2011, South Africa broke new ground with a resolution in the Human Rights Council that called on the High Commissioner for Human Rights to undertake a study documenting discrimination and violence on the basis of SOGI; in 2014, a second resolution called for a second report.⁵⁹ In 2016, the body adopted a third resolution creating an independent expert on the topic.⁶⁰ The applications for consultative status, shadow reports and submissions to treaty bodies, side events,

57 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.

58 Resolution 275: Protection against Violence and other Human Rights Violations Against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity (2014), <http://www.achpr.org/sessions/55th/resolutions/275>; Sibongile Ndashe, "Seeking the Protection of LGBTI Rights at the African Commission on Human and People's Rights," *Feminist Africa* 15 (2011): 17-37.

59 UN Human Rights Council, "Human Rights, Sexual Orientation and Gender Identity," U.N. Doc. A/HRC/RES/17/19, July 14, 2011, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>; UN Human Rights Council, "Human Rights, Sexual Orientation and Gender Identity," U.N. Doc. A/HRC/RES/27/32, Oct. 2, 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/177/32/PDF/G1417732.pdf?OpenElement>.

60 UN Human Rights Council, "Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity," U.N. Doc. A/HRC/RES/32/2, July 15, 2016, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2.

and diplomatic efforts that laid the groundwork for these milestones reflects a long-term strategy to cultivate support and surface SOGI-related concerns in international law.

In the face of intense domestic opposition, other sexual rights movements have turned to UN mechanisms as well. In 2005, the UN Human Rights Committee ruled that Peru's failure to ensure access to legal abortion had violated a young woman's right to privacy, freedom from cruel, inhuman, and degrading treatment, and protections for minors.⁶¹ The Human Rights Committee's subsequent reviews of Chile and Ireland both called for a relaxation of those countries' harsh prohibitions on abortion.⁶² In 2012, a report of a global commission of independent experts called for the decriminalization of sex work in a joint report.⁶³

In recent years, UN bodies have become increasingly receptive to transgender rights claims. In 2009, the Committee on Economic, Social and Cultural Rights observed in General Comment No. 20 that, under the ICESCR: "gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace."⁶⁴ A year later, the Committee on the Elimination of Discrimination against Women acknowledged in General Recommendation No. 28 that, under CEDAW, "the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity."⁶⁵ In 2011, the United Nations High Commissioner for Human Rights, Ms. Navathenam Pillay, in her report to the Human Rights Council on discriminatory laws and practices against individuals based on their sexual orientation and gender identity, noted the legal and other hurdles faced by individuals who wish to obtain identity documents in accordance

61 K.L. v. Peru (2005), https://www.esccr-net.org/sites/default/files/caselaw/decision_0.pdf.

62 UN Human Rights Committee, "Concluding Observations on the Fourth Periodic Report of Ireland," UN Doc. CCPR/C/IRL/CO/4, Aug. 19, 2014; UN Human Rights Committee, "Concluding Observations on the Sixth Periodic Review of Chile," UN Doc. CCPR/C/CHL/CO/6, Aug. 13, 2014.

63 John Godwin, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work*, United Nations Development Programme, Joint United Nations Programme on HIV/AIDS, and United Nations Population Fund, Oct. 2012, <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf>.

64 Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009), Vol. A-2, 483.

65 Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 (2010), Annexure A-4, 74.

with their self-identified gender.⁶⁶ Accordingly, the UN High Commissioner recommended that Members States “facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”⁶⁷

The claims of intersex people, too, have found some traction at the UN. In 2013, the Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment drew attention to the rights of intersex and transgender individuals by criticizing forced genital surgeries and involuntary sterilization.⁶⁸ His report highlights the importance of informed consent “as a critical element of a voluntary counseling, testing and treatment continuum.” In 2014, the World Health Organization (WHO) and half a dozen UN bodies condemned the forced sterilization of transgender and intersex people to make them conform to the gender binary. The report indicates, “some groups, such as transgender and intersex persons, also have a long history of discrimination and abuse related to sterilization, which continues to this day.” It adds that: “Intersex persons, in particular, have been subjected to cosmetic and other non-medically necessary surgery in infancy, leading to sterility, without informed consent of either the person in question or their parents or guardians. Such practices have also been recognized as human rights violations by international human rights bodies and national courts.”⁶⁹

In these and other fields, regional and international advocacy have worked in tandem with domestic advocacy to draw attention to sexual rights concerns within human rights structures. Achievements at the UN and other regional and international forums are influenced by activists at the local level who have used processes like the Universal Periodic Review, formalized complaint mechanisms, side events, and engagement with foreign missions to productively pressure governments to address sexual rights. As both a legal and normative tool,

66 “Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity”: Report of the United Nations High Commissioner for Human Rights, Ms. Navathenam Pillay, to UN Human Rights Council A/HRC/19/41 (November 2011): Vol. A-2, paras. 71 & 73.

67 *Id.*, para. 84.

68 “Report of the Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez,” UN Doc. A/HRC/22/53, Feb. 1, 2013.

69 OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF & WHO, “Eliminating Forced, Coercive and Otherwise Involuntary Sterilization. An Interagency Statement” (2014), http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf.

international and regional law has proven powerful for activists who face dismissal or resistance at the domestic level, with a range of possibilities for engagement and progress.

Limits of Law

As sexual rights claims have gained legitimacy with governments, supranational bodies, and other arbiters of law, activists have sharpened critiques of the limits and drawbacks of legal reform as a vehicle for change. Four of these limitations are especially evident when analyzing recent global developments in law and sexual rights: first, the constraining effect of tacit assumptions about political systems and conditions; second, the perils of embracing the state as defender and champion of these rights; third, the dangerous tradeoffs of rights in conflict; and fourth, the existence and influence of other systems of rules and regulation.

Law and Political Economy

As transnational activists are aware, appeals to law rest on fundamental assumptions about political systems that do not hold true always and everywhere. At least in the Euro-American imagination, law is supposed to be a rule-bound system where rules are set through more or less attenuated forms of democratic representation and, when disputes arise, a neutral arbiter evaluates the evidence presented and reaches a determination that is final and binding on the parties. Even this model is something of a fiction, and glosses over important differences in design even in Europe and the Americas – for example, the differences between civil and common-law jurisdictions. When transnational activists lobby for legislative changes or put their claims to judicial or quasi-judicial bodies, however, this is often the general model they have in mind.

Yet in many contexts, this ideal type obscures real obstacles that women, LGBTI people, sex workers, and other sexual subjects might face in securing sexual autonomy. First, the efficacy of lobbying for legislative change and using the courts to enforce sexual rights varies across different sociopolitical contexts. When crafting policy, appeals to values like personal freedom, harmony, privacy, equality, or human rights may be persuasive

in some contexts and prove to be totally unpersuasive in others. As the Asian Values debate has made plain,⁷⁰ this is in part a matter of nationalism and the construction of community values, but it is also a tactical matter – activists in China, for example, operate in a political economy where legislative and judicial change occurs very differently than it does in Brazil, the Netherlands, or South Africa. Law may be a central tool to achieve sexual rights, but an emphasis on lobbying and litigation may obscure other viable and promising avenues outside the state apparatus for obtaining substantive sexual autonomy and justice.

When laws or rights guaranteeing sexual autonomy are in place and recognized, they typically remain subject to contestation. The judicial system is itself a battleground, and the ideal type of a neutral, apolitical adjudicator and enforcer is rare in practice. Issues of bodily autonomy and sexuality can become highly politicized in courts; consider, for example, disputes over headscarves and the burkini in France, efforts to authorize the criminalization of extramarital sexual activity in Indonesia, or the politicized trials of opposition leader Anwar Ibrahim on sodomy charges in Malaysia. The independence of judges is similarly varied; in contexts where judges are elected to their posts, where they are affiliated with parties or dominant social groups, or where their salaries are controlled by political actors, the neutrality of the courts in upholding and extending sexual rights may have more immediately apparent limits. Courts are not ancillary or peripheral to the policymaking process, they are a necessary part of it, if not a venue of last resort for those who are dissatisfied with policy outcomes.

Finally, the potency of law rests heavily on the assumption that, when legal determinations are pronounced, they will be recognized and respected. Again, this assumption does not prove true in many contexts, whether as a matter of general legal practice or where sexual rights in particular are concerned. Consider, for example, Russia, where pronouncements from supranational judicial bodies have fallen on deaf ears, laying bare the lack of enforcement mechanisms that can compel defiant countries to comply with their putative obligations. Both the European Court of Human Rights and the UN Human Rights Committee have decried Russia's law against the propaganda of "non-traditional sexual relations among minors," in the *Alekseyev v. Russia* and

70 Baden Offord, "Singaporean Queering of the Internet: Toward a New Form of Cultural Transmission of Rights Discourse," in *Mobile Cultures: New Media in Queer Asia*, ed. Chris Berry, Fran Martin, and Audrey Yue (Durham, N.C.: Duke University Press, 2003), 133–37.

Fedotova v. Russian Federation rulings, respectively.⁷¹ In many systems, a genuine philosophical commitment to independent, efficacious judiciaries ultimately fall short in practice. Considerations like structural racism, sexism, and classism; daunting backlogs of cases; resource constraints; pressure from extrajudicial actors; and pervasive corruption throughout the justice system threaten to limit the power of legal advocacy, even when a state asserts a commitment to the law as a neutral arbiter of competing claims.

Engaging the State

A second issue noted by legal critics is the danger of entrusting the state with evaluating and enforcing sexual rights claims. The protean nature of the state – at various times a venue where competing claims are set forth and debated, a bureaucratic apparatus of rules and regulations, and an actor that carries out laws and policies – pose challenges to those who seek to harness its power for a sexual rights agenda.⁷² The legitimization of sexual rights does not occur in a vacuum, but against the backdrop of structural conditions that channel and shape the effects of legal advocacy. As activists have sought and seized openings to harness state power for the advancement of sexual rights, critics have warned that their efforts may be used to justify the expansion or intensification of reactionary state projects.

One critique that is familiar to many activists working in the sexual rights arena is the likelihood that demands for non-discrimination and inclusion may legitimate or even strengthen dominant state institutions. Attempts to change structural inequalities through legal change suggest that the difference between assimilation and liberation in legal change is perhaps a matter of degree rather than kind. Although proposals to include LGBTI people in hate crimes laws, military service, and civil marriage may be designed to be more or less transformative of the institutions they modify, their existence as movement goals and the rhetoric used to achieve them tend to reinforce the centrality of the carceral state, the military, and civil marriage to both good citizenship and the

71 *Alekseyev v. Russia*, Apps. Nos. 4916/07, 25924/08 & 14599/09 (Eur. Ct. H.R. 2010); Human Rights Committee, Communication No. 1932/2010, 2.2-2.3, U.N. Doc. CCPR/C/106/D/1932/2010 (Oct. 31, 2012).

72 See James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1999).

functioning of the nation-state.⁷³ As activist efforts make these institutions increasingly accessible regardless of sexual orientation and gender identity or expression, LGBTI people who cannot or do not wish to participate in those institutions may be pushed even further from the category of full citizenship and lose access to material benefits they previously enjoyed on more flexible terms.⁷⁴ To the extent that these dominant institutions run counter to progressive or radical aims, legal claims that merely expand their availability to a wider segment of the population are pyrrhic victories.

A similar critique is the argument that advances in sexual rights may come at the expense of other groups that are structurally disadvantaged or marginalized. In domestic politics in particular, activists and academics have been highly critical of the ways in which LGBTI people and their claims are rendered complicit in the carceral politics of the state.⁷⁵ In countries where LGBTI populations are subject to high rates of physical, sexual, and verbal violence, activists have launched legal campaigns to strengthen prohibitions against hate crimes on the basis of sexual orientation and gender identity and expression. As skeptics of those arguments have pointed out, however, hate crimes laws tend to be enforced in the context of structural inequalities of various kinds. When agents of the state disproportionately target racial, ethnic, religious, political, or socioeconomic groups in policing, sentencing, and incarceration, those groups are likely to bear the brunt of new bias-related offenses or penalty enhancements. And where conditions of confinement fall below minimum standards – for example, where prisons are overcrowded, unsanitary, under resourced, or where detainees are subject to torture or cruel, inhuman, or degrading treatment, physical or sexual assault, and violations of human dignity – imposing new criminal penalties for hate crimes may itself generate or reproduce a wide range of human rights violations.

73 See, e.g., *Against Equality: Queer Critiques of Gay Marriage*, ed. Ryan Conrad (AK Press, 2010); *Against Equality: Don't Ask to Fight Their Wars*, ed. Ryan Conrad (AK Press 2011); *Against Equality: Queer Revolution, Not Mere Inclusion*, ed. Ryan Conrad (AK Press, 2014); *Queer (In)Justice: The Criminalization of LGBT People in the United States*, ed. Joey L. Mogul, Andrea J. Ritchie, & Kay Whitlock (Beacon Press, 2012); *That's Revolting! Queer Strategies for Resisting Assimilation*, ed. Mattilda Bernstein Sycamore (Soft Skull Press, 2008).

74 See Katherine M. Franke, "Marriage Is a Mixed Blessing," *New York Times*, June 23, 2011, <http://www.nytimes.com/2011/06/24/opinion/24franke.html>; Paula Ettelbrick, "Since When is Marriage a Path to Liberation?," *Out/Look*, Fall 1989, p. 14.

75 Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law* (Durham, NC: Duke University Press, 2015); Dean Spade, "Their Laws Will Never Make Us Safer," in *Against Equality: Prisons Will Not Protect You*, ed. Ryan Conrad, 1-12 (AK Press, 2012).

At the transnational level, activists and academics have also been critical of a range of ways in which progressive measures in the realm of sexual rights are used to whitewash the state's dubious record in other areas of concern to social justice advocates. Often, but not always, this critique is couched under the term "pinkwashing."⁷⁶ Although the term has become a somewhat flexible descriptor, it specifically originated in Israel's use of LGBTI rights to bolster its claim that it is the only democratic and rights-respecting state in the Middle East, and its extension of this argument to insist its military occupation and attendant abuses are necessary and justified. In the instance of pinkwashing, successfully securing LGBTI rights enables the state to justify its existence and technologies of social control, often in ways that LGBTI activists neither foresaw nor desired when they fought for LGBTI-inclusive goals.

Because law is imposed and enforced through the state, activists seeking legal reform must necessarily engage the state to achieve their goals. In doing so, they court a powerful actor that is internally heterogeneous, and shaped by agendas and histories that are not always evident.⁷⁷ Often, the long-term repercussions of that engagement are not foreseeable to those who focus on securing positive short-term developments. Even where the risks of engagement are apparent, the benefits of using the state apparatus to advance the cause of sexual rights can be sufficiently seductive that movements press ahead with legal reform. This is particularly true insofar as opponents of sexual rights enthusiastically court legal and political power to advance their own goals. When they do so, sexual rights advocates who eschew engagement with the state apparatus run the risk of ceding powerful tools to those who may have no qualms about using them aggressively.

Rights in Conflict

A third issue that has confronted sexual rights advocates as their legal claims gain traction is the recognition that even when rights are recognized, they may not be absolute. Winning recognition of sexual rights claims, whether at the domestic or international level, only provides advocates and claimants with a rhetorical and political tool

76 Katherine Franke, "Dating the State: The Moral Hazards of Winning Gay Rights," 44 *Columbia Human Rights Law Review*, 1 (2012); Sarah Schulman, *Israel/Palestine and the Queer International* (Durham, NC: Duke University Press, 2012).

77 Rachel Sieder, "Contested Sovereignities: Indigenous Law, Violence and State Effects in Postwar Guatemala," *Critique of Anthropology* 31(3), 2011, 169–170.

to demand and secure particular benefits. The use of that tool in practice is still subject to contestation from opponents of sexual rights, who will seek to limit or constrain it when they perceive opportunities to do so – as is evident in Argentina with the implementation of the cost-free operations and treatments related to self-perceived gender identity that the law establishes as part of the Mandatory Medical Program.

As activists around the globe are well aware, attempts to circumscribe recognized sexual rights are not idle threats. Even strong victories in legislatures and courts are subject to counter mobilization and backlash from reactionary actors who seek to reverse gains or counteract them by challenging other protections for women, LGBTI individuals, and sex workers. At times, this occurs within a legal system, but backlash is also evident transnationally. Uganda passed a constitutional amendment banning same-sex marriage when activists in the country were not actively lobbying for same-sex marriage, but did so because same-sex marriage had been enacted in the Netherlands, Belgium, Spain, and a single U.S. state.⁷⁸ And often, the backlash goes far beyond the victory that ostensibly produced it. Consider, for example, Nigeria's Same-Sex Marriage (Prohibition) Bill, which was justified as a tool to prevent same-sex marriage from taking place in Nigeria but in fact drew criticism for curtailing and criminalizing virtually all forms of LGBTI advocacy in the country.⁷⁹

Particularly when backlash is contemporaneous with the assertion of sexual rights claims, sexual rights have been used as bargaining chips or tools for compromise in human rights forums. Two prominent and early examples of this type of negotiation were the deliberations over sexual rights language at the International Conference and Population and Development in Cairo in 1994 and the UN Fourth World Conference on Women in Beijing in 1995. At both summits, text recognizing various sexual rights guarantees was contested and sometimes ceded by governments seeking to forge conclusions that could be more palatable to even staunch opponents of sexual rights.⁸⁰ Activists seeking concrete commitments to sexual rights have begun to secure

78 Human Rights Watch, "Uganda: Same-Sex Marriage Ban Deepens Repression," July 12, 2005, <https://www.hrw.org/news/2005/07/12/uganda-same-sex-marriage-ban-deepens-repression>.

79 Human Rights Watch, "Nigeria: Anti-LGBT Law Threatens Basic Rights," Jan. 14, 2014, <https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic-rights>.

80 See Françoise Girard, "Negotiating Sexual Rights and Sexual Orientation at the UN," in *SexPolitics: Reports from the Frontlines*, ed. Richard Parker, Rosalind Petchesky, and Robert Sember (Sexuality Policy Watch 2007), 311-58.

these through statements, declarations, and resolutions at the UN and regional human rights bodies, but as long as sexual rights remain contentious among member states, the politicization and manipulation of sexual rights is likely.

Even where backlash fails to roll back sexual rights, opponents have often sought to circumscribe the scope of those rights by asserting competing interests and rights of their own. In many legal systems they have gained traction, in part because the ways in which sexual rights are or are not balanced with other interests or rights is far from defined.

Consider state interests. Many of the most foundational human rights covenants permit states to limit rights when it is necessary to protect a defined set of state interests. The International Covenant on Civil and Political Rights, for example, recognizes that states may limit the freedom of movement, freedom to manifest one's religion or beliefs, freedom of expression, freedom of assembly, and freedom of association where provided by law and necessary to protect national security, public order, public health, morals, or the rights and freedoms of others. Historically, states have at times successfully invoked these enumerated state interests to limit sexual rights claims. In 1976, the European Court of Human Rights decided in *Handyside v. United Kingdom* that the state had a legitimate interest in "the protection of the morals of the young" allowing it to confiscate and destroy a book that talked about homosexuality, sex, and drug use.⁸¹ In 1982, the UN Human Rights Committee decided in *Hertzberg v. Finland* that the state could ban discussions of homosexuality on public television because of its potentially harmful effects on minors.⁸² The recognition of sexual rights has advanced a great deal since those decisions were issued, but the idea that states retain some discretion in regulating morality remains a common principle in human rights law, and it remains unclear how sexual rights are to be weighed in any practical way against a competing interest asserted by the state.

81 *Handyside v. United Kingdom*, App. No. 5493/72, 24 Eur. Ct. H.R. (ser. A) at 15-18, 21 (1976).

82 Human Rights Committee, *Hertzberg v. Finland*, Comm. No. R.14/61, U.N. Doc. A/37/40 (Apr. 2, 1982), at http://www.ohchr.org/documents/publications/seldec_1_en.pdf.

Or alternately, consider competing claims asserted by those who feel that sexual rights limit their own human or civil rights. Opponents of sexual rights have often claimed that sexual rights are an imposition from elsewhere and run counter to their cultural or traditional values. Where women, LGBTI people, and sex workers are concerned, they may also argue that sexual rights are a matter of criminality, immorality, or disease. But where sexual rights are recognized, opponents have begun to stress the argument that sexual rights violate their own rights, and should be limited for that reason.

The turn to rights-based opposition to sexual rights is not a complete shift – other framings remain popular around the world – but it is a shift that has had some traction with policymakers who consider rights-based arguments to be more palatable justifications for discrimination. The legal scholar Reva Siegel calls this process “preservation through transformation.”⁸³ She uses the example of spousal violence, which was originally permitted in the United States under coverture laws that said that wives were the property of their husbands. As women were recognized as citizens under the law, coverture laws were eventually repealed. The legal system retained protections for spousal abuse, however, using new theory that the home was a private sphere of domesticity that the state could not police. The protection for spousal violence remained the same, even as the justification changed.⁸⁴

In many contexts, the same type of preservation through transformation has been evident with sexual rights. Various rights – freedom of religion, freedom of speech, cultural rights, academic freedom, parental rights, children’s rights – are asserted in ways that negatively impact women and girls, LGBTI people, and sex workers as rights-holders. At times, these efforts have been successful. As a matter of example, freedom of conscience has been widely used by doctors and paramedics to restrict the application of the right to abortion and contraception, and more recently has been asserted as a response to non-discrimination and partnership recognition laws for same-sex couples.⁸⁵ As is evident in the debate over the “traditional values” resolution at the UN, through which the Russian Federation has sought to codify a conservative, relativistic understanding

83 Reva Siegel, “‘The Rule of Love’: Wife Beating as Prerogative and Privacy,” *Yale Law Journal*, Vol. 105 (1996): 2117.

84 *Id.*

85 See Marcelo Alegre, “El problema de la objeción de conciencia en la esfera de la salud sexual y reproductiva,” http://www.palermo.edu/Archivos_content/derecho/pdf/objecion-paper.pdf, and Mercedes Cavallo y Agustina Ramón Michel, “La Objeción de Conciencia Frente al Aborto Legal (O la Reacción Frente al Problema del Aborto Legal) en América Latina,” en <http://www.cedes.org.ar/publicaciones/salud/2014/10613.pdf>

of human rights, the right to culture – long a staple of countermobilization against women’s rights – has been regularly mobilized in opposition to LGBTI rights as well.⁸⁶

A particularly pervasive discourse to counteract women’s and LGBTI rights has been the invocation of “gender ideology”. The phrase amounts to a biased way to refer to gender and feminist studies as theories oriented to an unnatural and corrupting ideology.⁸⁷ Like the resurgence of natural law in human rights discourse, the conservative framing of gender ideology has been embraced and promoted by the Catholic Church, and has taken root in countries such as France, Spain, Colombia, Brazil, Peru, and Mexico.⁸⁸ It defends a “natural” order of gender as an absolute truth and rejects any understanding of femininity and masculinity as cultural norms shaped by historical and political context. The concept has proven politically potent; in Colombia, allegations that gender ideology was being imposed on impressionable youth led to the demise of LGBT-inclusive curricula in schools.⁸⁹ It has also been deployed by Catholic advocates in efforts to halt and reverse abortion and the recognition of LGBTI rights.⁹⁰ These discussions about sexual and reproductive rights are illustrative of how religious sectors activate from civil society to defend and advance their cosmology in the public arena, even for those who do not share their beliefs.⁹¹

86 See UN Human Rights Council, “Promoting Human Rights and Fundamental Freedoms Through a Better Understanding of Traditional Values of Humankind: Best Practices,” A/HRC/RES/21/3, Sept. 10, 2012; UN Human Rights Council, “Study of the Human Rights Council Advisory Committee on Promoting Human Rights and Fundamental Freedoms Through a Better Understanding of Traditional Values of Humankind,” A/HRC/22/71, Dec. 22, 2012.

87 See the articles collected in “Habemus Gender! The Catholic Church and ‘Gender Ideology,’” a special issue of *Religion and Gender*, 6.2 (2016), <https://www.religionandgender.org/jms/issue/view/580>.

88 Annie Wilkinson, “Latin America’s Gender Ideology Explosion,” *Anthropology News*, March 21, 2017, <http://www.anthropology-news.org/index.php/2017/03/21/latin-americas-gender-ideology-explosion>.

89 Mara Viveros Vigoya, “Los interrogantes que suscita la construcción de un nuevo enemigo: la ‘Ideología de género,’” *El Espectador*, Aug. 19, 2016, <http://www.elespectador.com/noticias/educacion/los-interrogantes-suscita-construccion-de-un-nuevo-enem-articulo-650104>.

90 Julieta Lemaitre Ripoll, “By Reason Alone: Catholicism, Constitutions and Sex in the Americas,” *ICON: International Constitutional Law Journal*, Vol. 10, No. 2 (2012): p. 493-511; Marco Vaggione Laicidad y Sexualidad, in Pedro Salazar Ugarte y Pauline Capdeville (comps.), *Para Entender y Pensar la Laicidad, Colección Jorge Carpizo sobre Laicidad*, UNAM and Editorial Porrúa, 2013, <https://programadssrr.files.wordpress.com/2014/11/laicidad-y-sexualidad.pdf>

91 Isabel C. Jaramillo Sierra, “La Iglesia Católica, el Sexo y la Sexualidad en América Latina: más allá de la distinción público/privado”, in *Derecho y Sexualidades*, Editorial Librería, 2010 y Juan Marco Vaggione, “Paradoxing the secular in Latin America: Religion, gender and sexuality at the crossroads”, copyright de vaggione y TCDS, 2002.

In the assertion of “gender ideology” and elsewhere, a common refrain across sociopolitical contexts is the insistence that sexual rights violate children’s rights. In Russia, the law against propaganda of “non-traditional sexual relations among minors” has been justified on the basis that it protects the rights of children, who are under threat from the promotion of homosexuality.⁹² A similar argument was used in France, where children’s rights and well-being were invoked in opposition to the recent law legalizing same-sex marriage.

While the well-being of children may be framed in terms of a state interest or a countervailing right, parental rights are asserted as a countervailing right against guarantees of sexual and reproductive autonomy. Recently, politicians in Australia have asserted parental rights in their efforts to remove content from the Safer Schools program dealing with homophobic and transphobic bullying.⁹³ The parental rights argument has also been used in the Americas to limit the reproductive and sexual health rights of minors. Parents in the United States, for example, have asserted parental rights to prevent healthcare professionals from providing safer-sex materials and abortion services to their minor daughters.⁹⁴

The rights to religion, speech, children’s rights, and parental rights are common refrains. But in contexts where there are constitutional or statutory protections for other freedoms, these are used by opponents of sexual rights as well. In the Philippines, schools that have violated the rights of students – for example, denying diplomas to boys engaged in same-sex behavior or refusing to use the proper pronouns for a transgender girl – invoke their own academic freedom as a defense to accusations of discrimination.⁹⁵ The Philippine Constitution guarantees academic freedom, which “includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or influence.”⁹⁶

92 Ryan Thoreson, “From Child Protection to Children’s Rights: Rethinking Homosexual Propaganda Bans in Human Rights Law,” *Yale Law Journal*, Vol. 124 (2015): 1327-1344.

93 See, e.g., Karalee Katsambanis, “Don’t Teach My Kids about LGBTI Issues... That’s My Job,” *Sydney Morning Herald*, Feb. 22, 2016, <http://www.smh.com.au/comment/karalee-katsambanis-dont-teach-my-kids-about-lgbti-issues-thats-my-job-20160221-gmzp7t.html>

94 In 38 of the 50 states, some parental involvement – either consent or notification – is required for a minor to have an abortion. Most states make exceptions in the case of a medical emergency, but only some make exceptions in cases of abuse, assault, or incest. All 38 states also have a judicial bypass that allows minors to circumvent that involvement by getting permission for an abortion from a judge. Guttmacher Institute, “Parental Involvement in Minors’ Abortions,” *State Policies in Brief*, March 1, 2016, http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf.

95 United Nations Development Programme (UNDP) and USAID, *Being LGBT in Asia: The Philippines Country Report* (2014), <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/being-lgbt-in-asia--the-philippine-country-report.html>

96 *Id.*

Opponents have claimed a range of rights to deny LGBTI people and women exercising reproductive rights access to education, employment, housing, and healthcare, among other benefits and protections provided by the state. How states can and should balance these claims within their legal systems is an open question, and it is difficult for sexual rights advocates to take a one-size-fits-all approach. Some argue that sexual rights are absolute, and should take always precedence over rights asserted by other rights-holders. Others permit that opponents of sexual rights should be able to claim a competing right to religion, speech, but only insofar as doing so does not preclude the bearer of a sexual right from swiftly and fully exercising their right and accessing any goods and services to which they are entitled. Still others believe that, so long as the right can be reasonably exercised somewhere in the marketplace, individual proprietors may opt out by asserting a countervailing right. In the absence of clear guidance in domestic and international frameworks, sexual rights advocates globally continue to negotiate competing rights on an ad hoc basis.

Law as Regulation

The intrinsic limits of law may be enough to give some critics pause, but as advocates for sexual rights are well aware, law does not exist in a vacuum. Anthropologists of law have directed attention to these systems of rules and regulations noting that in some circumstances these are as – if not more – consequential than the state-centric model of law and justice to which advocates turn for vindication.⁹⁷

Consider, for example, religious law and rules that govern the behavior, morality, and relationships of their adherents. Some of these are intimately interwoven with state power, such that religious and political injunctions against same-sex activity and gender transgression are bound up with each other. As a number of women's and LGBTI advocates have noted, for example, the adoption of Sharia law in Northern Nigeria and Indonesia's Aceh province impose harsher forms of sexual regulation in those regions than one finds elsewhere in the larger

97 Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," in *Law as Process: An Anthropological Approach* (Routledge: 1978).

states in which they are located.⁹⁸ But elsewhere, religious actors may aspire to state power, seek to influence policymaking through lobbying and lawsuits, or seek to impose their religious or moral edicts outside of formal legislative or judicial systems. In recent battles over contraception in the Philippines, civil unions in Italy, LGBTI rights in Colombia, and abortion in Chile, for example, the power and influence of the Catholic Church has been particularly evident, just as it has been when the Holy See has weighed in on sexual rights at the United Nations. Particularly when states are unwilling or unable to contravene instructions from influential religious figures, these edicts may be powerful forms of rulemaking in themselves.

Another system that has come under scrutiny from queer scholars and activists are economic and labor forces that shape the lives and opportunities of queer people globally. The influence of the market is evident across a range of sexual rights issues. Women's groups continue to fight gender inequality in hiring, wages, promotion, and firing, as well as the employment and advancement consequences of pregnancy, childbirth, and childrearing. LGBT groups campaign to bring state power to bear on employment discrimination on the basis of SOGI in the private marketplace, and note limited employment opportunities for trans and gender-non-conforming individuals in particular. For sex workers, too, the combination of state criminalization and the pressures of the private marketplace often conspire to make various forms of sexual labor maximally precarious and minimally protected by existing social safety nets.

Although they receive far less attention, families, too, may have rules of their own. The state's ability to intervene in practices of rejection, exclusion, or expulsion within families is limited by the notion of a private sphere beyond the reach of the state – an argument that is asserted by some families to preserve systems of rules and regulation that result in physical or sexual violence against sexual transgressors.

These systems are not wholly separable from state-centric models of law, but nor are they wholly subservient to or dependent on them. Law remains a powerful tool to rein in gross abuses of rights, ensure accountability, and generate norms for state and non-state actors to follow. But with the maze of rules and norms existing outside

98 Human Rights Watch, "Indonesia: Aceh's New Islamic Laws Violate Rights," Oct. 2, 2014, <https://www.hrw.org/news/2014/10/02/indonesia-acehs-new-islamic-laws-violate-rights>; International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA), *State Sponsored Homophobia* (May 2015), http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf.

the formal purview of state power, relying exclusively on law – and the attendant framing of sexual rights as “rights” – is arguably necessary but insufficient to secure full sexual and reproductive autonomy for all.

Law as Society

It is possible to debate the strategic merits of law as a means of advancing sexual rights in any given situation. Nonetheless, law and regulations so deeply structure the social environment that simply disengaging from the use of state power in the form of law is not an option. Law functions both as a hotly contested terrain on which sexual rights are negotiated and codified and as a tool to ensure that those rights are respected and given meaning. As opponents of sexual rights organize domestically, regionally, and internationally, legal protections are crucial to carve space for people to freely use their bodies, express identities, forge relationships, and engage as equals in community life.

Indeed, the past fifteen years of legal developments have shown how law can be profoundly useful for sexual rights advocates. Activists have secured victories that have powerfully restrained and reshaped how state power is wielded over bodies, relationships, and activism. Such victories have also been symbolically important, and have served to focus policymakers’ attention on recurring patterns of discrimination, coercion, and violence in disparate contexts around the globe.

And crucially, these developments have challenged Eurocentric assumptions about the location of the center and periphery in the transnational transmission of legal models. Especially where LGBTI rights are concerned, many of the most comprehensive and successful models globally have been conceptualized and realized by activists, academics, and policymakers in Argentina, Colombia, South Africa, and elsewhere in the Global South. The models demonstrate that law can be a tool of transformative rather than incremental justice, and facilitate new ways of both regulating and liberating gender and sexuality.

At the same time, the limits of law underscore the caution that rights alone are not a panacea for the vulnerabilities and violations that women, LGBTI people, sex workers, and other groups face. Even when triumphant, sexual rights coexist in a larger social milieu with other forms of governance, the complexities of

state power, competing claims by other rights-holders, and other forms and systems of regulation. If activists are to avoid instances where laws are mere formalities or – worse – coopted in the service of other injustices, law cannot be understood outside of the social contexts in which it is forged and enforced.

Thinking about law in a larger social field invites critical reflection on how sexual rights advocacy is conceptualized and carried out. In what ways do tables, maps, and lists of the countries where something is legal or illegal advance knowledge, and in what ways do they suppress understanding? When do advocates declare victory in the realm of law and policy change, and how might those victories be premature when one thinks more expansively about the sociocultural changes that ground and sustain them? In what ways are legal structures themselves sources of injustice – for example, undemocratic structures of regional or international governance – and how might sexual rights advocacy act as a corrective rather than replicating those dynamics? As legal developments continue in myriad forms, these questions have some potential to channel efforts and steer the development of sexual rights for the fifteen years to come.

Conclusion

The examples discussed above are necessarily partial, offering a broad sketch of the ways that engagements with law have structured efforts to advance sexual rights across the globe over the past fifteen years. As this essay illustrates, law has been a powerful tool for sexual rights advocates, authorizing new forms of identification, behavior, and community. At the same time, and sometimes by the same actors, law is used to bolster oppressive systems, police bodies and behaviors, and narrow the horizon of possibility for those who would fundamentally rethink sex and gender. The relationship between law and sexual rights is necessarily complex and difficult, enmeshed as it is with notions of substantive freedom as well as the coercive power of the state.

What, then, are we to make of law as a tool for sexual rights? As Sonia Correa, Rosalind Petchesky, and Richard Parker have noted, and as this essay illustrates, rights-based approaches are necessary but not sufficient to achieve sexual and reproductive justice.⁹⁹ They are insufficient in the sense that law alone is limited in its capacity to ensure that all people, including women, LGBTI people, sex workers, and others, are able to live lives that are full, free, and pleasurable. But they are necessary insofar as sexual rights advocates cannot afford to cede the power of the state to those who would use it to curtail sexual and reproductive autonomy and the substantive rights and resources that make its exercise meaningful.

The recent resurgence of authoritarianism and far-right populism in many parts of the globe powerfully underscores the necessity of engaging with law. The recent crackdown in Chechnya, where leaders simultaneously deny the existence of homosexuality and extrajudicially imprison, torture, and kill gay men, underscores why the absence of meaningful mechanisms to check those in power and halt horrific abuses is so dangerous.¹⁰⁰ Yet recent events also offer a reminder that opponents of sexual rights are eager to seize legal mechanisms to curtail and reverse the gains of the past fifteen years. The reimposition of a supercharged Global Gag Rule

99 Sonia Correa, Rosalind Petchesky & Richard Parker, *Sexuality, Health, and Human Rights* (New York: Routledge, 2008), p. 154.

100 Tanya Lokshina, "Anti-LGBT Violence in Chechnya: When Filing 'Official Complaints' Isn't an Option," *Open Democracy*, April 4, 2017, <https://www.opendemocracy.net/od-russia/tanya-lokshina/anti-lgbt-violence-in-chechnya-when-filing-official-complaints-isn-t-option>

by the United States – which not only requires recipients of family planning funding to disavow abortion, but requires *all* recipients of health funding to take that step – puts the considerable stakes of these battles into stark relief.¹⁰¹ More insidiously, right-wing populists in the United States, the Netherlands, France, and elsewhere have outwardly embraced women’s rights and LGBT rights in the service of anti-Muslim, anti-immigrant, and anti-refugee laws and policies, echoing neo-conservative invocations of Afghan and Iraqi women’s rights as a justification for militarism and occupation.

Law is one of many tools available to hold the state accountable for abuses, expand the possibilities for sexual and reproductive autonomy, and resist the cooptation of gender and sexuality as a justification for injustice. As the varied engagements with rights and law over the past fifteen years illustrate, however, it is a pervasive and important one, which merits thoughtful and critical engagement in the years ahead.

101 Jill Filipovic, “The Global Gag Rule: America’s Deadly Export,” *Foreign Policy*, March 20, 2017, <http://foreignpolicy.com/2017/03/20/the-global-gag-rule-americas-deadly-export-trump-africa-women-reproductive-rights>.

Legal and safe abortion: a global view seen from Latin America

María José Barajas and Sonia Corrêa¹

Introduction

Abortion is a reality of women's sexual and reproductive life. Clandestine and unsafe abortions constitute a major public health problem. Available data shows that between 2010 and 2014, an estimated 56 million induced abortions occurred each year worldwide (Guttmacher, 2018b)². The experience in most of these countries demonstrates that when accompanied by consistent policies ensuring access to contraception, the number of abortions diminishes after legalization. Solid evidence also exists that legal and safe abortion reduces the levels of maternal mortality and principally, improves women's sexual and reproductive health as well as sexual lives.

Abortion laws and strategic litigation to ensure abortion rights are the main focus of this paper. As this article was being finalized, the Guttmacher Institute Report on *Abortion Worldwide, 2017 – Uneven Progress and Unequal Access*³ was published. It elaborates the following considerations with regard to the legality and illegality of abortion:

“As of 2017, 42% of women of reproductive age live in the 125 countries where abortion is highly restricted (prohibited altogether, or allowed only to save a woman's life or protect her health). The

1 María José Barajas is a lawyer, international human rights law specialist; former Assistant to the Director at Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos-PROMSEX (Peru). *Correspondence:* mjbarajasvega@gmail.com. Sonia Corrêa is a research associate at the Brazilian Interdisciplinary Association for AIDS and the co-chair of Sexuality Policy Watch.

2 Guttmacher Institute (2018). *Induced abortion worldwide. Global incidence and trends. Fact sheet.* New York: Guttmacher Institute. Available at: <https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>

3 Singh, S., Remez, L., Sedgh, G., Kwok, L. & Onda, T. (2018). *Abortion Worldwide 2017: Uneven progress and unequal access.* New York: Guttmacher Institute. Available at: https://www.guttmacher.org/sites/default/files/report_pdf/abortion-worldwide-2017.pdf

vast majority (93%) of countries with such highly restrictive laws are in developing regions. In contrast, broadly liberal laws are found in nearly all countries in Europe and Northern America, as well as in several countries in Asia. Nonetheless, some countries with broadly liberal laws have increasingly added restrictions that chip away at access to legal procedures” (page 4).

The cartography of national abortion laws will be more closely examined in the pages that follow. But before that, a bird’s eye view is offered of how, since the early 20th century abortion legal norms have evolved worldwide. Then, the profile and impact of anti-abortion forces is briefly examined and a concise assessment is made of how the shifting and conflictive environment of abortion politics is being altered by new medical abortion technologies.

Abortion laws: Past and present trends

Across the globe, legal reforms aimed at ensuring women’s right to make autonomous reproductive decisions, especially regarding abortion, have been much slower and subject to greater controversies than other legal changes granting women’s political, civil and economic rights. Furthermore, at least in the case of Latin America, these legal changes have also been less pronounced than gains achieved in respect with other dimensions of sexual and reproductive rights, such as marriage equality for same-sex couples or, more recently, gender identity recognition.

Even so, it is quite remarkable how much progress has been made in the realm of abortion rights in the last few decades. While in 1920 only the Soviet Union had decriminalized abortion⁴, today more than sixty percent of the world’s population lives in countries where abortion is permitted without any restriction or on broad grounds. But abortion laws vary widely, their patterns being associated with or influenced by levels of ‘development’, cultural dimensions (including religion), the nature of national political systems, the existence or not of past and

⁴ The early Soviet abortion law would be struck down by Stalin in 1934, to be reinstated in the post-Stalinist era after 1955. Between the 1920 Soviet reform and the 1950s, very few reforms were registered that made abortion more widely accessible: The State of Yucatán in Mexico (1926), Catalunya and Uruguay for a brief period of time (1936-1937 and 1934-1938 respectively), Sweden (1936) and Denmark (1937) (most of them partial). In this same period, various countries in Latin American have also included exceptions to criminalization, such as rape, incest and mental disability of women.

present population control policies and the ways in which these various layers intersect with women's equality (or inequality). A concise overview of abortion laws worldwide provided by Berer (2017) informs that:

“At the end of the twentieth century, abortion was legally permitted to save the life of the woman in 98% of the world’s countries. The proportion of countries allowing abortion on other grounds was as follows: to preserve the woman’s physical health (63%); to preserve the woman’s mental health (62%); in case of rape, sexual abuse, or incest (43%); fetal anomaly or impairment (39%); economic or social reasons (33%); and on request (27%). In 2002, the number of countries that permitted each of these grounds varied greatly by region. Thus, abortion was permitted upon request in 65% of developed countries but only 14% of developing countries. “(page 17).⁵

The landscape described by Berer is fundamentally the outcome of sequential waves of contemporary liberalizing reforms that began in 1948 when Japan legalized abortion (within a population control frame). This would be followed by legal changes in Eastern Europe, Western and Central Asia including China, influenced by the reenactment of legal abortion in the Soviet Union in 1955 and, a bit later, by normative changes that took place in the 1960s and 1970s in Western Europe, United States, Australia and New Zealand. In the same period, other countries decriminalized abortion: Cuba, also under socialist influence, made it legal in 1961; in 1971, India and North Vietnam allowed abortion for women’s health reasons (in the latter case extending to the whole country in 1975) within a population control frame and, in 1973, Tunisia reformed its law.

Since then, more intensively in the course of the past twenty years, a last round of liberalizing reforms was registered in other countries of the global South, even when they are located in the regions where restrictions to abortion rights tend to prevail. This is an ongoing trend, as it can be illustrated by the fact that since 2016 when we began the research to write this paper two countries have fully reformed their restrictive legislation in Latin America: Chile and Bolivia, in the first case to leave behind total prohibition adopted in the 1980’s and in the second to enlarge the number of circumstances in which abortion is allowed. Then, as the article was

5 Berer, M (2017) “Abortion Law and Policy around the World”: in Search of Decriminalization”. Health and Human Rights Journal, Volume 19, Number 1, June 2017, available at <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Berer3.pdf>

being reviewed for final publication in Ireland a victorious referendum stroke down the constitution premise on the protection of life since conception opening the way for legislation ensuring the right to abortion and on June 14th, in Argentina, a law provision that allows for abortion until the 14th week of pregnancy was approved by the House of Representatives. Even when, on August 8th, the Senate vote against the law, there are strong signs that that a new reform proposal will be tabled next year and the debate will continue.

In result of the history briefly recaptured above, the right of women to safe and legal abortion is today prevalent in so-called developed countries. But even in these countries right to abortion is not yet universal, as now, after the Irish referendum, one Western European country retains a highly restrictive law (Northern Ireland) and in other three jurisdictions abortion is still entirely prohibited (Andorra, Malta and San Marino). Furthermore, in Italy the access to legal abortion on demand has been systematically undermined by the effects of extensive resorting to conscious objection (Garbagnolli, 2017). If the lenses move to Eastern Europe, legal abortion laws inherited from the Soviet era have been struck down or are under attack in many countries. Last but not least, in the US, threats to abortion rights have been escalating since when the Supreme Court decided on the matter in 1973 and with greater intensity in the last ten to fifteen years.

Elsewhere in the world, even when laws allowing access to pregnancy termination exist, they do not necessarily imply that women's reproductive autonomy is respected, nor that access to procedures are guaranteed. This can be illustrated, for example, by the quite extensive practice of coerced abortions in China, after stringent population control policies were adopted in the late 1970s (Eklund and Purewal, 2017). Sex selective abortion is another problematic reality to be examined. Originally detected in India and China in the 1980s, this practice, which is long rooted cultures of son preference, has more recently expanded to other Asian countries, as well as few Eastern European contexts (UNFPA, 2017).⁶ And as it will be looked at more closely further ahead in the majority of countries where the law allows for abortion within limited circumstances access to safe services may be null.

6 See UNFPA (2017) Gender Biased Sex Selection, available at <https://www.unfpa.org/resources/preventing-gender-biased-sex-selection-eastern-europe-and-central-asia>

On the other hand, since the 1980s and more intensively from the mid 1990s onwards, the largest number of legal reforms granting access to abortion occurred in the global South and this is very positive. These reforms, while propelled by domestic struggles in which feminists played a major role, were also strongly influenced by the positive impact of international normative definitions, such as those recommended by International Conference on Population and Development (Cairo, 1994) that recognized abortion as a major public health problem (paragraph 8.25 of the ICPD Program of Action) and the IV World Conference on Women Platform for Action that recommends UN members states to revise punitive legislation (Paragraph 106.k) (see Corrêa, Germaine and Sen, 2015; Yamin and Bergallo, 2017).

Anti-abortion politics: a bird's eye view

The contemporary landscape of abortion laws, in particular what concerns restrictions to pregnancy termination, cannot be fully comprehended without taking into account longer historical trends in respect to disciplinary devices and political forces averse to women's reproductive autonomy. This is a vast and complex topic that cannot be examined in depth in few pages. But it seems necessary to draw, albeit in imperfect broad strokes, its main contours.

One first aspect to be highlighted is, for example, that even though contemporary abortion politics are heavily determined almost everywhere by religious views, penal laws that prohibit abortion today in the large majority of countries have a predominant secular origin. By and large, they derive from the 1810 Napoleon Penal Code, which left its deep imprint in both continental Europe and Latin American post-colonial criminal laws; or else from the 1961 British Penal Code that gave birth to restrictive abortion laws still on place in Asia, the Pacific, Africa and the Caribbean.⁷ To recapture Foucault (1980), 19th century abortion criminal laws, enshrined in the legal architecture of modern states, were a main tool of the larger biopolitical apparatus aimed at the macro-managing of populations and the micro-disciplining of procreative practices within the then emerging nuclear family. These were laws fundamentally grounded in the secular tenets of the modern state.

⁷ The 19th century laws criminalizing abortion, in particular the Napoleon Code, were not originally inspired by religious doctrines but rather by pre-Christian Roman penal codes that already criminalized the practice.

Another element to be taken into account in this brief review of anti-abortion politics is the history of views and doctrines on abortion in Catholicism. Pregnancy termination was subject to broad and deep doctrinal controversies within the Catholic Church until the late Middle Ages when these debates were, somehow, appeased by Saint Thomas' premise of late hominization of embryos, which grounded a canonical definition that abortion in the early stages of pregnancy was not a grave sin (Rosado Nunes, 2012).⁸ This position, however, changed in 1869 when Pope Pius IX adopted the thesis of immediate personalization that implied the radical condemnation of abortion in any stage of gestation and to the excommunication of those who practice it.⁹

This late 19th century doctrinal shift can eventually be interpreted as an adjustment of the Vatican's theological premises to modern conditions, as it appears to have both incorporated new biological findings on human reproduction and aligned Church norms to European secular laws prohibiting abortion adopted few decades earlier. Since then this has been the Church position on the matter and, at least since after World War II, Catholic hierarchies have systematically pressured states and international institutions to abolish existing abortion laws, even in those cases when they were highly restrictive.¹⁰ Vatican anti-abortion politics significantly escalated after the 1960s, when legal reforms multiplied in the so-called developed world. From there on, in many places, beginning with the US, conservative Catholics have implemented these politics in coalition with Evangelical and secular actors (Corrêa, Petchesky and Parker, 2008).

In the 1990s, as a response to the normative definitions on reproductive rights and abortion adopted in UN documents, these anti-abortion assemblages expanded transnationally and became much more heterogeneous. In the past twenty years, this powerful maze of anti-abortion religious and non-religious forces has been

8 In Saint Thomas' doctrine, ensoulment is a gradual process whose main signal is the ability of the embryo to move in the womb, the conception was that before motion the soul was not yet fully there and the life of embryo was equated with the life of plants. This doctrine explains why, in Colonial Iberian criminal law, which was embedded in canonical premises and ruled all over Latin America, abortion was never criminalized, even when pregnancy outside of marriage was considered a proof of the crime of fornication in the case of women.

9 Rosado Nunes, M.J. (2012) 'O Tema do Aborto na Igreja Católica: Divergências Silenciadas'. *Ciência e Cultura*, Volume 64, Number 2, 23–31.

10 One sharp illustration is analyzed by Lorea (2006) in regard to pressures made by the Vatican to insert the terminology of rights to life since conception in the text of the Inter-American Convention of Human Rights, later named the San Jose Convention, when it was discussed in Bogota in 1948. Latin American states resisted these pressures precisely to preserve national abortion legislation to save women's lives, but also in the case of rape and incest. See Lorea, R. (2006). *Acesso ao aborto e liberdades laicas*. *Horizontes Antropológicos*, Volume 12, Number 26, 185-201, available at <http://dx.doi.org/10.1590/S0104-71832006000200008>

propelling regression in legislation everywhere – in the US, Latin America and Africa and also Europe – or else creating impervious barriers to legal reform and to access to safe services where and when abortion is legal. Various articles emerging from the Sexuality Policy Watch project *SexPolitics: Trends and Tensions in the 21st Century* have looked more closely into the impact of these forces on national sexual politics. Abortion is a critical area scrutinized in *Sex at Dusk and the Morning After: Sexuality Policy in the United States in the Obama Years* (Fried and Rothschild, 2018).¹¹ And, the weight and effects of anti-abortion forces in sexual politics is also examined in the cases of Europe (Patternote, forthcoming 2018), the English-speaking Caribbean (Barrow, forthcoming 2018), Latin America (Careaga and Pecheny, forthcoming 2018), and post-Soviet regional case studies (Kirey and Sitnikova, forthcoming 2018). Furthermore, the role of conservative Catholicism in current anti-abortion frays is examined by Vaggione (forthcoming 2018), whose article critically analyzes the Vatican's doctrinal frames in relation to the law and its political strategies regarding citizenship mobilization.

Medical abortion: a new frontier

In the shifting and contradictory historical trajectory of abortion politics briefly scanned above, a key and promising novelty has been the development of medical abortion. This technology became available in the 1980s in the form of the then-called French abortion pill RU-486, whose main component is mifepristone, and misoprostol (a prostaglandin) marketed as a gastric medication, which was then extensively used by Brazilian women after informally consulting drug store vendors who recommended it as the best resource to 'provoke menstruation'. In the 1990s, these drugs were tested, improved and approved as safe technologies for medical abortion by the US Food and Drug Administration (2003) and WHO (2003 and 2005), including for self-administered procedures. Since then, medical abortion was rapidly incorporated into legal abortion health policies and, as importantly, access through the Internet -- of Misoprostol in particular -- is radically altering the global landscape in terms of access to safe abortion, even in those contexts where stringent legal barriers exist. Medical abortion is now extensively used as the preferred technology in many countries where abortion is legal on request, such as the US, France, UK, India, Colombia, Mexico DF and Uruguay, amongst others. It also offers a safe abortion alternative to women who live in African and Asian countries where existing clauses allowing

11 Available at <http://sxpolitics.org/trendsandtensions/uploads/trends&tensions-wp1.pdf>

for pregnancy termination do not ensure access to safe services. In the past few years in Latin America, a large number of local feminist networks generally known as “Socorristas” (emergency health personnel), were created and offer qualified information and access to medical abortion, therefore also impacting public debates on decriminalization.¹²

The above-mentioned Guttmacher Institute Report *Abortion Worldwide, 2017*, has also looked into the meanings and effects of medical abortion, concluding in its introduction that: *“One of the most important developments in terms of the safety of abortion is the steady increase in the use of medication abortion, which is likely having an important impact on abortion-related morbidity and mortality. In addition, the advent of medication abortion has profoundly altered the context in which safe abortions are provided and by whom — and these trends are continuing to evolve”* (page 4). This assessment can and should be complemented by the content compiled in the Special Issue on Medical Abortion published by journal *Contraception*, in partnership with the International Campaign on Women’s Right to Safe Abortion, which describes and analyzes in depth the revolutionary effects of medical abortion as well as the barriers that remain to make it a more widely used technology to favor women’s sexual and reproductive autonomy.¹³

Skuster (2017) has written another landmark article on medical abortion, which is particularly relevant in the contexts of the analyses here developed, because it examines the way in which even progressive laws can create barriers for women’s reproductive autonomy that was made possible by medical abortion. In particular she looks into liberalizing abortion legislation adopted since the 1960’s mostly inspired by the British law that is based on health grounds and is centered on the relation between the women and medical professionals as providers of pregnancy termination. Skuster insightfully argue that these health grounded progressive abortion laws more than often constitute a barrier to the amplified access to medical abortion.

12 Check the websites (in Spanish): in Argentina (<http://socorristasenred.org/>), in Ecuador (<http://www.abortoseguroecuador.com/>), in Chile (<http://yo-decido.com/aborto/>).

13 Berer, M. et al., (2018). ‘Medical Abortion – Special Issue’, *Contraception – an international reproductive health journal*, Volume 97, Issue 2, available at <http://www.contraceptionjournal.org/content/contr-medical-abortion-special-issue>

Abortion laws: a global overview

In the next pages abortion laws will be more closely examined through the lenses of updated information on national legislations. The data compiled in this section was originally collected from the 2013 UN database on abortion laws and the 2017 World Abortion Law Map developed by the Center for Reproductive Rights, to be later updated with information provided by the World Health Organization web-based Data Base on Abortion Policies launched in 2017 and few other sources for specific countries.¹⁴

The section begins with brief historical recapturing of post 1930s reforms in the so-called developed countries and subsequently maps out abortion legislation according to the United Nations regional frame: Europe, Africa, Asia, the Pacific, the English-speaking Caribbean and Latin America (which include Spanish-speaking Caribbean countries).

This bulk of information confirms Berer's (2017) assessment that most states worldwide admit six main grounds for allowing abortion: a) women's life risk; b) rape or sexual abuse, c) serious fetal abnormality; c) physical and sometimes mental health risks, d) social and economic reasons; e) on request. Abortion upon request is now available in sixty-six countries and island territories (thirty-two of them falling into the "developed countries" category). Contrastingly, just in twenty-two nations and island territories pregnancy termination remains fully prohibited. Between these extremes points – in which the right of women to exercise their reproductive autonomy is either fully respected or entirely disregarded – most countries around the world allow for abortion under specific circumstances. Nevertheless, in most of the countries encompassed in this last category, the ability of women to access a safe abortion is uneven, if not entirely absent. This is so because, as also noted by Berer, health regulations, sanitary norms, the mindset and attitude of health providers and surrounding cultures can either determine barriers or enable access to abortion procedures. Consequently, great caution is required in the interpretation of the information provided in the next sub-sections, as the description of existing legal norms does not fully portray the realities of access to and restrictions on pregnancy termination. Rather it reflects the tip of the iceberg of abortion rights worldwide.

¹⁴ World Health Organization – WHO (2018). Global Abortion Policies Database [online database], available at <https://srhr.org/abortion-policies/>,

Abortion laws in the so-called developed countries

In the European region, as defined by the UN, after the Soviet Union reform, in the 1920's and 1930's, Denmark, Iceland and Sweden have also changed their laws, albeit in very limited ways. Then in 1948 Japan legalized abortion within a eugenic and population control frame. Seven years later, in 1955, abortion was again made legal in the Soviet Union and, as previously said, this revision would impact in Eastern European countries under Soviet influence.¹⁵ Then in the 1960s, Sweden and Denmark enlarged their legislations and in 1967 the UK adopted a new regulation allowing abortion to protect women's health that overruled the 19th century criminal restrictions on abortion that, however, remains on the books until today, a reform that, however, has excluded Northern Ireland.¹⁶ After the UK, a rapid sequence of reforms followed across Europe: Macedonia (1972) (then part of the Republic of Yugoslavia), Austria (1974), France and Germany (1975) and Italy (1978), Serbia, Bosnia and Herzegovina (1977) and Croatia (1978). Concurrently, court decisions or legal changes granting the right to abortion upon request have also taken place in the US (1973), Canada (1969 and 1988), Australia (1969) and New Zealand (1977). Then in the 1980s, abortion was made legal in the Netherlands (1981), Czechoslovakia and Greece (1986), Byelorussia (1987) and Romania (1989 after the fall of the Ceausescu regime). Bulgaria and Belgium reformed their laws in 1990 and Albania in 1996. The last European countries to legally expand the right to pregnancy termination were Switzerland (2002), Portugal (2007), Montenegro (2009), Spain (2010) and Luxembourg (2012) and, as mentioned already in May 2018, a referendum in Ireland has called for the constitutional protection of life from conception to be lifted and a new legislation ensuring abortion rights will begin to be discussed. The legal outcomes of most of these reforms are reflected in Table 1 and Table 2 right below.

¹⁵ European countries, besides the USSR, that then legalized abortion were Estonia (1955), Latvia, (1955), Lithuania (1955), Ukraine (1955) and Moldova (1956). Hungary reformed its law in 1953 and Poland had a much older legislation that included circumstances allowing for pregnancy interruption. A glaring exception was Romania where abortion was fully criminalized in 1966.

¹⁶ In Northern Ireland, the only circumstance allowing for abortion are life and health risks. But the UK government has recently adopted a new policy to finance the travel of Northern Irish women with scarce resources to England and Wales where they can have access to free abortion procedures. See: <https://www.theguardian.com/commentisfree/2017/jun/29/northern-ireland-women-abortion-amendment-access>

Table 1: Abortion Laws in the European Region

Content of the Laws	Northern Europe	Southern Europe	Western Europe	Eastern Europe
Right to abortion on request	Denmark Estonia Latvia Lithuania Norway Sweden	Albania Bosnia and Herzegovina Croatia Greece Macedonia Montenegro Portugal Serbia Slovenia Spain	Austria France Germany Luxembourg Switzerland	Belarus Bulgaria Czech Republic Republic of Moldova Romania Russian Federation Slovakia Ukraine
Right to abortion under certain circumstances	Iceland: fetal impairment, rape, incest and other socioeconomic grounds. Finland: fetal impairment, rape, incest and other socioeconomic grounds. United Kingdom: life risk, physical and mental health risk and fetal impairment. <i>These rules do not apply to Northern Ireland.</i>	Italy: life risk, physical and mental health risk, fetal impairment and other socioeconomic grounds.	Belgium: health risk, fetal impairment and situation of distress before the end of the 12 th week of gestation. Liechtenstein: life risk, physical and mental health risk, and unmarried minors. Monaco: life risk, health risk and fetal impairment. Netherlands: life risk, health risk, fetal impairment and distress.	Hungary: life risk, physical and mental health risk, fetal impairment, rape, incest and other socioeconomic grounds. Poland: life risk, health risk, fetal impairment, incest, rape.
Right to abortion when woman's life is at risk	Ireland, until May 25 th when the referendum called for elimination of the premise on right to life from conception. The new legislation has not yet been defined.	Northern Ireland		
Totally prohibited		Malta Andorra San Marino*		

Sources: U.N. World Abortion Policies (2013), World Abortion Law Map (2017), WHO Database on Abortion Policies (2017).

*Abortion is also totally prohibited in the Holy See that, however, we do not consider to be a proper nation-state.

Table 2: Abortion laws in Australia, Canada, United States and New Zealand

Country	Year	Content of the law or norm
Australia	Varies by state	Laws vary depending on the state concerned. The British Penal Code 1861 prohibition of “unlawful” abortions remains in the books but statutory or case laws define that abortion is unlawful if performed to preserve the pregnant woman’s life or health. Indications for abortion, except for Western Australia , are somewhat restrictive, the access to abortion is fairly easy.
Canada	1988	Supreme Court revoked the 1968 abortion law in the Case R. vs. Morgentaler, considering that the law –which permitted abortion in cases when the life or health of the woman is at risk - infringed the right to privacy, freedom and personal safety of the woman. Since then, Canada has no further legislation on this matter, so it is understood that abortion is available on request.
New Zealand	1977-1978	Amendment of the 1961 Crimes Act allows abortion in the cases of woman’s life risk, physical and mental health risk, fetal abnormality, rape and incest, women’s severe mental disability and if the pregnancy is the result of sexual intercourse with dependent family member (which constitutes an offence).
United States	1973	Laws vary depending on the state concerned request. In 1973, the Supreme Court made abortion legal at national level (cases Roe vs. Wade and Doe vs. Bolton). In 1992, the Supreme Court has ratified the Roe vs. Wade decision in the case Planned Parenthood of Southeastern Pennsylvania vs. Casey. Even so, Since the 2000’s a number of states have severely restricted public funding and access to abortion services. In 2017, 43 states prohibited abortion except in cases where woman’s life is at risk (see footnote 18).

Sources: U.N. World Abortion Policies 2013, 2017 Centre for Reproductive Rights and 2018 Guttmacher Institute.

However, as previously mentioned, the longstanding trend towards legalization observed in the European region and other so called developed countries is neither homogenous nor completely stable. As seen in Table 1, in Western Europe three countries retain on their books very old laws that fully prohibit abortion (Andorra, Malta and San Marino) and Northern Ireland allows it just to save women’s lives. Furthermore, a number of Eastern Europe countries where abortion was legal, including the Russian Federation, have either adopted regressive legislations or have tried to restrict access to abortion in recent years (International Campaign for Women’s Right to Safe Abortion, 2016). A case in point is Poland, where abortion now risks being completely restricted. Attacks on abortion rights, propelled by the Catholic Church, have also become more virulent in Spain and particularly in Italy (Ceberi Belaza, 2018; Garbagnoli, 2017). Though much less debated, the growing evidence that sex selective abortion is becoming frequent in a number of post-socialist nations – Albania, Macedonia and Montenegro – is another problematic trend related to abortion in European Region.

Yet more critically, we cannot lose sight of deep, sweeping and persistent controversies and obstacles to abortion rights in the US because these battles do not just affect domestic politics but have also deleterious global ramifications. Since the 1973 Supreme Court *Roe Vs. Wade* decision, an increasing number of US states “have constructed a lattice work of abortion law, codifying, regulating and limiting whether, when and under what circumstances a woman may obtain an abortion” (Guttmacher Institute, 2018d).¹⁷ In 1976, the Hyde Amendment has prohibited the use of federal money to fund abortion services or even health insurance schemes that include the procedures in ways that further limit women’s rights to pregnancy termination. Similar trends were registered in relation to US international funds, such as the Helms Amendment, also approved in 1973, prohibited US development aid to be used in programs that provide abortion as a method of family planning (or what is qualified as abortion promotion). Then in 1984, the Reagan administration adopted the so-called Mexico City Policy and within it the Gag Rule that prohibits foreign NGOs using US aid funds in any type of abortion related work (Girard, 2004). Suspended by the Clinton and the Obama administration in 1993 and 2008 respectively, the rule was reinstated by George Bush in 2001 and by Donald Trump in 2017. In its new version, the rule has been expanded to funds for global health and HIV/AIDS (Stone, 2017; Girard 2017, Fried and Rothschild, 2018).

Abortion laws in Asia and the Pacific Regions

As previously noted, after Japan in 1948, China (1957 and 1979), India, (1971), and Vietnam (1972-1975) have also made abortion legal, albeit within a population control frame that was not guided by the respect women’s rights and reproductive autonomy (Eklund and Purewal, 2017, Le Minh et al, 2007).¹⁸ Another group

17 Thus, according to the Guttmacher Institute (2018d), 43 US states prohibit abortion except when the life or health of the woman is at risk (below certain gestational limits). 19 states have laws that prohibit “partial-birth” abortion: 11 states restrict coverage for abortions in private insurance plans; 45 states allow health providers to refuse to participate in an abortion procedure and 42 allow health institutions to deny abortion. Other restrictive measures include: unconstitutional bans at specific gestational limits as well as non-surgical abortion bans; mandatory ultrasounds and waiting periods, and requirements to attend biased counseling before a woman can get an abortion; and the so-called “personhood” (of the fetus) measures, such as the “right to burial”.

18 The most glaring case was China, where forced abortion was a component of the Draconian one-child policy, implemented from 1979 to 2015. Eklund and Purewal (2017) analyze the policy in the following terms: “... close to unrestricted availability of abortion services was key to implementing the population policy, and abortion rights were largely driven by population control concerns and not by concerns over women’s reproductive and sexual rights”. Though in recent years the Chinese one-child policy was made more flexible, the practice of coerced abortion continues to feed anti-abortion arguments globally. Not surprisingly, coerced abortion in China was, for example, mentioned in the justification of the Gag Rule as re-enacted by the Trump administration in January 2017.

of countries -- situated in Central and Western Asia -- has also legalized abortion after the mid 1950s while under the hegemony of the Soviet Union. Then in the 1980s, Turkey reformed its law substantially, enlarging the circumstances allowing abortion and in the course of the past decade, Nepal (2004) and Cambodia (2007) legalized abortion on health and women's rights grounds. In other countries, however, legislation remains very limited even when, in some cases, these restrictions may do not fully hinder access to procedures. As shown in Table 3, in three countries -- Iraq, Lao and the Philippines - abortion is fully prohibited and in nine other nations only allowed to save women's lives: Afghanistan, Bangladesh, Brunei, Darussalam, Lebanon, Myanmar, Timor-Leste, Oman, Sri Lanka, Syria, the United Arab Republic and United Arab Emirates.

Table 3: Abortion Laws in Asia and the Pacific Regions

Content of the law	Eastern Asia	South-Central Asia	South-Eastern Asia	Western Asia	Melanesia	Polynesia
Abortion on request	China Democratic People's Republic of Korea Mongolia	Kazakhstan Kyrgyzstan Nepal Tajikistan Turkmenistan Uzbekistan	Cambodia Singapore Vietnam	Armenia Azerbaijan Georgia Turkey		Niue Tonga
Right to abortion under certain circumstances	Japan: life and health risks, rape and socio-economic reasons. Republic of Korea: health risk, fetal impairment, rape and incest, intellectual or cognitive disability of the woman and other reasons (where provided).	Bhutan: life risk, fetal impairment, rape, incest and intellectual or cognitive disability of the woman. India: life risk, physical and mental health risk, fetal impairment, intellectual or cognitive disability of the woman and socio-economic reasons. Maldives: life and physical health risk. Iran: life risk and fetal impairment.	Malaysia: life and physical or mental health risks. Thailand: life and physical or mental health risks, fetal impairment and rape. Indonesia: life risk, fetal impairment and rape. Timor-Leste: life and physical or mental health risks, fetal impairment, rape and other reasons (where provided). Lao People's Democratic Republic: rape.	Cyprus: life and physical and mental health risks, rape and fetal impairment. Iran: life risk and fetal impairment. Israel: life and physical and mental health risks, fetal impairment, rape, incest and other reasons (where provided). Jordan: life and health risks. Kuwait: life and health risks and fetal impairment. Qatar: life and health risks and fetal impairment. Saudi Arabia: life and health risks and other reasons (where provided). United Arab Emirates: life and health risks and fetal impairment. Iraq: health risk and fetal impairment.	Fiji: life and physical and mental health risks, fetal impairment, rape and incest. Vanuatu: reasons such as if the miscarriage procured constituted a termination of pregnancy for good medical reasons	Samoa: Life and physical and mental health risks.
Right to abortion when woman's life is at risk		Afghanistan Bangladesh Pakistan Sri Lanka	Brunei Darussalam Myanmar	Bahrain Lebanon Oman Syrian Arab Republic Yemen	Kiribati Nauru Papua New Guinea Solomon Islands	Cook Islands Tuvalu
Totally prohibited			Philippines		Marshall Islands: (LAW UNCLEAR). Micronesia: (LAW UNCLEAR) Palau	

Sources: U.N. World Abortion Policies 2013, 2017, World Abortion Laws 2017 and WHO database on abortion policies 2017.

While a large number of abortion restrictive criminal laws in Asia are inherited from colonial times, a number of them also derive from Islamic prescriptions in those places where Sharia regulates private matters. It is also notable that in a significant number of cases, extremely limited laws have been adopted by states that have, in the course of the past thirty years or so, experienced political transitions towards democratization that comprised fully fledged constitutional and penal code reforms: such as the Philippines in the 1980s and more recently Afghanistan, Lao and Myanmar. The Philippines, the oldest Catholic nation in Asia (Timor East is also predominantly Catholic), in particular, provides a striking example of how anti-abortion religious forces negatively affect law and policy. The current draconian legislation resulted from the 1987 constitutional reform, when a powerful Church lobby pressure achieved inclusion of the right to life from conception in the text (Parcon and Sibugon, 2017). The negative effects on women's reproductive health were blatant (Guttmacher Institute, 2013). Since then, the only significant legislative gain for sexual and reproductive health was the 2012 approval, after strenuous feminist advocacy, of the Reproductive Health Law¹⁹ that focuses on maternal mortality reduction, access to contraceptives, post-abortion care and sexuality education.

Asia is also the region where the introduction of obstetric visualization technologies negatively overlapped with deep-rooted cultures of son preference, leading towards the practice of sex-selective pregnancy termination. The detrimental gender effects of sex selective abortions have been widely debated since the 1990s (Sen, 2003). This practice, that was prevalent in India and China since the 1980s, has also been detected in recent years in various post-Soviet countries within and outside Asia, such as Vietnam and Azerbaijan, also Armenia and Georgia (ASTRA Network, 2014). Since the problem gained visibility, policy measures have been adopted to curtail the practice. India has approved strict criminal regulation of sex-selective abortion (2002) and in China, the recent softening of the one child policy and state monitoring of sex selective abortion services was expected to reduce its incidence (El Mundo, 2015; Eklund and Purewal, 2017). However, as this article was being finalized an article published in *The Guardian* reported that in some provinces the policies now adopted to curtail sex selective abortions are in fact imposing restrictions on pregnancy termination. Women's rights defenders are openly criticizing these measures, despite state restrictions on this type of critique (Kuo, 2018). In both cases, states have opted for vertical restrictive policies instead of investing in cultural and institutional changes that are needed to dislodge deep gender bias related to son preference.

19 The "Responsible Parenthood and Reproductive Health Act" of 2012.

A troubling but not always discussed aspect of sex selective abortion is that for some time the practice and its effects are being used as anti-abortion arguments. Feminist campaigns against sex-selective abortion at times add water to the mills of these arguments, as exemplified by the unreflective use and global dissemination of the term female feticide. In a critical reflection on the implications of this complicated conundrum, the Indian feminist Nivedita Menon points towards the incongruence of claiming the right of women to control their bodies while at the same time arguing that women must be legally restricted from choosing specifically to abort female fetuses. In her view, feminist should be cautious not to counter the rights of (future) women to be born against the rights of (present) women to have control over their bodies (CREA, 2015).

Abortion laws in Africa

As reported by the Guttmacher Institute (2016), although Africa has the highest maternal mortality rate in the world, about 90 per cent of African women of reproductive age still live in countries where abortion laws remain either restrictive or non-accessible. As shown in Table 4, while five countries of the continent entirely prohibit abortion – Congo (Brazzaville), Gabon, Guinea-Bissau, Madagascar and Senegal, another five countries allow abortion on request: Tunisia (a very early reform in 1973), Cape Vert (1986), São Tomé e Príncipe (no date available in the sources), South Africa (1996) and finally Mozambique (2015). The cases of Ghana, Ethiopia and Sierra Leone are also to be highlighted. In 1986 in Ghana, legal reform occurred along the lines of the 1967 British law that protects women's health, but knowledge of the law and access to services remained problematic. (DAWN, 2006). In 2007, Ethiopia has also enlarged the number of circumstances allowing abortion and in this case the law has facilitated access to services. Then in 2015, the Sierra Leone Parliament approved a new law legalizing abortion that, however, was stalled by an executive order of the president after strong pressure from anti-abortion religious forces.

As shown in Table 4, between fully prohibitive and pro abortion rights legislations a significant number of African countries allow for abortion when women's life is at risk and when their physical and mental health are at risk, as well as in the cases of rape, incest and fetal impairment. Various others also consider socio-economic circumstances. Many of these laws have been adopted in the course of the past fifteen years or so. This trend began in Chad and Mali in 2002, then moved to Benin in 2003, Ethiopia in 2004 and Swaziland in 2005. In all

cases the number of situations allowing for abortion have been enlarged, including protecting women's health. Then exceptions for life risk, health reasons and grave fetal abnormality were adopted in Niger (2006), in Togo (2007) where pregnancy resulting from rape and incest were also added and in 2012 the same exceptions were approved in Lesotho and Mauritius. In the same year, Rwanda liberalized the abortion law to allow it in case of rape, incest, and life risks, to protect women's health, fetal abnormalities and also forced marriages; and Somalia left out total prohibition of pregnancy termination in the penal code, allowing the possibility of abortion to save women's lives.

Table 4: Abortion Laws in Africa

Content of the law	East Africa	Central/Middle Africa	North Africa	Southern Africa	West Africa
On request	Mozambique	São Tomé and Príncipe	Tunisia	South Africa	Cape Verde
Abortion permitted under limited circumstances	<p>Burundi: life and health risks.</p> <p>Comoros: very serious medical reasons (where provided).</p> <p>Djibouti: therapeutic purposes.</p> <p>Eritrea: physical and mental health risks, rape, incest and termination performed on a girl under the age of 18.</p> <p>Ethiopia: life and health risks, rape, incest, fetal impairment and intellectual or cognitive disability of the woman.</p> <p>Kenya: life and health risks, other reasons (where provided)</p> <p>Mauritius: life risk, physical and mental health risks, rape, fetal impairment and sexual intercourse with a female under 16 or sexual intercourse with a specified person.</p> <p>Rwanda: health risk, fetal impairment, rape, incest, when a woman has been subjected to forced marriage and defilement of a girl under 18, which is treated as rape.</p> <p>Seychelles: life risk, physical and mental health risks, rape, incest, fetal impairment, intellectual or cognitive disability of the woman and defilement.</p> <p>Zambia: life risk, physical and mental health, rape, fetal impairment and risk of injury to the physical or mental health of any existing children of the pregnant woman.</p> <p>Zimbabwe: life risk, physical health risk, rape, incest and fetal impairment.</p>	<p>Cameroon: health risk and rape.</p> <p>Central African Republic: life risk, rape, incest, fetal impairment and if a minor finds herself in a state of grave distress.</p> <p>Chad: life and health risk and fetal impairment.</p> <p>Equatorial Guinea: life risk, physical and mental health risks (husband and parental authorization required).</p>	<p>Algeria: life risk, physical and mental health risks.</p> <p>Egypt: life and health risks.</p> <p>Morocco: life and health risks (husband authorization required).</p> <p>Sudan: life risk and rape.</p>	<p>Angola: life risk, rape and incest.</p> <p>Botswana: life risk, physical and mental health risks, rape, incest, fetal impairment and defilement.</p> <p>Namibia: life risk, physical and mental health risks, rape, incest, fetal impairment and intellectual or cognitive disability of the woman.</p> <p>Swaziland: life risk, physical and mental health risks, rape, incest, fetal impairment and unlawful sexual intercourse with a mentally retarded female.</p> <p>Lesotho: life and health risk, rape, incest and fetal impairment.</p>	<p>Benin: life and health risks, rape, incest, fetal impairment and abortion for the minor child, in case this would constitute a handicap for its development.</p> <p>Burkina Faso: life risk, physical and mental health risks, rape, incest and fetal impairment.</p> <p>Gambia: life risk, physical and mental health risks.</p> <p>Ghana: life risk, physical and mental health risks, rape, incest, fetal impairment and defilement of mentally disabled women.</p> <p>Guinea: life risk, rape, incest, fetal impairment and early pregnancy.</p> <p>Liberia: life risk, physical and mental health risks, rape, incest, fetal impairment and pregnancy that results from illicit intercourse with a girl below 16.</p> <p>Mali: life risk, rape, incest and therapeutic reasons.</p> <p>Niger: life and health risk, fetal impairment.</p> <p>Sierra Leone: Life risk, mental and physical health risk</p> <p>Togo: life and health risk, rape, incest and fetal impairment.</p> <p>Mauritania: proven medical necessity.</p>
Strictly life risk	Malawi Somalia South Sudan Uganda United Republic of Tanzania	Democratic Republic of the Congo	Libya		Côte d'Ivoire Nigeria (in Southern Nigeria, while in Northern states abortion is regulated by Sharia and it is usually highly restrictive).
Full prohibition	Madagascar	Congo (Brazzaville) Gabon			Guinea-Bissau Senegal

Source: U.N. World Abortion Policies 2013, 2017, World Abortion Laws 2017 and WHO database on abortion policies 2017.

In Africa, in more pronounced ways than in Asia, recent legal changes have been clearly influenced by global and regional debates and new normative frames. One landmark of this cross-influence was the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa - known as Maputo Protocol - adopted by member states of the African Union in 2003. The Maputo Protocol establishes that states should allow abortion in cases of sexual assault, rape, and incest and when the pregnancy endangers the physical and/or mental health of the woman or her life or that of the fetus (Center for Reproductive Rights, 2014). Furthermore, in January 2016, the African Commission on Human and Peoples' Rights launched a regional campaign for the decriminalization of abortion on the continent and, in January 2017, the African Leaders Summit on Legal and Safe Abortion was organized in Ethiopia to mark the first anniversary of this continental mobilizing. On that occasion, a statement was adopted that urges states to ratify without reservation the Maputo Protocol to guarantee the right to abortion, remove barriers to access to this right and adopt policies on sexual and reproductive health with emphasis on the adolescent population.

Despite significant signs of positive legal change – and even when the content of legislation in a large number of countries is broad enough to allow access to abortion in various circumstances – almost everywhere the practice is culturally stigmatized and there remain great difficulties to access safe services. Even in countries where abortion has been fully decriminalized, severe barriers to safe abortion are identified today – as illustrated by South Africa where ten years after legalization, the extensive spread of conscientious objection amongst health providers has created a major obstacle for women wanting to terminate pregnancy in legal and safe conditions (Harries, Gerdtts et al., 2015). Although, in 2008, the law was amended to ensure access to a larger number of services, problems remain and conscientious objection appears to be throwing abortion back in the shadows of illegality.²⁰ Similarly, in Mozambique, the last country to legalize abortion in the region in 2015, major investments are now required to overcome the stigma connected with abortion within the society, in local communities and also amongst health providers (International Campaign for Women's Right to Safe Abortion, 2016).

20 As reported by the Daily Maverick article in January 29th, 2018: https://www.dailymaverick.co.za/article/2018-01-29-health-e-news-abortion-the-legal-service-performed-mostly-illegally/#.WnJaeKs_YU

The English-Speaking Caribbean

On the surface, the situation of abortion laws appears to be more favorable in the English-speaking Caribbean than in other global South regions. Amongst 26 countries, roughly one third (eight) allow abortion on request. On the other extreme, an equivalent number (nine) either allow abortion just to save a woman's life – Antigua and Barbuda, Dominica, Haiti, Suriname and Cayman Islands – or entirely prohibit it as in Aruba, British Virgin Islands, St. Marteen and Curacao. However, these numbers are distorted by what can be described as a 'colonial effect'. The seven islands where abortion on request is legal are French Departments (French Guyana, Guadeloupe, Martinique, Saint Martin), Dutch municipalities (Bonaire and Saint Eustatius) and a US territory (American Virgin Islands), where local rules follow 'metropolitan' norms on the matter. However, this alignment with post 1960s North Atlantic abortion liberalization does not apply everywhere since the other three Dutch territories – Aruba, Curacao and Saint Marteen -- still retain on their books a 19th century Netherlands legislation fully prohibiting abortion (even when in the case of Curacao these absolute restrictions have not been strictly applied since 1999) and the British Virgin Islands also applies until today the 1861 British Penal Code. When considering independent nations, as shown in Table 5, full prohibition is also the law in Haiti and in Antigua and Barbuda, the Cayman Islands and Dominica abortion is only authorized in the cases when the lives of women are at risk.

Table 5: Abortion laws in the English-Speaking Caribbean

	Caribbean Region Countries		
On request	Bonaire French Guiana Guadeloupe	Guiana Martinique Saint Eustatius	Saint Martin U.S. Virgin Islands
Abortion permitted under limited circumstances	Bahamas: medical or surgical treatment of a pregnant woman in good faith and without negligence. Barbados: life risk, physical and mental health risks, fetal impairment. (In addition, parental authorization is necessary). Belize: life risk, physical and mental health risks, fetal impairment.	Grenada: medical or surgical treatment of a pregnant woman in good faith and without negligence. Jamaica: life risk, physical and mental health risks Saint Kitts and Nevis: life risk, physical and mental health risks.	Saint Lucia: life risk, physical and mental health risks, rape, incest. Saint Vincent and the Grenadines: life risk, physical and mental health risks, rape, incest, and fetal impairment. Trinidad and Tobago: life risk, physical and mental health risks.
Strictly life risk	Antigua and Barbuda	Cayman Islands	Dominica
Full prohibition	Aruba British Virgin Islands	Saint Maarten Curacao (even if the application is not strict)	Haiti Suriname

Sources: U.N. World Abortion Policies 2013, 2017, World Abortion Laws 2017 and WHO database on abortion policies 2017.

In the English-speaking Caribbean, only two countries have in recent decades reformed their laws to favor women's reproductive decision making. Barbados substantially enlarged the possible grounds for abortion in 1983 and Guyana made abortion legal on request in 1995, becoming the first country in the South American continent to do so. On the other hand, as in Africa, the large majority of countries either have criminal regulations that allow for abortion in the case of life or health risks or else have more ample grounds, including rape, incest, fetal impairment and socio-economic conditions. But once again, despite the relative flexibility of these laws, abortion stigma is prevalent in all societies, barriers to access remain severe in many places and anti-abortion groups are very active across the region (Dawn, 2006; Barrow, forthcoming). Furthermore, as also noted by Barrow (forthcoming) even in contexts where it is legally possible to have abortion on request there are no available services because the populations of the islands are very small, as happens in Saint Eustatius. On the other hand, since abortion is legal and proper services exist in some territories, women who have resources may travel across the islands as to access procedures.

Latin America and the Spanish- speaking Caribbean countries

As shown in Table 6, this is another group of countries where restrictive laws tend to prevail and, most importantly, there have been regressions in the past thirty years. Examining the region from a longer historical perspective, however, it is worth recalling that during the Calles administration in Mexico in 1926, after a Feminist Congress organized there by Margaret Sanger, the State of Yucatán approved a law granting access to abortion on various grounds including economic necessity, which was to become the second liberalizing abortion reform in history after the USSR in 1920. Then in Uruguay, abortion was fully legal between 1934 and 1938 (Woods et al., 2016) and, as already noted, right after the revolution in 1961 Cuba also made abortion legal. Between these two points (Yucatán and Cuba) during the 1930s and 1940s, a few countries enlarged pre- existing legislation to allow for abortion in the case of rape and incest.

After the Cuban reform, however, forty-five years elapsed before another substantial liberalizing legal change took place. This happened in Colombia where, in 2006, the Constitutional Court issued a decision that voided the total prohibition of abortion to grant the right to legal and safe abortion in three circumstances: women's life or health risks, life-threatening fetal malformations; or pregnancy resulting from rape, non-consensual artificial insemination or incest. This decision, soundly based on principles of gender justice and women's rights

to dignity and personal autonomy, set the stage for the decision to be consistently implemented and not simply remain in the books as happens in other countries where these various grounds are enshrined in the law, but do not translate into access to safe procedures. A year later in Mexico – where each state has its penal code – the Federal District Assembly (Mexico City) approved a new law that permits abortion until the 12th week of pregnancy.²¹ Then in 2012, after many reform efforts that can be retraced back to the mid 1980s, Uruguay approved a national law granting access to abortion on demand until the 12th week of pregnancy within the rules defined by the law.²²

Table 6: Abortion Laws in Latin America and the Spanish speaking Caribbean

Content of the Law	Caribbean	Central America	South America
On request	Cuba	Mexico City	Uruguay
Abortion permitted under limited circumstances		<p>Costa Rica: life and health risk.</p> <p>Mexico states' law:</p> <ul style="list-style-type: none"> - Rape (32 states). - Life risk (24) - Fetal abnormalities (16) - Women's health (14) - Economic causes (2) - Unintended abortion - Non-consented insemination <p>Panama: life risk, rape and fetal impairment (parental authorization is required).</p> <p>Peru: life and physical or mental health risk.</p>	<p>Argentina: rape, life and physical or mental health risk, rape, until June 14th, when the new law provision was partially approved, but it is still pending of final Senate voting.</p> <p>Bolivia: rape, life and physical or mental health risk, incest, fetal impairment and social economic causes, such as when the woman has older persons and children under her responsibility or if she is a student, a teenager or underage (these social causes have been added in the 2017 reform).</p> <p>Brazil: life risk, rape and fetal anencephaly</p> <p>Colombia: life and physical or mental health risk, fetal impairment, rape, incest and if the pregnancy is the result of a criminal act of unwanted artificial insemination or unwanted ovum implantation.</p> <p>Ecuador: life and physical and mental health risk, socioeconomic reasons, rape.</p> <p>Chile: rape, life risk, fetal impairment</p>
Strictly life risk		Guatemala	Paraguay Venezuela
Full prohibition	Dominican Republic	Honduras El Salvador Nicaragua	

Sources: U.N. World Abortion Policies 2013, 2017, World Abortion Laws 2017 and WHO database on abortion policies 2017.

21 The main change of the law is that it authorizes abortion until the 12th week of pregnancy when the woman freely decides. See: Adame, J. (2018). 'La reforma dele Código Penal dele Distrito Federal que autoriza el aborto de menos de doce semanas', Boletín Mexicano de Derecho Comparado, Number 151, available at <https://revistas.juridicas.unam.mx/index.php/derecho-comparado/article/view/3931/4968>

22 "Voluntary Interruption of Pregnancy" bill. The House of Representatives passed the Voluntary Interruption of Pregnancy Law on September 25, 2012, with 50 votes in favor and 49 against. On the 17th of October, the Senate ratified the bill, as modified by the House. President Mujica signed it five days later. The new law authorizes abortion on demand during the first 12 weeks of pregnancy, and 14 weeks in the case of rape; there is no gestational limit when the woman's health is at risk or in the case of severe fetal anomalies. The procedure is available within the public health system, free of charge. See: Wood, S., Abracinkas, L., Corrêa, S. & Pecheny, M. (2016). Reform of abortion law in Uruguay: context, process and lessons learned, Reproductive Health Matters, Volume 24, Number 48, available at https://www.researchgate.net/publication/311524180_Reform_of_abortion_law_in_Uruguay_context_process_and_lessons_learned

As exemplified by the Uruguayan example, in almost all countries of the region proposals have been made in the course of the past three decades to enlarge access to abortion or make it legal. Success has been scarce, however, because efforts to legalize abortion have faced fierce resistance on the part of the Catholic Church that historically has great influence on state affairs, and also more recently as an effect of the growth and politicization of evangelism. Latin America is also the region where, under the influence of anti-abortion forces since the 1980s, various countries have fully prohibited pregnancy termination, including saving woman's lives: Chile (1988) Honduras (1991), El Salvador (1994), Nicaragua (2006) and Dominican Republic (2010). After Federal District law reform in 2007, seventeen other Mexican states have adopted the premise of the right to life from conception in their constitutions or have further restricted penal code rules in relation to abortion.²³

However, and very positively, this persistent regressive trend has recently begun to change. In 2015, the absolute prohibition of abortion in Chile was finally challenged when the Executive Branch proposed a reform of the law and, as noted above, a new law was approved in August 2017 that allows abortion in the cases of life risk, rape and fetal abnormality.²⁴ Immediately following this, legal reform was approved in Bolivia that enlarges the possibilities of pregnancy termination without criminal sanctions (see Table). And in Argentina a most promising scenario has taken form while this chapter was being finalized. On February 2018, *the National Campaign for the Right to Legal, Safe and Free Abortion created in 2003*, called for a demonstration in front of the National Congress to call for abortion legalization, then on March 6th, the country's president declared that it would allow its congress basis to discuss the matter (see Pedrido (2018)).²⁵ Law provisions previously tabled began to be processed and public hearings involving around thousand testimonies have taken place between March and June 2018, while streets demonstrations steadily continued their pace. On June, 14th the House voted in favor of a law that will allow abortion until the 14th week of pregnancy.²⁶ Even when, two months later, the reform was not reaffirmed by the Senate the the legal debate will continue, because culturally and politically abortion is now "decriminalized" in Argentinean society.

23 This happened, for example in Yucatán, where in 2009, a Family Law was approved that enshrined the right to life from conception in the state constitution and established criminal punishments for women who abort, thereby restricting access to the procedure. See <http://www.cimacnoticias.com.mx/node/44138>

24 Although this is a limited reform that has also granted the right to conscientious objection, including for institutions, it has meant a major step forward.

25 Argentina: Abortion came out of the closet, available at <http://sxpolitics.org/18305-2/18305>

26 The law partially approved establishes that women can undergo abortion on request until the 14th week of pregnancy and after that in the cases of rape, life risk and fetal abnormality. The next also ensures the right to conscientious objection.

Discussions on reform provisions have also begun in El Salvador and Honduras (2016) where abortion prohibition is absolute. In the latter case, feminist organizations have advocated for decriminalization in the cases of life risk, rape and fetal abnormality in Congress discussions around the Penal Code Reform.²⁷ In other countries where the law is not so restrictive, proposals to broaden the grounds for abortion have also been proposed in recent years. In most cases they are still awaiting legislative processing or court decision. In Peru since the 1980s different law provisions aimed at expanding the circumstances to allow abortion for cases of pregnancy resulting from rape, non-consent insemination and grave fetal abnormalities have been proposed without much success. In Brazil, where the very limited access to abortion rights has been under severe attack in recent years²⁸, efforts to expand grounds for abortion have concentrated on the judiciary since the mid 2000s, as will be more closely examined in the next section.

Lastly, it is also worth noting, since the 1990s across the region, health protocols have also been adopted that ensure access to abortion procedures in cases when it is legal, guaranteeing confidentiality and quality of care.²⁹ Within this health frame, an abortion harm reduction model was established in Uruguay in the early 2000s that is now also implemented in Argentina, in which public health providers give women all the necessary information to prevent the detrimental effects of clandestine abortion (Woods et al, 2016).³⁰

27 For more information see: <https://somosmuchashn.wordpress.com/somos-muchas/>

28 See International Campaign for Women's Right to Safe Abortion (2017). 'BRAZIL – The turbulence in Brazil continues', available at <http://www.safeabortionwomensright.org/brazil-the-turbulence-in-brazil-continues/>

29 This is the case of Ecuador (2006), which enacted a new health code empowering public and private health service providers to administer abortions in accordance with the penal code. Argentina did the same in 2007 (Guía Técnica para la Atención Integral de los Abortos no punibles). In Brazil since 1998, a protocol has been in place that was expanded in 2005 (Atenção Humanizada ao Abortamento. Norma Técnica); and Peru (2014) has also enacted national guidelines on the provision of abortion services in health facilities. See Dides, C., Castillo, I & Galán, G. (2017), Dossier – Guías de atención integral del aborto en distintos países de América Latina. Santiago de Chile: Corporación Miles & Ipas: <http://mileschile.cl/wp-content/uploads/2016/08/Dossier-Gu%C3%ADas-AIA-y-PSSYR-final.pdf>

30 IPPF Western Hemisphere Region has developed technical cooperation agreements with the ministries of health in Ecuador and Argentina to implement the harm reduction model in public hospitals and health centers. To date, the model is being implemented in seven countries throughout the Caribbean and Latin America, in both IPPF and public health facilities in conjunction with national IPPF Member Associations <http://www2.ohchr.org/english/issues/women/docs/responses2ndNV/InternationalPlannedParenthoodFederation.pdf> More recently, this cooperation has also expanded to Sub-Saharan Africa. <http://www.saafund.org/africa/>

International human rights law and strategic litigations

Since the 1960s and 1970s, when abortion law reforms aimed at granting women rights to reproductive autonomy were adopted, most legal changes in this domain have been achieved through legislative processes and a few were granted by high court decisions.³¹ Nevertheless, in the past twenty years and, with greater intensity, in the last decade, strategic litigation aimed at ensuring abortion rights has expanded both domestically and internationally. This shift can be partially attributed to the above-mentioned adoption of new international normative definitions in relation to reproductive rights broadly speaking and abortion in particular. Although the ICPD Program of Action and the Beijing Platform do not precisely define the right to abortion, the articulation of their various normative definitions would gradually enable conceptual developments in relation to abortion rights in international human rights law. Indeed, as Yamin and Bergallo (2017) state:

“[...] legal mobilization for abortion and other sexual and reproductive rights moved ahead through the use of supranational tribunals and standard-setting, as well as at the national level. New generations of feminist lawyers availed themselves of advances in regional and international arenas, as well as structural innovations at the national level, such as constitutional blocs in domestic constitutional law in Latin America. Transnational advocacy networks created new geographies of knowledge, and the Internet made the sharing of ideas and strategies among lawyers and activists in different regions infinitely easier. Lawyers worked with physicians and others to bridge gaps between normative victories and the effective enjoyment of rights in practice. Today, it is clear that there is no one path forward, no one-size-fits-all strategy for achieving access to safe and legal abortion”. (p. 2)

Thus, since Cairo and Beijing, the language on reproductive rights and abortion as a major health problem has consistently been incorporated by international human rights bodies and is now infused in a number of their normative parameters, such as: recommendations to countries being reviewed by human rights surveillance

31 This is the case of the United States, whose Supreme Court made abortion legal at national level in 1973 (cases *Roe vs. Wade* and *Doe vs. Bolton*; ratified afterwards in 1992 with the case *Planned Parenthood of Southeastern Pennsylvania vs. Casey*). Also, Canada's Supreme Court made abortion legal without restrictions in the *Case R. vs. Morgentaler* (1988). For further information, see Table 2.

committees to change their laws and policies; general comments made by these same bodies; reports and positions expressed by Special Rapporteurs; and, more importantly, regional human rights courts and international committee decisions on specific abortion cases.

Throughout the years, surveillance committees have in their revision work recommended states to decriminalize abortion in cases of life risk, rape and grave fetal abnormalities as well as recognized the impact of unsafe abortion on high levels of maternal mortality.³² CEDAW and the Committee on the Rights of the Child observed that states should ensure access to abortion services within their obligations to implement comprehensive reproductive health policies. The Committee on Torture went further, stating that laws fully prohibiting abortion expose women “(...) to grave traumatic stress and risk of psychological problems such as anxiety and depression”.³³ Other committees have called attention to negative effects of abortion criminal laws on health providers³⁴. Other observations and recommendations demanded states to comply with accessibility, acceptability and quality of care of legal abortion services³⁵ to eliminate barriers to these services³⁶ as well as waiting periods and obligatory counseling.³⁷

Substantive definitions and recommendations on abortion rights have also been made by Special Procedures, in particular in the case of reports issued by *Special Rapporteurs on the right to the highest attainable standard of health (Right to health)*, *Violence Against Women*, *Torture and other cruel, inhuman or degrading treatment or punishment (Torture)*, as well by the Special Group on laws that discriminate against women.

32 Human Rights Committee: Concluding observations: Zambia, para. 18, UN Doc. CCPR/C/ZMB/CO/3 (2007); (1999); Human Rights Committee: Concluding observations: Costa Rica, para.11, U.N. Doc. CCPR/C/79/Add.107; Committee on the Elimination of Discrimination against Women (CEDAW Committee): Concluding comments: Chile, para. 19, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); CEDAW Committee: Concluding observations: Paraguay, para. 31 A); U.N. Doc. CEDAW/C/PRY/CO/6 (2011); Committee on the Rights of the Child: Concluding observations: Chile, para. 56, U.N. Doc. CRC/C/CHL/CO/3 (2007); Human Rights Committee: Concluding observations: Guatemala, para. 20, CCPR/C/GTM/CO/3 (2012).

33 Committee against Torture: Concluding observations: Nicaragua, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).

34 Committee on the Rights of the Child: Concluding Observations: Nicaragua, para. 59 b), U.N. Doc. CRC/C/NIC/CO/4 (2010) and General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para. 54, U.N. Doc. CRC/C/GC/15 (2013).

35 Committee on Economic, Social and Cultural Rights, General Comment No. 14: the right to the highest attainable standard of health (art. 12), 22nd session, 2000, para. 12, U.N. Doc. HRI/GEN/1/Rev.9.

36 In regard to spouse or tutor consent see CEDAW Committee: Concluding Observations: Kuwait, para. 43 b), U. N. Doc. CEDAW/C/KWT/CO/3-4 (2011).

37 CEDAW Committee, Concluding Observations: Hungary, paras. 30-31, U.N. Doc. CEDAW/C/HUNG/CO/7-8.

The 2011 report prepared by Anand Grover, the Special Rapporteur on the Right to Health for the 2008-2014 period is exemplary in that regard.³⁸ It compiles and articulates all recommendations made by Surveillance Committees on the rights to legal and safe abortion. It also exhaustively analyzes the effects of criminal restrictive legislation as barriers that curtail women's rights to health and violate their autonomy and dignity and proposes their elimination. The report adamantly concludes that: "*Criminal prohibition of abortion is a very clear expression of State interference with a woman's sexual and reproductive health because it restricts a woman's control over her body, possibly subjecting her to unnecessary health risks*" (paragraph 27). The Special Rapporteur has also reminded states that they are obliged to provide qualified post-abortion care independently of the legality of the procedure and underlines that women who resort to illegal abortion experience high levels of stigma and discrimination, which may also occur in contexts where abortion is legal.

In 2013 and 2016, the Special Rapporteur on Torture described as torture or ill treatment the absolute prohibition of abortion, restrictions of access to safe abortion and the trial or subjugation of women to humiliating attitudes deriving from these norms, especially in contexts of extreme vulnerability. There are also groundbreaking case decisions issued by UN Committees as well as regional and international human rights commission and courts to be looked at. In 2005, the Human Rights Committee of the United Nations issued a decision on the case of *K.L. vs. Peru* (2005) considering forced pregnancy to be a violation of the right to be free from cruel, inhuman or degrading treatment or punishment. In 2011, CEDAW delivered another groundbreaking decision in the case of *L.C. vs. Peru* (2011), arguing that the denial of access to reproductive health services is discriminatory. In 2012, the European Court of Human Rights judged the groundbreaking cases *Tysiack vs. Poland* (2007) and *R.R. vs. Poland* (2011) and *P&S vs. Poland* (2012). The first case is significant in that it made possible for women to challenge decisions by doctors, who cannot shrink from their obligations to provide women with therapeutic abortions when the health of the mother is at risk. And, in the third case, it declared the state responsible for the violation of the right of a minor's to privacy³⁹ and not to be tortured.⁴⁰

38 See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement>

39 European Court on Human Rights. Case of *P. and S. vs. Poland*, Application No. 57375/08, Judgment of 30 October 2012, para. 112.

40 *Idem*, para. 151.

That same year, the Inter-American Court of Human Rights ruled on the landmark case of *Artavia Murillo vs. Costa Rica* (2012), when it explicitly stated that reproductive rights are human rights and set the parameters for the protection of prenatal life in clarifying that this right is not absolute but rather gradual and incremental, according to the development of life and to the other rights involved. A year later, in the decision on the case *B. vs. El Salvador* which requested the state to perform an urgent abortion to save the life of a woman pregnant with an anencephalic fetus, the Court reaffirmed the rights of pregnant women to life and comprehensive health care (Women's Link Worldwide, 2013).⁴¹

These developments in international human rights law jurisprudence have also propelled domestic initiatives of strategic litigations in regard to abortion rights, including because a case must be legally processed at the domestic level without response before reaching the international system. Conversely, national court decisions on the matter are increasingly being informed by international normative arguments. In the case of Latin America, pro-abortion rights activism has increasingly resorted to the judiciary in the past ten years or so. This step was initially aimed at overcoming barriers in the access to procedures in specific cases— as in the 2005 *Paulina* case in Mexico⁴² or the successful appeal made to the Argentinean Supreme Court that aimed at overcoming institutional and political barriers to abortion procedures in cases permitted by law.⁴³ But subsequently litigation continued expanding. For example, since 2011, the Mexican non-profit organization, Grupo de Información en Reproducción Elegida (GIRE) has documented and litigated various cases of denial of women's access to legal abortion by State authorities. In 2017 alone, GIRE litigated a total of nine new cases. At the beginning of 2018, four GIRE-defended cases were awaiting review by the Mexican Supreme Court, and in April, two received landmark favorable rulings. Currently, GIRE litigators are defending two cases of criminalization.⁴⁴

41 For further information, see: <http://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/b-vs-el-salvador>

42 In this case, the Mexican state health and law enforcement officials denied a legally permitted abortion in a case of rape. A petition was filed in 2002 with the Inter-American Commission on Human Rights, alleging violations of Paulina's legally guaranteed rights under Mexican law, as well as her rights to physical and psychological integrity and health, among others. See more at: <https://www.reproductiverights.org/case/paulina-ram%C3%ADrez-v-mexico-inter-american-commission-on-human-rights>

43 For instance, it happened in Argentina with the ruling in the F.A.L. case (2012), which eliminated legal hurdles (the need to file a police report or obtain a court order) as well as regulatory hurdles (narrow interpretation of abuse) to obtaining a safe voluntary termination of pregnancy. The decision also establishes a set of obligations for the State in order to ensure access to safe and timely services for women who have been sexually assaulted and wish to have an abortion (<http://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/f-a-l-s-self-executing-measure>). Moreover, Bolivia's Constitutional Court issued a ruling in 2014 invalidating the requirement that women who become pregnant as a result of rape receive judicial authorization prior to accessing abortion services (CRR, 2014).

44 We dearly thank Jennifer Paine for having providing this information in time to be included in the final revision of this paper.

But principally, the difficulty in attaining legislative reforms – because anti-abortion forces prevent them from happening— is gradually leading the pro-abortion rights camp to shift towards the judiciary to achieve broader grounds for abortion or even full decriminalization. The two first initiatives in that direction were the legal action mobilized by Women’s Link Worldwide in Colombia in 2005, which resulted in the ground-breaking 2006 Constitutional Court Decision, and the lawsuit presented by ANIS in 2004 that would result in the 2012 Brazilian Supreme Court decision that granted abortion in the case of anencephaly. In the case of Brazil, this route has steadily continued, as since 2016, two new lawsuits have been presented to Supreme Court, the first requesting the enlargement of access to abortion in the cases of women infected by Zika and the second interrogating the constitutionality of criminal law and demand full decriminalization of abortion until the 12th week of pregnancy (Guimarães and Corrêa, 2017; Human Rights Watch, 2017). This new litigation was followed, in late 2017 by the case of Rebeca Mendes who has requested the Court for the right to abort legally and after having had request denied traveled to Colombia where she could have access to a legal procedure (Abortion Frontline Project, 2017).

A few last words

What trends and challenges emerge from the overview and legal mapping offered in the preceding pages? First of all, this still incomplete exercise tells us that despite the long-standing resistance through inertia of state laws and other normative frames, the right of women to legal and safe abortion has been steadily expanding since the early 20th century, still more noticeably in the past forty years and with greater intensity in the last two decades. However, as insightfully noted by Alan Guttmacher Institute (2018b), this landscape is extremely uneven in terms of legal progress and unequal in terms of access. It is also fraught with tensions and conflicts because women’s sexual and reproductive autonomy has become central to contemporary politics.

When national laws on abortion are examined closely, a significant aspect is that the most prevalent model of legal regulation is one that allows for abortion under certain exceptions, which is enshrined in the penal codes of 77 countries (9 in Europe, 23 in Asia and the Pacific, 26 in Asia, 9 in the English-speaking Caribbean and 10 in Latin America). The paradox is, however, that even if in some of these countries, both North and South of the Equator, this type of legal provision has indeed favored the right of women to terminate unwanted

pregnancies, in the large majority of them the more flexible premises enshrined in the law do not translate into women's rights nor access to services. In the UK, where the law changed in 1967, in India where the provision was adopted in 1961 and in Colombia after 2007, the legal protection of women's health has indeed provided ample ground for the right to abortion to be exercised. This does not apply however to most countries in Latin American (with the exception of Colombia). In Argentina, for this provision to be consistently implemented additional judiciary actions had to be mobilized and even when a Supreme Court decision on the matter was issued, access to procedures has not been guaranteed. Obstacles to safe services also prevail in the nine English-speaking Caribbean countries and the majority of African countries that have in recent years adopted the legal promise of women's health protection. This means that the 1960s – 1970s legal strategy to ensure the right to abortion through a model that is based mainly on the decision between women and doctors is not effective everywhere because cultural and political enabling conditions are required for this type of legislation to be consistently interpreted in ways that favor women's reproductive autonomy, as compellingly illustrated by the Colombia case.

These countries where legal frames include the premise of protection of women's health but do not ensure access to services are places where expanding access to medical abortion can be an effective strategy to overcome existing obstacles to safe abortions. Greater knowledge of and access to medical abortion is also necessary, when not urgent, in those contexts where access to legal abortion on demand is being curtailed by conscientious objection. Last but not least, as proven by the Latin American experience, medical abortion can have very positive health impacts even in those contexts where abortion laws are highly restrictive. As previously mentioned, this new technology is radically changing the overall abortion rights environment and must be always taken into consideration when global and national abortion rights trends are examined. As compellingly observed by Skuster (2017) in her article:

As more women use misoprostol for abortion without a healthcare provider, human rights authorities and governments must now turn their attention to healthcare provider involvement requirements. By ending these requirements governments would make real progress toward effectuating women's rights and realizing the promise of medical abortion (p. 394).

Finally, the recollection developed in the last section, albeit not exhaustive, indicates that developments underway since the 1990s in international human rights jurisprudence were crucial to infuse political energy and solid arguments in national debates. Furthermore, at least in the case of Latin America, all suggests that new pathways towards abortion decriminalization through strategic litigation is here to stay, even when debates and processes will continue at legislative levels and may be successful as it happened in the cases of Chile, Bolivia and Argentina. Amongst other, this implies that international-local connections must be constantly cultivated, activated and expanded in the ongoing struggles for legal and safe abortion. This is so because much yet remains to be done to effectively ensure the right to legal and safe abortion for all women who need it, particularly in the global South.

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Mapping Trends: Power Imbalances and the Circulation of Information on Sex Work

Laura Murray, Elsa Oliveira and Debolina Dutta¹

Introduction

During the 2014 *International AIDS Conference* in Melbourne Australia, *The Lancet* international medical journal launched their special issue on HIV and sex work. The series - comprised of seven papers that investigate the complex issues faced by sex workers worldwide - calls for the decriminalization of sex work, citing law reform as the most effective measure in tackling the HIV/AIDS epidemic (Das and Horton, 2014). Sex worker activists at the conference celebrated *The Lancet* conclusions; yet there was a stark contrast between the special issue conclusions and the biomedical direction where the broader field of HIV prevention appeared to be heading. The pre-conference statement by sex worker activists highlighted such disconnects, not only denouncing the pervasive biomedical focus of HIV prevention in their country contexts, but also calling for more sex worker community-led research and work stating: “we have outreach data and want to share this evidence, but we need money for training and to analyze our data” (Scarlet Alliance, 2014).

Tensions between research, policy and activist demands have also emerged in South Africa. Despite a lack of substantiated proof, South Africa was placed on the US Department of State’s Tier- 2 trafficking watch list from 2005-2009. Pressure from the US to address the so-called ‘trafficking problem’ led the South African state, a signatory of the Palermo Protocol, to develop and pass the Prevention and Combatting of Trafficking in Persons Act in 2013; a piece of legislation was pushed through parliament at an unprecedented speed. The conflation

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of sex work with trafficking, coupled with data “acquired through methodologically unsound ways” characterized much of the debates during the development of the Act (Walker and Oliveira, 2015, p. 140). As the Global Network of Sex Work Projects (NSWP) notes in their briefing paper about sex work and trafficking, conflation is “not a misunderstanding of terminology, but a conscious attempt to abolish prostitution” (NSWP, nd). Although many activists and researchers protested the implementation of the Act the law passed nonetheless.

Sex worker activists have long asserted the need for a protagonist role in the information produced about them (Delacoste and Alexander, 1998; Kempadoo and Doezema, 1998; Pheterson, 1989) and work by sex worker rights activists continues to draw attention to the importance of sex workers’ voices in shifting political, academic, and biomedical discourses about the sex industry (Chateauvert, 2014; Gira-Grant, 2014; Maciotti and Geymonat, 2016). Yet as the examples from the 2014 AIDS Conference and South Africa suggest, political structures are heavily invested in debates about sex work and while sex workers’ rights organizations are engaged in these conversations, it would appear that large gaps continue to exist between what sex worker rights networks are demanding, what research is finding, and the types of policies regulating sex work.

In this article, we map global and regional trends in information produced about sex work in an effort to shed light on these imbalances. Based in the global South, we are researchers and activists who work and act politically from a sex worker rights perspective. We believe that it is important to step back and look critically at the field in which we all are engaged. In doing so, we highlight the importance of equalizing, or at the very least, reducing the research/activist/policy-making divides and making research practices more accountable to its subjects. Drawing on specific examples from the respective countries where we, the authors, live and work, we also highlight the kinds of important work being done by sex worker activists across the globe. Although our findings do not include all of the material available, we seek to offer an overview of what is being produced about sex work, identify trends in the power imbalances inherent in contemporary sex work research, and suggest possible paths forward to reduce the disparities between sex workers’ lived experiences and policies made about them.

Writing and Analysis Process

In keeping with the postmodern feminist understandings of knowledge production (see Hill-Collins, 1990; hooks, 1990; Mohanty, 2003), we recognize that research is an embodied and embedded practice and that the “theorist-researcher is no mere observer or discoverer of knowledge” operating from an objective distance (Davies, 2002). In this paper, we are especially concerned with the geopolitical locations from which information about sex work is produced, circulated and put into practice, and as such, we seek to situate our analysis within the political and geographical locations from which it stems.

Laura Murray (first author) lives in Rio de Janeiro, Brazil. Originally from the United States, Laura has worked on sex worker rights as a researcher, activist, and filmmaker since 2000; and in Brazil specifically since 2004. In 2013, she directed a documentary entitled, *A Kiss for Gabriela* (2013) that focuses on Gabriela Leite’s (the founder of the sex worker movement in Brazil) 2010 historic run for Congress. Laura is a member of Davida - a sex workers’ rights collective founded by Gabriela Leite, collaborator of the Brazilian Network of Prostitutes and also affiliated with two academic institutions – the Institute of Social Medicine at the State University of Rio de Janeiro and the Federal University of Rio de Janeiro through the research and advocacy collaborative, Prostitution Policy Watch.

Elsa Oliveira (second author), originally from Angola, lives in South Africa where she is a researcher at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand located in Johannesburg. Since 2010, Elsa has engaged in participatory visual and narrative research approaches to explore the lived experiences of migrant sex workers, migrant women, and LGBTIQ asylum seekers and refugees. In 2013, she launched the MoVE project with Dr. Jo Vearey. Involving work with a range of civil society partners, including the Sisonke Sex Worker Movement, a central aim of MoVE is to facilitate the co-production of knowledge through participant involvement and to engage public audiences in research outputs. Two of MoVE’s participatory photography projects with migrant sex workers, *Working the City* and *Volume 44* document the experiences of male, female and transgender sex workers and have circulated widely, challenging victimizing and stigmatizing discourses about the population.

Debolina Dutta (third author), originally from India, is a doctoral researcher at the Institute for International Law and the Humanities, Melbourne Law School in Melbourne Australia. She has been associated with the sex workers' movement in India since 2003, and has had a long-term association particularly with the Kolkata based sex-workers' collective, Durbar Mahila Samanwaya Committee (DMSC). In 2011, Debolina co-directed the documentary film *We Are Foot Soldiers* (2011), which considers children of sex workers as political actors and tells the story of their collectivization in Sonagachi, Kolkata. She is presently working with DMSC, Veshya Anyay Mukti Parishad (VAMP), and a graphic artist, to put together an illustrated book called *The Rule of Laughter*, which tells stories about how sex worker activists use laughter and humor to draw pleasure from their work and subvert the power of the criminal law that engulfs every aspect of their lives in India.

Sexuality Policy Watch (SPW), a global forum of researchers and activists headquartered in Rio de Janeiro, invited us to collectively write this paper as part of an exercise mapping global trends and shifts in sexual politics and sexuality research during the first decade and a half of the twenty-first century. A first draft of this paper was presented at the Sexuality Policy Watch seminar in July 2016 and we received important feedback from seminar participants, and in particular, sex worker activist and president of the African Network of Sex Workers Alliance Daughtie Ogutu, who commented on our text and provided invaluable insights, criticisms and suggestions. The text was then revised and finalized across three continents during the second semester of 2016, and the analysis presented herein refers to a period through May 2016.

The empirical data presented is the result of a critical review of global and regional trends of information produced by sex worker activists and networks, peer reviewed literature, and international organizations. We conducted this review using a range of search engines and sites, exploring aspects such as: authorship, geopolitical locations, funding sources, methodologies used, and the primary research topics in academic, policy and activist documents. For the peer-reviewed literature component of our analysis, we used the interdisciplinary search engine ProQuest to identify articles published between January 2006 - May 2016. We searched for articles that included the key words "sex work", "sex workers" and "prostitution" in their titles. These searches yielded a total of 593 results with "sex work"; 1,237 with "sex workers"; and 421 with "prostitution". When we removed all non-peer reviewed articles (i.e. book reviews) and duplicated results, the final number considered for the analysis presented herein was: 325 articles with "sex work" in the title; 1,168 with "sex workers";

and, 369 with “prostitution” in the title. More information regarding how these articles were categorized and analyzed is included in the following section.

For advocacy documents and reports, we searched global and regional sex worker activist network websites (see Graph 2). Many of these websites have extensive libraries and links that were consulted in order to ensure a broader perspective of information circulating in these fields. We focused on information produced during the 2006 - 2016 time period, but also include references to materials produced beforehand that are mentioned or featured on these websites. For the policy documents and reports included in our analysis, we searched the databases of international cooperation agencies and philanthropic foundations such as the World Bank, various UN agencies, the Gates Foundation, the Open Society Foundations (OSF), the Global Fund for Women, Amnesty International, and the Association of Women’s International Development (AWID). However, the lack of consistency across the various search engines available on the websites posed many challenges. For example, there was a large number of results on the OSF website (1575), yet, we were unable to filter the results with “sex work” in the title. We faced similar difficulties with the search engines and options on the Gates Foundation, the Global Fund for Women, AWID, and Amnesty International websites. In order to ensure methodological consistency, we narrowed our focus to the World Bank and UN agencies that allow specific searches of documents and reports with “sex work”, “prostitution” or “sex workers” in the title and refer to other key reports from international organizations and agencies that received international attention during the period of focus (2006-2016).

Regional and Global Trends in Information Circulated about Sex Work

Peer Reviewed Journal Articles

Table 1 shows the total number of articles included in this review by year of publication. Of the articles searched with the key words “sex work” or “sex worker” in the title, a total of 1492 were included in the analysis. The number of articles with “prostitution” in the title was substantially less: with 369 over the entire time period. As can be seen in Table 1, the number of articles with “sex work” or “sex worker” in the title have more than doubled from the 2006-2010 to 2011-2016 period, increasing from 448 to 1044 (take note that this only

accounts for a third of 2016). The total number of publications annually has also steadily increased since 2006 having hit the highest point of 249 publications in 2013. Articles with “prostitution” in the title had a smaller increase, going from 153 in the 2006 - 2010 time period to 216 in 2011-2016.

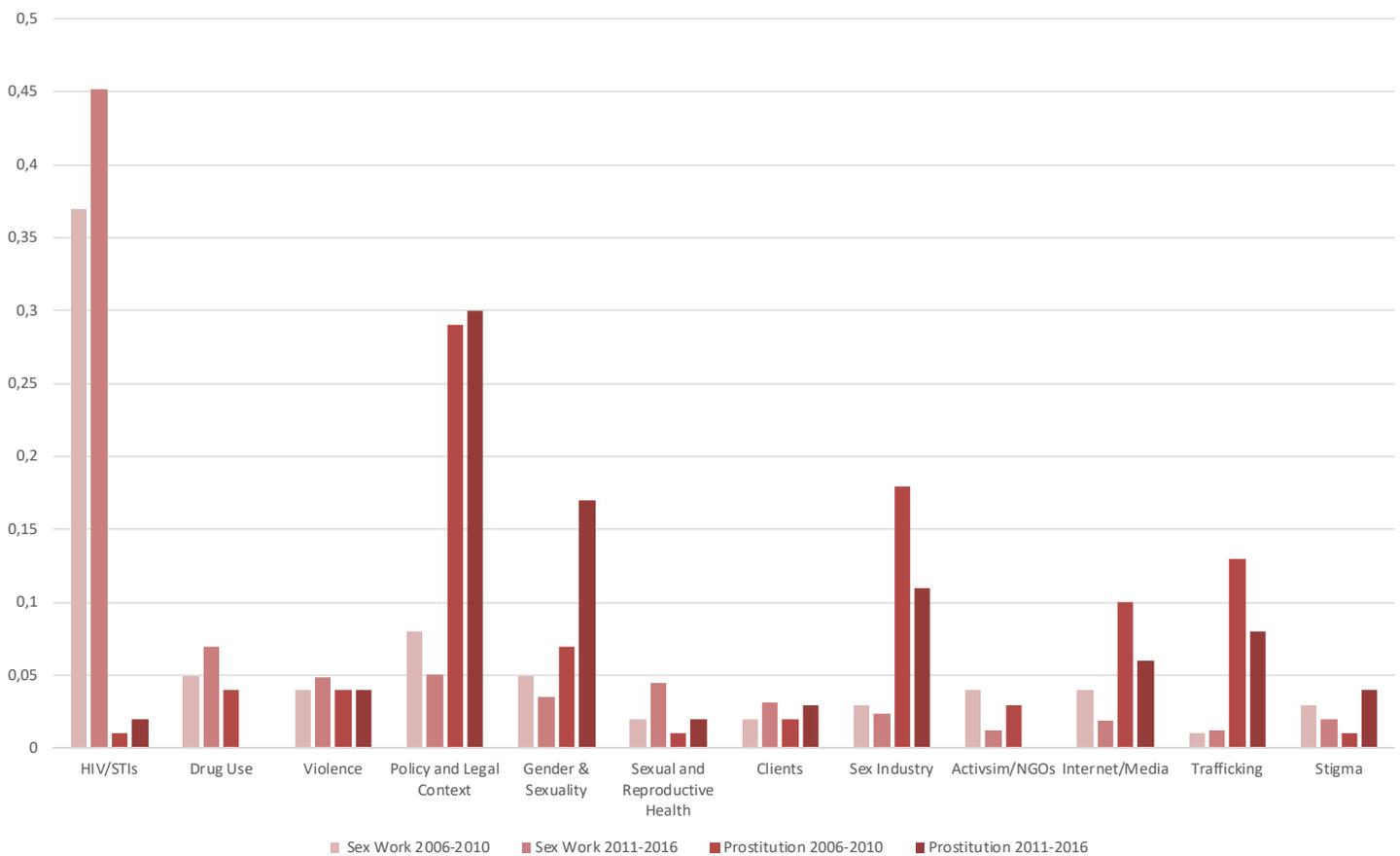
Table 1: Total number of articles with “sex work”, “sex workers”, and “prostitution” in the title, per year of publication.

Year	Articles with sex work or “sex works” in title	Articles with “prostitution” in title
2016	59	14
2015	193	34
2014	178	38
2013	249	39
2012	190	49
2011	175	42
Subtotal	1044	216
2010	149	41
2009	93	25
2008	75	33
2007	73	26
2006	58	28
Subtotal	448	153
Total	1492	369

The articles passed through two levels of analysis. First, they were categorized by: authors’ countries of affiliation, the country the article was about, the methodology used, primary and secondary topics of focus and if any of the authors were affiliated with a sex worker rights organization. Then, a second more detailed examination was performed in which the abstracts – and in some cases full articles-- were consulted to classify the articles into the following 25 thematic categories based on the article’s primary topic: Activism/NGOs, Sexual Exploitation of Minors, Clients, Drug Use/Dependence, Gender & Sexuality, Exit, HIV/AIDS, Initiation, Media/Internet/Film, Megaevents, Mental Health, Migration, Sexual and Reproductive Health, Policy and Legal Contexts, Sex Markets/Industry, Services and Interventions, Sex Practices, Stigma, STIs, Trafficking, Violence, Other.

In the case of papers reporting on quantitative research/analysis, the primary topic was defined as the outcome variable of interest (i.e. HIV or drug use). In qualitative analysis, the primary topic was ascertained depending on the language of the title, abstract and key words. Very early in the process we perceived a substantive difference between the literature with “sex worker” or “sex work” in the title and the writing that used the word “prostitution”. As such, we have decided to maintain the two categories separate to permit comparisons across these distinct bodies of literature. The primary topics of the academic literature that have been indexed are presented in Graph 1 below.

Graph 1: Primary topics of focus in peer reviewed publications with “sex work” or “sex workers” in the title compared to those with “prostitution”



As the graph illustrates, there is a marked difference between the literatures with “sex work” in the title versus those with “prostitution”, in particular with regard to the most common primary topics of focus.

In the sex work literature, research on HIV/AIDS and STIs still dominates with 45 per cent of all articles from 2011-2016 and 37 per cent from 2006-2010. In this same block, the second most common primary topic concerns ‘policy’ and ‘legal contexts’ (i.e. studies about regulation, criminalization, decriminalization), which represented 8 per cent of the peer-reviewed literature from 2006-2010 and 5 per cent from 2011-2016. In the literature with “prostitution” in the title, the topic “Policy and Legal Context” was the most common and corresponded to 29 per cent and 30 per cent of papers published in the 2006-2010 and 2011-2016 time periods, respectively – nearly four and six times that of the “sex work” literature. Also, there is a rather significant number of articles about the sex industry broadly speaking (18 per cent and 11 per cent of the total) of which the largest number has the term “prostitution” in the title.

Although there is a difference between the sex work and prostitution literature in terms of the primary topics of focus, in both bodies of literature there has been increased attention to policy and its impacts on sex worker health and rights. A look at the special issues published in both categories show clear tendencies towards the importance of decriminalization for rights and health, in particular during the time period from 2010-2015. For example, in 2014, *The Lancet* launched a special series on HIV and sex work that explicitly calls for decriminalization of sex work as the most effective way to reduce their vulnerability to HIV. The special issue included articles making connections between human rights violations and health (Decker et al 2014) and emphasizing the importance of a community empowerment approach to HIV prevention (Kerrigan et al 2014). Also in 2014, the journal *Criminology & Criminal Justice* published a special issue entitled, “*The Governance of Commercial Sex: Global Trends of Criminalization, Punitive Enforcement, Protection and Rights*” edited by Sanders and Campbell² with articles that take a critical look at such policies. The same is true of a *Sexuality Research and Social Policy* special issue published on “Prostitution Policies in Europe” with guest editors Crowhurst, Outshoorn, and Skilbrei (2012). Finally, in 2010, the *Journal of Law and Society* Special Issue entitled “Regulating Sex/Work: From Crime Control to Neo-liberalism?”³ edited by Scoular and Sanders and featuring critical analysis of regulation, criminalization and gentrification in diverse sex work contexts.

2 <http://journals.sagepub.com/toc/crjb/14/5>

3 <http://onlinelibrary.wiley.com/doi/10.1111/jols.2010.37.issue-1/issuetoc>

Due to the sheer size of the literature on HIV, further analysis of the articles' conclusions and methodologies is necessary to make concrete conclusions about the tendencies. It is noteworthy that of the 478 articles with HIV as a primary focus, 347 (73 per cent) of are exclusively quantitative studies. As the 2014 *The Lancet* special issue on sex work and HIV emphasizes, there is largely consensus across the literature regarding the effects of structural determinants on sex workers' health, yet a closer analysis of the article titles suggests that there continues to be a substantial investment in biomedical research focused on identifying sex workers' individual "risk factors" for HIV. At the same time, less of ten percent of these articles (39) count with sex worker co-authorship. In addition, over fifty per cent of them (21) are about HIV/AIDS, including some of the few sex worker community led studies such as the community survey led by Scarlet Alliance in Australia on criminalization and sex work (Jeffreys, Matthews, & Thomas, 2010). While this remains a small percentage of the total number of articles about HIV (6 per cent), it is a possible reflection of sex worker rights organizations' advocacy to be actively involved in HIV related research produced about them and funding tendencies within HIV/AIDS work that supports such engagement (a similar pattern was found in the international agency literature).

Given the uproar about trafficking in contemporary debates on sex work, we were surprised at the relatively small number of articles with trafficking as a primary topic in our preliminary findings: 28 in the sex work literature and 37 in the prostitution literature. Sensing that this could be because of the search criteria (only articles with "sex work", "sex workers" or "prostitution" in the title), we conducted an additional search on literature on trafficking over the past 10 years as to gain a clearer understanding of academic research trends in this particular domain. The results of this focused search are presented in Table 2.

Table 2: Trends in the number of peer reviewed articles published and indexed in ProQuest with “trafficking” and “sex” in their titles

Year	Number of articles with “trafficking” and “sex” in the title
2015	55
2014	118
2013	69
2012	50
2011	70
Subtotal	362
2010	41
2009	14
2008	30
2007	18
2006	14
Subtotal	117
Total	479

As can be seen in Table 2, there has been a large increase in the number of articles published about trafficking over the past decade; comparing the five-year time periods of 2006-2010 with 2011-2015, the total number of articles tripled from 117 to 362 with a particularly drastic increase in 2014. A closer look at this increase suggests that it may be due to the publication of three special issues that year, that taken together, account for 24 articles and are indicative of the contentious nature of trafficking debates. On one hand, the editors of the *Annals of the American Academy of Political and Social Science* special issue⁴ note being particularly concerned with the sensationalistic and “misconceived portrayals of human trafficking” (Weitzer, 2014) whereas the *Crime Law and Social Change* special issue⁵, “Understanding the Anti-human Trafficking Campaign” features pieces that are highly critical of the legalization of sex establishments and more focused on the implementation and implication of criminal justice reform. In their introduction to the *Journal of Intercultural Studies* special issue focused on trafficking in persons⁶, editors Chong and Clark highlight patriarchy, gender inequality and the

4 <http://journals.sagepub.com/toc/anna/653/1>

5 <https://link.springer.com/journal/10611/61/2/page/1>

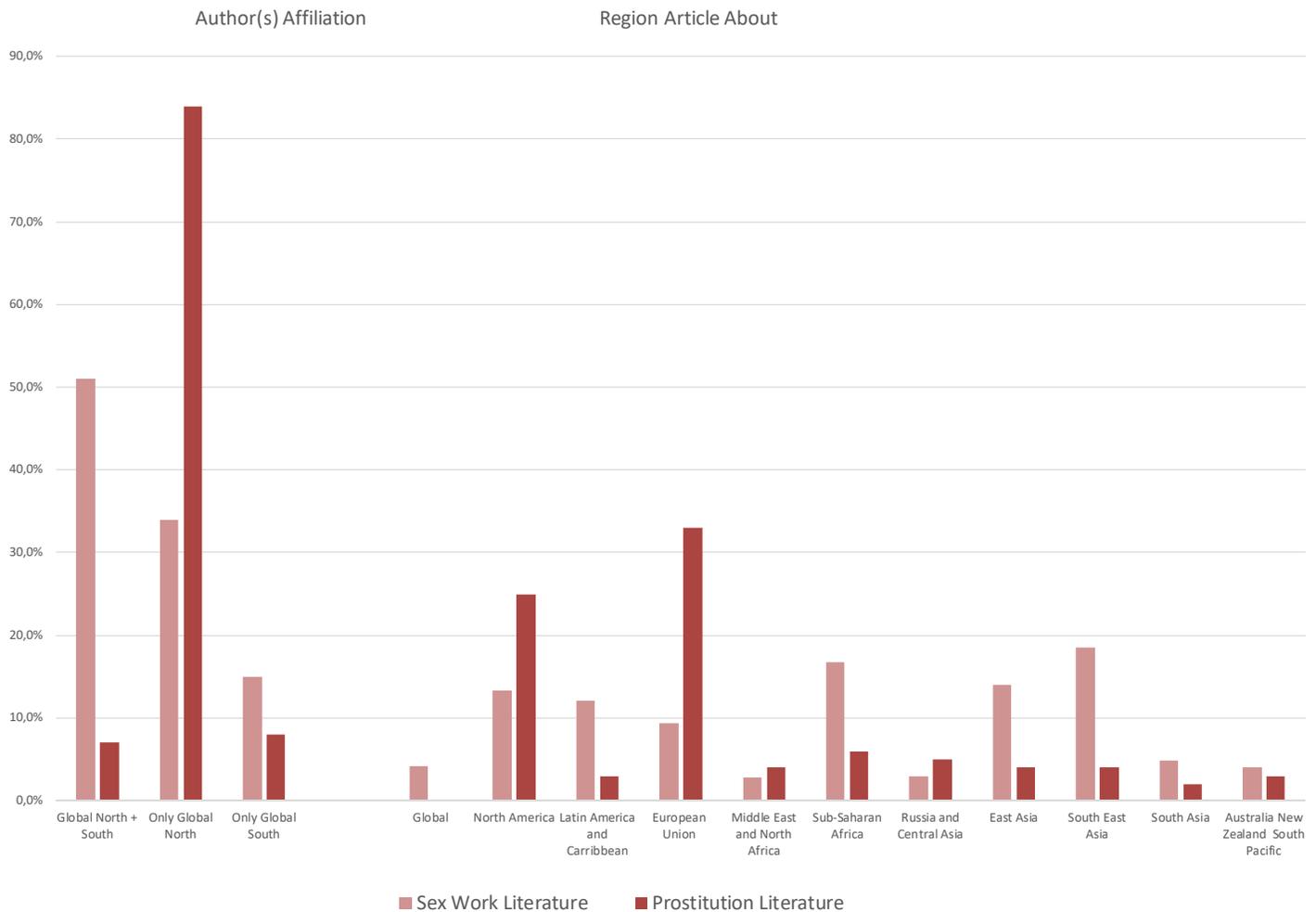
6 <http://www.tandfonline.com/toc/cjis20/35/2>

feminization of poverty as reasons that increase women and girls' vulnerability to trafficking, yet do not engage with the literature discussing the complexities of migration, legal contexts and women's agency. In addition to these special issues exclusively focused on trafficking, in 2014 *Trends in Organized Crime* published a special issue edited by Arsovska and Allum on "Women and Transnational Organized Crime"⁷ with 3 articles focused on sex trafficking. All of this literature reinforces the continued embattled nature of the field of research about trafficking over statistics, definitions, and sex workers' experiences.

Graph 2 below illustrates the result of the analysis concerning the location of authors and subjects of research. Although the majority of articles in the sex work category (53.4 per cent) were written by multiple authors with a mix of affiliations from the global North and South, the discrepancies between which region the article is about versus where the authors are from are sharply marked. Sub-Saharan Africa and Southeast Asia for example make up 35.2 per cent of the foci of all of the publications, yet only 0.3 per cent of the publications are written by authors solely from these regions. This compared to North America, where this same ratio (region about/region of authors' affiliation) is 13 per cent to 9.4 per cent. It is important to note that in the mixed "North + South" category in the sex work literature, a large number of the articles and publications pertain to public health and are signed by three or more authors, with the lead authors generally being from a North American, English or European Union institutions, and co-authors from local research centers. Finally, there is a small amount of literature that presents original research or literature reviews at a global level, including countries located both in the global North and South.

7 <https://link.springer.com/journal/12117/17/1/page/1>

Graph 2: Global regions of author affiliations and regions articles are about in peer-reviewed literature with “sex work” and “prostitution” in the title 2006-2016.



It is important not to essentialize or generalize this data (it is possible that there are researchers from the Global South working at northern institutions and vice versa), yet these discrepancies raise important questions regarding the unequal power dynamics inherent to the geopolitical distribution of research capacities. For example, of the 220 articles in the sex work literature written exclusively by authors with affiliations in the Global South, not a single one is about a country in the Global North. In comparison, there are 115 articles about countries in the Global South written by authors with affiliations exclusively in the Global North. In fact, there is only one article in the prostitution literature with authorship exclusively from the Global South about a

country in the Global North: the article, “Instant mobility, stratified prostitution market: The politics of belonging of Korean women selling sex in the U.S.” (Kim 2016) that is written by an author with an affiliation at a South Korean institution and about Korean women in the United States.

Troubling power imbalances also emerge through a combined analysis of Table 2 and Graph 2 in terms of thinking about primary topics and geopolitical locations. In the sex work literature, the majority of articles with authorship from Northern and Southern institutions is public health literature, in which the first and last authors tend to be from a Northern based institution and the others local researchers. In other words, those who are guiding and funding the research tend to be based in the Global North and the focus of their research is on the Global South. For example, of the 765 articles written by authors with affiliations in northern and southern institutions, 405 (52.9 per cent) are about HIV/AIDS and STIs, and of these, 394 are about countries in the Global South. Along these same lines, of the 228 articles in the sex work literature about Sub-Saharan Africa, 123 (54%) have HIV/AIDS as their primary topic and only 2 (0.15%) about policy and legal contexts. This can be compared to the 124 articles about the European Union, in which 34 (27.4 per cent) are about HIV/AIDS and STIs and 24 (19.3 per cent) about policy and legal contexts. Furthermore, of the 116 articles with policy and legal context as their primary topics in the prostitution literature, 91 (78 per cent) are about countries in the Global North. Again, a similar dynamic can be found in the sex work literature, where 76 per cent (58) of the 76 articles with policy and legal contexts as their primary topic are about countries in the Global North.

International Cooperation Agencies, Foundations and NGOs⁸

As indicated in Table 3 (below), the World Bank, UNAIDS and United Nations Population Fund (UNFPA) released 36 publications between 2010-2016 with “sex work” in the title. The number of publications more than doubled over the 2011 - 2016 time period. However, quite significantly, all 36 publications had HIV/AIDS as a topic of focus. Of this total, twelve (33 per cent) were co-authored by sex worker rights organizations. It is important to note, however, that ten of these publications (out of 12) are adaptations or translations of two large reports produced through a partnership between the World Health Organization (WHO), UNAIDS and NSWP:

⁸ Here non sex work led or focused NGOs

Prevention and Treatment of HIV and Other Sexually Transmitted Diseases for Sex Workers in Low and Middle Income Countries (WHO, 2012) and Implementing comprehensive HIV/STI programs with sex workers: practical approaches from collaborative interventions) (WHO, 2013).

Table 3: Number of publications with “sex work” in the title and listed on the World Bank and United Nations agency websites.

Years	World Bank	WHO	UNAIDS	UNAIDS	% with sex worker organization as co-author	% with sex worker organization as co-author in peer review literature
2006-2010	4	3	2	0	0%	3% (13)
2011-2016	9	10	4	2	48%	2% (21)
Total	14	13	7	2	33%	3% (45)

An additional report, *Rights, Risk and the Law*, by the Global Commission on HIV and the Law (2012) did not come up in our search as it is not exclusively about sex work, yet it makes important connections between criminalization and HIV vulnerability, linking the struggle for sex worker rights to other domains that are also criminalized, such as same sex relations, drug use, and HIV transmission. Like the WHO report⁹, it explicitly endorses the decriminalization of sex work, calling for countries to “Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against “immoral” earnings, “living off the earnings of prostitution and brothel-keeping” (2012; 43).

Although the Amnesty International website was not conducive to our methods and criteria of restricting the search to publications with sex work in the title, the organization held a central place in the international debates on sex work due to a leakage of information on their plans to develop a policy endorsing the decriminalization of sex work.¹⁰ The news sparked a heated global controversy involving everyone from Kate Winslet to Gloria Steinem and a large campaign against the policy-in-formation led by the Coalition Against Trafficking in Women (CAATW). As part of Amnesty’s institutional policy development process, they conducted consultations with sex

9 The 2012 WHO report also notes the harms of criminalization and included as its first good practice recommendation: “All countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.”

10 <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>

worker rights organizations and networks, and authored a series of reports published in 2016 on sex work and human rights with case studies from different countries including Hong Kong, Papua New Guinea, Argentina, and Norway.¹¹ These reports all point to the harms of criminalization, and were perhaps the most visible reports on the sex work information landscape released by an international agency in 2016. In a similar fashion, Open Society Foundations funded a wide variety of reports on sex worker rights and policies throughout the decade, including projects previously cited in the section on sex work network productions.

While the methodological limitations we faced surveying the NGO and private foundations produced literature restrict our ability to generalize, in closing this partial review, three results are worth highlighting: (1) the predominance of HIV/AIDS; (2) the growing inclusion of sex worker rights networks as co-authors after 2011; and (3) consensus in international reports regarding the importance of decriminalization to protect and promote sex worker rights. Global sex worker network involvement in the co-authorship of reports and stands for decriminalization taken by international human rights organizations such as Amnesty International and UN agencies have served as an important counter-point to anti-prostitution policy proposals, and been included in coverage by the mainstream press such as a 2016 *New York Times* (Bazelon, 2016). However, as the loud outcry by a wide range of sex worker rights and ally organizations against UN Women's exclusionary e-consultative process to develop a sex work policy in 2016 attests¹², this example of collaboration should, perhaps, be read more as an outcome of successful advocacy on the part of the global sex worker networks and the commitment of the individual institutional representatives than as a solid illustration of openness on the part of UN structures to the subject. Indeed, language aspects, literacy levels, financial and time conditions continue to determine the structure of participation and authority in the realm of international publications produced by multilateral and non-state agencies publications. The same factors limit the scope and reach of this literature beyond certain privileged circles.

11 Amnesty International summary of the case study research on human rights abuses against sex workers: <https://www.amnesty.org/en/documents/pol40/4061/2016/en/>

12 <http://www.nswp.org/news/un-women-petition-meaningfully-consult-sex-workers-now>

Sex Worker-led Organizations and Networks

On their website, the Indian sex worker rights organization Durbar Mahila Samanwaya Committee (DMSC) ¹³ states: “there is an urgent need of printed materials to reach out to masses, to make people aware, to fathom their sentiment, to create support group from among them, eventually generating a strong public opinion in our favor.”¹⁴ DMSC’s statement summarizes the importance of sex workers and sex worker activist networks producing materials about their own lives – it is as much about information as mobilization. DMSC alone has published forty-five books on topics ranging from sexuality to community ownership, an example of the extensive production of sex worker activists, networks and organizations across the globe.

In this section of our empirical analysis we highlight a selection of resources produced by sex workers and sex worker rights organizations over the same period (2006-2016) to illustrate the types of information being produced by these networks that are all too often ignored. Table 4 provides an overview, which is by no means exhaustive, of the primary websites included. We give a broad introduction to the extensive resources available and primary topics covered by global and regional networks, yet are limited by our language skills, geographic locations and space to present a complete overview. For these same reasons, readers will notice that many of the specific examples of information come predominantly from our own contexts and activist networks.

13 <http://durbar.org>

14 <http://durbar.org/html/publications.aspx>

Table 4: Sex Work Rights' Network, Organizational and Social Media Websites Mapped

Global, Regional and National Network Websites Mapped	Region/Country	Links
Global Network of Sex Work Projects	Global	www.nswp.org
Asian Pacific Network of Sex Workers (APNSW)	Asia Pacific	https://apnsw.wordpress.com
African Sex Workers Alliance (ASWA)	Africa	http://aswaalliance.org
International Committee on the Rights of Sex Workers in Europe (ICRSE)	Europe	www.sexworkeurope.org
Sex Workers' Rights Advocacy Network	Central and Eastern Europe and Central Asia	http://swannet.org
Latin America Platform of Sex Workers	Latin America	http://plaperts.nswp.org
Latin America and Caribbean Network of Sex Workers (RedTraSex)	Latin America and Caribbean	www.redtralsex.org
Red Umbrella Fund	Global	www.redumbrellafund.org
Country Level Activist Organization Websites		
Durbar Mahila Samanwaya Committee (DMSC)	India	http://durbar.org
The India Network of Sex Workers	India	http://ainsw.org
Karnataka Sex Workers Union	India	http://kswu.blogspot.com.br
SANGRAM	India	www.sangram.org
The Scarlet Alliance	Australia	www.scarletalliance.org.au
Sex Workers Outreach Project (SWOP) - New South Wales	Australia	www.swop.org.au
Sex Worker Open University	England	www.sexworkeropenuniversity.com
Sex Worker Education and Advocacy Taskforce (SWEAT)	South Africa	www.sweat.org.za
Best Practices Policy Project	United States	www.bestpracticespolicy.org
Sex Workers Outreach Project USA (SWOP USA)	United States	www.new.swopeusa.org
Desiree Alliance	United States	http://desireealliance.org/wordpress
Beijo na Rua	Brazil	www.beijonarua.com.br
Mundo Invisível	Brazil	www.mundoinvisivel.com.br
Davida/Daspu	Brazil	www.daspu.com.br
AMMAR	Argentina	www.ammar.org.ar
Maggie's Toronto Sex Workers Action Project	Canada	http://maggiestoronto.ca
Whore of Yore	Global	www.thewhoresofyore.com
YouTube and Vimeo Channels		
SWEAT	South Africa	www.youtube.com/channel/UCGtRhbHKtmvPXkiAldE3yjQ
Empower	Thailand	www.youtube.com/user/empower2010
ScarletAllianceVideo	Australia	www.youtube.com/user/scarletalliancevideo
ScarlotHarlotTV	United States	www.youtube.com/user/ScarlotHarlotTV
PJ Starr	United States	https://vimeo.com/pjstarr
A Kiss for Gabriela	Brazil	www.youtube.com/channel/UCUe-sTeaktr3r5i1Vkh4vyA
Asian Pacific Network of Sex Workers (APNSW)	Asia Pacific	www.youtube.com/user/apnsw
Triple X Workers	Canada	https://vimeo.com/xxxworkers

Global and regional sex worker rights networks have extensive resource sections on their websites that feature their own productions. The Global Network of Sex Work Projects (NSWP), for example, publishes a series of global and regional reports, policy briefs, the newsletter *Sex Work Digest* and *Research for Sex Work*¹⁵, a peer-reviewed journal published by NSWP since 2004. The theme breakdown of their resources on their website is suggestive of the topics of focus and amount of information available: 249 resources on health, 258 on legislation and policy, 131 on human rights, 131 on migration and trafficking, 103 on stigma and discrimination, 80 on violence and 48 on economic empowerment. The HIV/AIDS related resources are nearly all global in focus, and include reports highlighting the negative impacts of non-rights based HIV programming for sex workers around the world and results of a global consultation on PreP and early treatment as HIV prevention strategies. This last report, published in 2014, encourages the HIV interventional community and donors to take sex workers' concerns seriously, and "continue meaningful engagement with key populations in this shift towards the use of biomedical interventions" (NSWP, 2014).

The Latin American and Caribbean Network of Sex Workers (RedTraSex) has led a series of research projects on labor conditions, sex worker political advocacy, and a regional study on stigma, and discrimination in health care services (RedTraSex, 2013). This last study was conducted entirely by sex workers, with support of research consultants in the design, training, and analysis phases. Conducted in 15 countries, the study report documents the presence of stigma and its negative health effects, in addition to calling for actions to strengthen the sex worker movement as the most important way to reduce sex workers' vulnerability.¹⁶

Occupational health and safety guidelines are important resources in the networks where sex work establishments are decriminalized. For example, the Sex Workers Outreach Project (SWOP) in Australia has extensive and detailed information and resources in Chinese, Korean, and Thai for migrant workers. Their website also features reports on occupational health and safety and workers handbooks, in addition to legal fact sheets on sex work law generally, how to get approval and run a sex business, and security information sheets for home-based and business-based sex workers.

15 <http://www.nswp.org/research-sex-work>

16 The research was funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria.

In contrast, in countries where sex work remains criminalized, the majority of fact sheets and publications are focused on violence, human rights violations, decriminalization and connections between HIV and the law. This is particularly the case for the Sex Workers Education & Advocacy Task Force (SWEAT) in South Africa, the African Sex Workers Alliance (ASWA), and the Sex Workers' Rights Advocacy Network (SWAN) which bring together sex worker organizations from Central and Eastern Europe and Central Asia. In the United States, where all aspects of sex work remain criminalized, the Best Practices Policy Project released the first US national report written by sex worker led organizations about HIV policy and sex work in the United States in 2016 with a focus on transgender sex work (Best Practices Policy Project, 2016). Focused on the deafening silence surrounding sex work in US HIV policy, the report calls attention to the way in which “the intersection of transphobia, whorephobia, HIV stigma, racism and other discrimination leads to almost unimaginable harm” (Best Practices Policy Project, 2016).

The International Committee on the Rights of Sex Workers in Europe (ICRSE) has also addressed intersections between sex work and other social movements. Their “Intersectional Document Series”, seeks to “give sex workers, activists from other social movements and policy makers the tools to explore the intersection of sex workers' rights with other rights and social struggles such as those connected with LGBT people, women, workers, migrants and health” (ICRSE, 2016). Their website features a resource section organized by topics (demand, labor, feminisms, health, migration and trafficking), in addition to advocacy materials to fight the wave of criminalization laws implemented across the region over the past five years.

The negative impact of criminalization and prevalence of state violence against sex workers is well illustrated in *Sex workers speak: who listens?* a two-week blog series written by authors who are or were involved in the sex industry, and/or in sex workers' organizing internationally, that was later published as an e-book (Geymont and Maciotti, 2016). Of the seventeen chapters, eight are focused on State violence and the harms of criminalization, and three on trafficking and migration (the series was part of an open Democracy series entitled, *Beyond Trafficking and Slavery*).

Indeed, migration and trafficking are recurring themes across the websites surveyed. Nearly all websites consulted had publications, reports, and blog posts about the harms of conflating migration, trafficking, and

sex work. ASIJKI, the Coalition to Decriminalize Sex Work in South Africa, published a fact sheet noting three problems with the anti-trafficking movement: exaggerated estimations, oversimplifying complex social problems and failure to endorse decriminalization as a way to reduce coercive practices.¹⁷ Sex worker organizations have also used film to address these issues. The sex worker rights organization EMPOWER in Thailand produced the film *The Last Rescue of Siam*¹⁸; a comical parody of the “raid and rescue” tactics of anti-trafficking groups. The Asian Pacific Network of Sex Workers also created a video, *Cambodia’s New Anti- Trafficking Law: Sex workers speak out*¹⁹, featuring sex workers denouncing Cambodia’s 2008 anti-trafficking law that made all forms of sex work illegal. The video, which also addresses HIV and broader human rights violations, has had over 21,000 views.

Indeed, films, video and photography have been an important medium for contesting dominant discourses with personal narratives. *Trabajo Sexual en Primeiro Persona*²⁰ (Sex Work in First Person) directed by Mai Staunsager, is a video project developed in partnership with AMMAR (Association of Argentinean Women Hookers in Action for our Rights) in Buenos Aires that offers a wealth of interviews with sex worker activists, short films and videos from sex worker rights events and protests. Triple-X Workers’ Solidarity Association Vimeo channel has a series of videos produced for or by the Canadian organization on topics ranging from HIV prevention to historical videos of sex worker protests. *Our Bodies Our Business*, a documentary directed by George Stamos, features sex worker activists’ participation at the 1989 International Conference on AIDS in Montreal²¹. The *A Kiss for Gabriela* (2013) YouTube Channel has a series of English subtitled interviews with Gabriela Leite about her views on prostitution, politics and activism. Debolina Dutta and Oishik Sircar’s *We are Foot Soldiers* (2011) follows the lives of six children of sex workers in Sonagachi, Calcutta’s famous red light district, constructing a narrative of political assertiveness and activism that challenges the victimizing discourses of the film recurrent

17 <http://www.sweat.org.za/wp-content/uploads/2016/02/Sex-work-and-Human-trafficking-Asijiki-1.pdf>

18 <https://www.youtube.com/watch?v=70rPAxLFFKU>

19 https://www.youtube.com/watch?v=Nsf8W6IX_4s

20 <https://www.youtube.com/playlist?list=PLrvJ6XhpRd9HD5iM-GincWigPMX3u-4lp>

21 <https://vimeo.com/195574653>

in many media and documentary characterizations of the children's lives.²² Catherine Scott's documentary, *Scarlet Road*, about sex work and disability, through the work of sex work activist Rachel Wotton, attracted widespread and mainstream attention that bridged the disability rights movement with the sex worker rights movement.²³ PJ Starr's 2016 feature length documentary, *No Human Involved*,²⁴ about the prison torture and murder of Marcia Powell in a Phoenix, Arizona prison brings attention to incarceration politics, violence and discrimination towards incarcerated sex workers and intersections between prisoners' rights and sex worker rights movements. Film and performances by artist-activists such as The Incredible, Edible Akynos²⁵ (*Black Pussy, Whore Logic, Dark. Nude. Storytellers*), directly engage issues of race, gender and class hierarchies in sex work – extremely important yet largely overlooked issues in the other forms of information circulating.

Biographies, autobiographies, anthologies and theatre have served a similar purpose by being important spaces for sex workers to share narratives of their lives in their own words. In Brazil, there are two recent examples of biographical narratives written by sex worker activists: Gabriela Leite's *Filha, Mãe, Avô e Puta* (Daughter, Mother, Grandmother, Whore) (2012) and, Amara Moira's *Se Eu Fosse Puta* (If I Were a Whore) (2016). Georgina Orellano, sex worker and Executive Director of AMMAR is publishing a book of her life history called *Putá Feminista* that will have a cover selected through an intense competition where over 60 visual artists presented ideas.²⁶ Indian sex worker activist, Nalini Jameela, published *The Autobiography of a Sex Worker* in 2007 (Jameela 2007) and in 2008, Sangram, an NGO also in India, created a theatre production called *My Mother, The Gharwali, Her Maalak, His Wife* in which sex workers represent themselves and their realities. In Brazil, Gabriela Leite's autobiography was turned into a play with the same name, *Filha, Mãe, Avô e Puta* (Daughter, Mother, Grandmother and Whore) that travelled for a year to theatres in Brazil and is in early production to be made into a feature film.

22 See also (Dutta and Sircar 2018)

23 <http://www.scarletroad.com.au/news-reviews/>

24 www.nohumaninvolvedfilm.com

25 <https://www.akynos.com> and <https://akynosburlesque.wixsite.com/blackswcollective>

26 <http://www.ammr.org.ar/El-libro-Puta-Feminista-ya-tiene.html>

An additional format that has been used by sex worker organizations since the earliest years of their mobilization is newsletters. The Brazilian Network of Prostitutes has published the newspaper, *Beijo da rua* (A Kiss from the Street) since 1988. During the 1990s, the newspaper was sold on newsstands throughout Brazil, and today is available primarily online.²⁷ In 1993, DMSC began publishing a Bengali newsletter/leaflet, *Barbonita Bolchi* (We the Prostitutes Speaking) and circulated it publicly at that year's Kolkata Book Fair. Since 2009, DMSC has also published a monthly Bengali magazine called *Durbar Bhawna*²⁸ (Durbar's Worldview). SWOP in Australia has published the free quarterly magazine, "The Professional" for over two decades, and in the United States, the quarterly magazine *\$pread* was published by and for sex workers from 2005-2010. In South Africa, *Izwi Lethu: Our Voices*²⁹ is a 'newsletter by sex workers for sex workers'. In circulation since 2015, the publication features stories, an advice column, fashion tips, health tips, the sex work hotline number, and more. Written by sex workers, with the exception of a guest column, the newsletter is a collaborative project involving Sisonke and the MoVE project at the African Centre for Migration & Society (ACMS).

The sometimes-contentious relationship with academic research is also an area that sex work activists engage with through a variety of formats. Across the board, sex workers emphasize the importance of researchers being cognizant of the consequences (unintended and otherwise) of their work and the role that research funding and institutional and professional interests play in directing research agendas. Maggie's Toronto Sex Workers Action Project has a note to non-sex worker researchers, students, reporters and artists on their website that begins with the following statement:

Thanks for your interest in sex work justice. We need people to educate themselves about sex work, do research, study, listen and learn. It is possible to do all of this without exploiting sex workers in the process. [...] Frequently, simply reading the ample research and journalism sex workers have already offered to the world would answer some or most of the questions we get. [...] Sometimes the project being proposed would be harmful and needs to be completely re-thought or shelved. Because we are

27 <http://www.beijodarua.com.br>

28 <http://durbar.org/html/articles.aspx>

29 <https://issuu.com/move.methods.visual.explore/stacks/f370165798154ee69cd94a901d957922>

*committed to our communities, we work to ensure that any engagement with sex workers won't leave either individual workers or the community as a whole worse off.*³⁰

Maggie's of Toronto highlights the literature already published about sex work, directing those who access their website to read and answer questions before requesting activists' time. While reinforcing the importance of research, they also are clear that research can be harmful and exploitative, and that those seeking to study sex work should ensure that their projects will leave the sex work community as a whole better and not worse off. *Tits and Sass*, a sex worker blog based in the United States, has also published a series of posts on academic research and sex work, such as Lime Jello's April 2015 post, "Why you shouldn't study sex workers". The author gives six reasons why researchers should "find something else to study" including "*because sex workers are human beings with lives outside of our jobs, because research about sex workers should definitely benefit sex workers, because sex workers can and do research sex work*" (Lime Jello, 2015). Based in South Africa, the Sisonke Sex Worker Movement produced *Sex Workers and Sex Work in South Africa: A Guide for Journalists and Writers* (Sonke Gender Justice, 2017) in partnership with legal scholars, researchers and non-sex worker NGOs to both provide basic facts on sex work and orientate writers on respectful terminology and interviewing techniques.

Indeed, partnerships between sex worker organizations and academic institutions have been one way that activists and scholars, including ourselves, address such tensions. In the contexts where we work, there is the *Observatório de Prostituição* (Prostitution Policy Watch) in Rio de Janeiro, Brazil which was conceptualized with the Gabriela Leite in 2013 and founded in partnership with the sex worker rights organization Davida. Based at the Federal University of Rio de Janeiro, examples of the kinds of work PPW does include a short course on the history of the sex worker movement in Brazil taught by sex worker leaders, activists and researchers; preservation and dissemination of the movement's archive of 30 years of activism; advocacy against institutional and police violence and a large ethnographic study of the impacts of mega-events on sex work contexts in Rio de Janeiro (including the 2014 World Cup and 2016 Olympic Games). In India, the NGO Sangram, that brings together sex workers, health workers, social scientists and lawyers conducted a pan-India survey with

30 www.maggiestoronto.ca

unorganized sex workers to highlight their experiences and voices within sex work debates. The preliminary findings from this research were published in 2011³¹ and since then it has been widely used for national and international advocacy on sex workers' rights. The previously mentioned MoVE project in South Africa is housed at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand, Johannesburg and has collaborated with the Sisonke Sex Worker Movement since 2010 on a range of initiatives aimed at both co-producing knowledge with sex workers and expanding research engagement with public audiences beyond the academy. A central aim of these endeavours has also included the development of accessible materials for sex workers and sex work activists, including the previously mentioned and ongoing *Izwi Lethu: Our Voices* newsletter project. Other examples, of many, include the *Observatorio sobre Violencia Institucional ejercida hacia el Trabajo Sexual* (Observatory of Institutional Violence against Sex Workers) brings together sex worker activists from AMMAR and a group of interdisciplinary scholars to study and fight institutional violence against sex workers in Argentina. In 2016 they published a report of calls received denouncing violence through a telephone hotline³², *Línea Roja*, and in 2017 launched a cell phone APP, *Puty Señal* with the same goal of fighting institutional violence.

Reflections on the trends

The overall data collected signals a gradual increase in the amount of information available about sex work across regions. In addition, trends across the three sets of data that has been analyzed (sex worker networks, peer reviewed literature and international agencies) also point towards an increasing emphasis on the importance of decriminalization to protect and promote sex workers' health and rights. This is clear in the literature and other materials produced by sex workers organizations, but is also present in the public health peer-reviewed literature as well as in publications delivered by WHO, UNAIDS and Amnesty International.

Against this backdrop it is quite striking that - despite the availability of these analyses and arguments – in the past five years France voted to criminalize clients, Germany passed restrictive legislation that was strongly

31 http://www.sangram.org/resources/Pan_India_Survey_of_Sex_workers.pdf

32 http://www.ammr.org.ar/IMG/pdf/primer_informe_linea_roja.pdf

contested by sex worker rights groups, and Canada criminalized buying sex. Furthermore, in all of our national contexts, the presence of conservative anti-prostitution forces (mainly religious), feminist abolitionist groups and lobbyists and, in the particular case of India, rescue organizations, are increasingly felt. In Brazil, such groups are threatening to take away legal rights where they exist (by removing “sex work” from the Ministry of Labor’s Classification of Occupations), in the case of South Africa and India, further reducing them where they don’t (by passing bills such as the aforementioned TIP bill in South Africa, and supporting violent ‘raid and rescue’ operations in India).

Such disconnects, in light of our findings, raise the following questions: What might it mean that studies on legal and policy models are conducted primarily in the global North by authors with global North affiliations? What kind of power dynamics are behind the overwhelming amount of literature about HIV/AIDS and sex work, that is primarily led and funded by Northern institutions and is about the global South? What kinds of changes must be made for sex workers’ voices, writing and cultural productions to be more meaningfully incorporated and referenced in dominant narratives about sex work? What kind of bodies (political and biological) do these types of dynamics ultimately enforce? In an effort to answer these questions, in this final section, we look closely at the geopolitical, institutional, and methodological dimensions of our findings. Through our discussion, we seek to point to possible paths forward for research and activism seeking to further expand sex workers’ rights at a time when they have increasingly come under attack.

Geopolitical Imbalances

We begin with the geopolitical inequalities that cross-cut all fields analyzed. One of our main findings is that the bulk of information and analyses being produced and circulated about sex work is still dominated by northern institutional perspectives. We found a glaring lack of policy research focused on Southern contexts (especially non-BRICs countries or non- HIV prevalent contexts), as compared to the repetition of studies looking at certain legal models in the global North. This is a dangerous combination, as such arguments are being made without taking a closer look at the political and social contexts of the countries with the highest rates of HIV. Furthermore, there is very little, either activist, policy or academic, research in these contexts that take a closer look at less studied issues that also have profound impacts on sex workers’ lives. To this point, questions such

as whether the Swedish or New Zealand models are best might be missing other important issues such as migration or racism and how these intersect to affect how any legal model would be put in place. In Brazil, for example, we've found that the way in which the law is enacted is shaped much more by deep seated stigma towards sex workers, sexuality politics, gender inequalities and the whims of individual state actors than the law "on the books" (Murray 2014).

Although our research has not examined this aspect in depth, it is evident that the logic of funding streams is largely responsible for these geopolitical dynamics and distortions. Despite positive shifts observed in recent years, research centers with easier access to funding are still predominantly located in the global North and their 'targets' or 'subjects' pertain to the global South. This inevitably reinforces unequal power dynamics as the vast majority of knowledge continues to be produced without the effective involvement of sex workers and by institutional bodies that are far away and not always knowledgeable of the contexts they are speaking and writing about. Such a dynamic is not only constraining for researchers, but also for activist organizations. As reported by the Red Umbrella Fund (2013), the overwhelming majority of funders are in the global North (especially the United States and Canada, followed by Europe), while the bulk of the grants go to Africa, Latin America, and South and South - East Asia - a pattern that coincides with our findings. This means that the decisions being made about what areas and projects to fund are taken thousands of miles away from where the grants are being implemented. In addition, because organizations need funding to publish their work and get it out into the world, the same dynamics that permeate academic scholarship in terms of global funding dynamics, English language dominance, and a larger concentration on topics of funders' interest are also present within the information circulated by activist networks.

Historical legacies add additional layers to the complexities and tensions of local and global politics and the distortion deriving from funding trends. Within the countries where we work, the layered legacies of colonialism that remain in post-colonial structures continue to have a devastating effect on sex workers' lives. The current ban on sex work in South Africa is a remnant of the Immorality Act of 1927: a post-colonial and racialized law that prohibited relationships across the color bar, and later, same sex relationships under apartheid (Richter 2012). Encapsulated in the Sexual Offenses Act, 1957 all aspects of sex work are criminalized in South Africa. This includes selling sex, buying sex, and any third-party stakeholders benefitting from sex work revenues. Although there have been some progressive advancements made since the end of apartheid, specifically in

relation to gay and lesbian rights, the decriminalization of sex work was deemed as unconstitutional and slated as an antithesis to human rights very early on in South Africa's democracy (ibid: 64).

In India, historical accounts of sex work have traced the origin of its mode of ordering to colonial India by pointing out how, in the mid-nineteenth century, 'prostitution' became a part of official discourses in a form that resonates in the contemporary moment. The term "common prostitute" entered the legal vocabulary of the state with the identification of a subject whose sexual relations with British soldiers needed to be regulated in order to control the spread of venereal diseases among British populations. The scare of venereal diseases prompted the colonial administration to pass the *Cantonment Act* (CA) of 1864 and the *Contagious Diseases Acts* (CDA) of the 1860s-1880s with the intention of regulating prostitution in India, taking a cue from the *Contagious Diseases Acts* passed in England. While the CA specifically targeted a certain section of women who practiced prostitution within the jurisdiction of the cantonment areas, the CDAs covered 'common prostitutes'. Indian prostitutes were required to compulsorily register themselves with the administration, undergo regular medical checkups, were prohibited from entering certain specified areas, and could even be incarcerated if found infected with venereal diseases. With the passing of these laws, prostitution became the subject matter of colonial governance.

The rise of a global discourse around 'white slavery,' or 'white women bonded in prostitution' resulted in the League of Nations passing its conventions on trafficking in the 1920s, to which India was also a signatory. In 1949, the UN General Assembly adopted the *Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others* and the government of India, which was now a free and sovereign state entity, ratified this international convention in 1953. In 1956, India enacted SITA, or the *Suppression of Immoral Traffic in Women and Girls Act*, later changing its name to the Immoral Traffic (Prevention) Act (ITPA) through an amendment in 1986. Sex work in India continues to be primarily regulated through this criminal law that has a direct connection to India's colonial past and the British's selective criminalization of prostitution. The regulation of common prostitutes and the simultaneous, selective criminalization/ legalization of the occupation is a historical nuance of the Indian context in particular (Dutta, 2019 forthcoming)³³.

33 See Tambe (2009, 2011) and Kapur (2007) for more information on prostitution in colonial India and the recently released study report by VAMP and SANGRAM, *RAIDED!: How Anti-trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* for more information about the impact of India's "raid, rescue and rehabilitation" strategies implemented as part of anti-trafficking actions and legislation. Released in March of 2018, the study was conducted entirely by sex workers and focuses on narratives of women who were "rescued" in raids, passed through "rehabilitation programs" and then returned to sex work. Available at: <https://www.sangram.org/resources/RAIDED-E-Book.pdf>.

In Brazil, debates regarding the abolition of prostitution gained traction when the country abolished slavery in 1888. Similar to many other countries, as sexual commerce began to be seen as a problem in Brazil, it also became a moral issue that resonated with the struggle to abolish slavery as part of “modernization” projects for social and political progress (Correa and Olivar 2013; Pereira 2005). Associated with slaves in the minds of local elites, prostitutes were seen more as victims than criminals (Blanchette, Mitchell and Murray in press). However, they were also highly stigmatized and – like the newly freed slaves – were understood as a population that needed to be subjected to the guiding hand of the state, in the form of the police and in the name of “public hygiene” (Schettini 2006). The basis for Brazil’s laws today can be found in the first Republican penal code, established in 1890 and reformulated in 1940. Abolitionist in orientation, these laws did not touch prostitution itself, but criminalized a series of activities around the sale of sex in the name of repressing “sexual exploitation” (Schettini 2006). The ambiguous and contradictory nature of the Brazilian law is not an accident (Blanchette, Mitchell and Murray in press; Correa and Olivar 2013). As Sonia Correa and Jose Miguel Olivar note, this legal model ‘did not inhibit prostitution, but left the space open for calls for the eradication of sex work to capture the social imagination and for state and societal violence against sex workers to remain unquestioned and unpunished’ (2013; 177).

The overwhelming focus on HIV/AIDS must be read within this historical relationship between public health concerns and State control of sex workers’ bodies. While we do not question that HIV is an important issue for persons involved in commercial sex, or that sex workers often experience heightened levels of vulnerability, we do critique this obsessive focus because the research frameworks it informs often fail to account for a wide range of other equally important factors influencing and impacting sex workers lives, including sexual and gender nonconforming discrimination, religion, heteronormativity and the associated pressures of conformity, morality discourses, patriarchy, and stigma, to name a few. Indeed, our analysis of the academic literature found that the topic ‘Gender and Sexuality’ represented a smaller percentage of the articles with ‘sex work’ in the title (especially in comparison to the prostitution titled literature), even decreasing during the 2011-2016

timeframe as research on HIV/AIDS increased.³⁴ As many activists and researchers have stated before (de Zaldondo, 1991; Leite, Murray, & Lenz, 2015; Pheterson, 1990), the pathologization of sex workers as vectors of disease reinforces stigma around sex work and infantilizes them by placing prostitution under the tutelary power of a wide variety of institutions (from biomedicine to security forces). It also ignores the plethora of human experiences, needs, and issues that encompass being a person who also happens to sell sex, creating obstacles for shifting research attention to the structural issues that time and time again have been found to be critical to protecting rights *and* health.

Double Bind of Institutional Affiliations

On the one hand, our trends analysis uncovered important advancements in terms of highly visible research-activist collaborations. The 2012 World Health Organization report and 2014 *Lancet* special series on HIV and sex work that incorporated sex workers as authors and involved networks and organizations based in the Global South are two of the most visible and cited examples. Yet on the other hand, as these examples themselves show, the ability to circulate such materials and incorporate them into policy discussions on a global level is still dependent on global North based allies for funding and translation. Furthermore, while we found a fair amount of sex worker produced content in dialogue with, and reacting to, research produced by academic institutions, we did not find the opposite to be true: peer-reviewed literature appears to rarely incorporate information produced by sex workers and sex worker networks.³⁵ At the same time, we found that co-authorship by sex workers both in peer reviewed and international agency publications was nearly always associated with institutional affiliations (not surprising of course, as the same is true of all other authors).

34 Although we did not examine the gender question specifically in the academic research, we see important connections between the fields of research on sex work and on gender. A 2017 report published by Elsevier looking at gender in the global research landscape indicates that while gender disparities remain, there was an increase in the proportion of women among researchers and publication authors in the time period 2011-2017 (Elsevier, 2017). The report also notes that published papers using “gender” in the title and written by women over the same time period were divided between biomedical and social science research topic areas.

35 It is important to note, however, that there are a series of notable exceptions in edited volumes and books (see Dewey & Zheng 2013, Gould & Fick 2008, Magaisa 2001, Muzvidziwa 2001, Tamale 2011).

It is within this context that we draw attention to the consequences of the nearly exclusive valuing of institutional voices and emphasize the importance of promoting research methods that expand the voices of those outside of institutional power structures. We refer to this as an institutional double bind because in all spheres – activist networks, peer reviewed literature and agency reports – institutional affiliations are associated with broader circulation and credibility, yet the power dynamics inherent in what it takes to construct and maintain such credibility are rarely examined. At the same time, there is a paradox. When ‘respectable’ publications (such as *The Lancet*) and organizations (such as Amnesty International) release studies defending decriminalization, they are either discredited by critics or quite simply ignored, by those purporting ‘evidence-based policies’. This was particularly the case with the highly publicized celebrity studded campaigns, led by the Coalition Against Trafficking in Women (CAATW), against Amnesty International’s policy supporting decriminalization in which both the reliability of data and credibility of organizations – on both sides – was a frequent focus of debate.

In this sense, in addition to more co-authorship, recognition and value of the extensive amount of information produced by sex workers in academic and policy-making spheres, it is also key to subvert ‘credibility wars’ and deconstruct what might be referred to as ‘informational hierarchies’. Part of this begins with authors being open about our place in the field (as we have attempted to do here) in addition to being more attuned to the consequences of our work and its place in these hierarchies. In addition to the potential impacts on the individual lives of people we work with when doing research, what we produce feeds the public narratives about sex work and agencies making decisions about where to invest time and resources. In the following section, what we refer to as ‘methodological missteps’ are precisely those that fail to take such concerns into account from the beginning.

Methodological Missteps

As emphasized in activist critiques of researchers, sex workers are often excluded from direct engagement in setting research agendas, implementation of the research projects, analyzing data collected and from participating in policy discussions and public debates on the issues that are directly impacting their lives. As they note, conventional research methodologies and one-sided agendas and analyses often result in the (re) production of superficial, often inaccurate, and potentially unethical, portrayals of those who are being

researched. In this sense, much can, and has, been learned from the creative means activists have long used to disseminate their messages. Research approaches that draw on visual means such as photography, video and illustrations facilitate the inclusion of under-represented groups in research. They offer an opportunity to challenge and contend conventional depictions of sex work, unlocking improved understandings and revealing important nuances that shape how sex workers' thrive, survive, and negotiate their lives (see Oliveira and Vearey 2015).

Inspired by Paulo Freire (1993 [1969]), Cornwall and Jewkes (1995) describe participatory research as a process of , '[...]sequential reflection and action carried out with and by local people rather than on them' (p. 1667). For them, the decision to include a participatory approach to research reflects, 'a choice, which is both personal and inherently political' (p. 1667). We have all been involved in such projects in our countries that use innovative and creative methodologies to support the audibility of sex workers voices, experiences and needs while also supporting capacity building and solidarity. In South Africa, MoVE project's³⁶ *Working the City* and *Volume 44* are both participatory research projects with migrant sex workers that use photography as a way to document under-represented voices and experiences. Both challenge victim narratives and directly confront stigmas by showing the complexities of migrant sex workers' lives, and resulted in travelling exhibitions and publications that have circulated broadly in activist, policy and research contexts. The Prostitution Policy Watch, in partnership with a variety of NGOs in Rio de Janeiro, conducted a participatory photography project entitled "*O que você não vê*" (What you don't see)³⁷ in which sixteen sex workers produced visual and audio diaries of their daily lives during the 2016 Olympic and Paralympic Games and then curated a website and a gallery exhibition of their images and narratives. In India, *The Rule of Laughter* is an illustrated book that comes out of a collaborative research project between DMSC and Veshya Anyay Mukti Parishad (VAMP). Considering fun, laughter and humor as political, the book tells stories about how sex worker activists use them to subvert the power of the criminal laws that engulf every aspect of their lives in India.

36 <http://www.migration.org.za/page/about-wtc/move>

37 www.oquevcnaove.com. Website in English: <https://whatyoudontsee.hotglue.me>

While participatory methods and activist organization/academic institution partnerships may contribute to reducing the power imbalances, it may not be correct to assume that the mere participation of sex workers in research processes can eliminate the power differentials between those who are sex workers and those who are not (Dutta forthcoming). Even when participatory research methods are used, the rules that govern research design and implementation often remain the preserve of researchers. The use of participatory research methods must be regarded as an ongoing practice of creating channels of communication and trust between sex workers and non-sex worker researchers for a co-production of knowledge that is nuanced and reflect the realities of lived experiences. No research method is completely neutral in scope, and researchers like us must use them critically and be mindful of their political implications every step of the way³⁸.

The central question thus becomes, in our perspective, to recognize the political nature of all knowledge production. Indeed, research is a political process and activism a form of knowledge production. We agree with Michal Osterweil (2013) when she suggests that we should not treat ‘activism or political action as constitutively distinct from academic or knowledge work,’ but rather conceptualize research processes as political practices, and activism as a form of knowledge production in and of itself (2013: p. 599-60). There is a very real need to create more direct, participatory and horizontal channels of learning. Research and participatory approaches are about long- term engagement, where data is collected using a range of techniques and where research not only strives to gain new understandings of issues and lives that can feed ‘the Academy’ and change policy, but where the process of making, doing, and telling is critically reflected on and challenged. Failure to readily engage, accept and/or recognize the relevance of non-academic material, or that the processes of making knowledge are infused in messy power fluctuations, not only implicitly negates the importance of local knowledge(s) and processes, it contributes to the disconnectedness between sex workers lives’ and prostitution policies. Knowledge production can neither be detached from locations and subjectivities, nor from the hierarchies implied in this very production process. The first step towards breaking down the structuring role of these hierarchies is to begin talking about them.

38 Although not in the context of sex work, as an illustration of feminist co-production of knowledge where authorship is shared, see Richa Nagar and Sangtin Writers, *Playing With Fire: Feminist Thought and Activism Through Seven Lives in India*.

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Authors and Editors

Authors

Alice Miller

Alice Miller is an Associate Professor (Adjunct) of Law at Yale Law School and the Co-Director of the Global Health Justice Partnership. She is also an Assistant Clinical Professor in the Yale School of Public Health and a Lecturer in Global Affairs at the Jackson Institute for Global Affairs at the Whitney and Betty MacMillan Center for International and Area Studies. An expert in gender, sexuality, health, and international human rights, Miller previously taught at the University of California, Berkeley School of Law, where she was faculty director of the Women's Institute for Leadership Development, and at Columbia University, where she was co-director of the Center for the Study of Human Rights. She holds a B.A. from Harvard and a J.D. from University of Washington School of Law.

Debolina Dutta

Debolina Dutta is a doctoral researcher at the Institute for International Law and the Humanities, Melbourne Law School. By looking at sex workers' activism and academic legal scholarship in post-colonial India, her thesis re-conceptualizes methods of feminist legal knowledge production as practices of creating and inhabiting lawful relations. Her research is motivated by a larger concern with the responsibilities and conduct of the feminist scholar/ researcher in a world where critical scholarship often reproduces the very hierarchies that it claims to undo. Her writings have appeared in the journals *Childhood*, *Feminist Studies*, *Himal Southasian*, and in the *Palgrave Handbook of Gender and Development*. She is presently collaborating with sex worker activists from DMSC and VAMP, and queer artist, Anirban Ghosh, to put together an illustrated book of stories called *The Rule of Laughter*. The book looks at humor and laughter as everyday politics of resistance in the lives of sex workers.

Debolina has also co-directed the documentary film *We Are Foot Soldiers*, on the collectivization of children of sex workers in Sonagachi, Kolkata. The film was awarded the 3rd prize at Jeevika: Asia Livelihood Documentary Competition in 2012.

Elsa Oliveira

Researcher and PhD candidate at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand located in Johannesburg, South Africa. She is committed to research undertakings seeking to support activist efforts, specially relating to issues of migration, sexuality, and health. Pinned on the belief that research should be driven by social justice agendas and that knowledge production must include involvement of individuals and/or groups under investigation. As the co-founder (and, current co-coordinator) of the MoVE project at the ACMS, Elsa is also interested in exploring new ways of conducting and disseminating research, including developing ways to co-produce and share knowledge through public engagement. Her PhD is examining the use of participatory visual and narrative methods to understand the grounded lived experiences of migrant sex workers in South Africa.

Eszter Kismödi

Eszter Kismödi JD. LL.M. is an international human rights lawyer on sexual and reproductive health law, policy and research. For the past 15 years her work has focused on developing ways in which legal and policy development, health programs and research can be shaped to improve the respect, protection and fulfillment of human rights laws and the achievement of sexual and reproductive health. She worked as a human rights adviser at the World Health Organization (WHO), Department of Reproductive Health and Research for ten years (2002-2012) contributing to the work of United Nations treaty monitoring bodies, the Human Rights Council, United Nations Special Rapporteurs and regional and national legislative and human rights bodies. Her working experience extends to Europe in particular Eastern Europe, Central Asia, South-East Asia, Africa, Middle East and Latin America. She is a core member of the Network on Rights Oriented Research and Education (RORE) and the author of and contributor to several WHO publications.

Jane Cottingham

Jane Cottingham works as an independent consultant and researcher in the field of sexual and reproductive health and rights with a focus on the intersection of laws and policies, and sexual health and human rights. She worked at the World Health Organization in Geneva, Switzerland, from 1994 to 2009 as a technical officer and team coordinator in addition to working for Gender, Reproductive Rights, Sexual Health and Adolescence at the Department of Reproductive Health and Research, WHO. Her mandate included working with women's health advocacy groups, policy-makers and scientists to ensure women's rights and gender perspectives were integrated into sexual and reproductive health research, policies and programs at international, regional and national levels. She focused on developing and promoting barrier methods for dual protection; developing guidelines for the provision of safe abortion services, gender and ethical issues in research; and developing a human rights-based approach to sexual and reproductive health policy development and programming. In 1976 she co-founded ISIS, Women's International Information and Communication Service, and served as the organization's director in Geneva for 11 years. Cottingham is a member of the editorial advisory board for *Reproductive Health Matters* and a board member for the Guttmacher Institute. She received a Bachelor's in English and a Bachelor's in philosophy from the University of Reading in the United Kingdom in 1969 and a Master's in population sciences from the Harvard School of Public Health in 1991.

Laura Murray

Laura is a post-doctoral fellow at the Institute of Social Medicine at the State University of Rio de Janeiro (IMS/UERJ) and Executive Researcher with the Prostitution Policy Watch (Observatório da Prostituição) – an extension project at the Federal University of Rio de Janeiro that brings together researchers, students, sex workers and activists with the goal of advancing sex workers' human rights through a broad range of research, advocacy and cultural activities. She is also a member of the sex worker rights collective *Davida* and directed the documentary, *A Kiss for Gabriela* (2013), about sex worker activist Gabriela Leite's 2010 historic campaign for federal office in Brazil. Laura has worked on issues related to HIV prevention, sex work activism and sexual rights through a variety of avenues since 2000 and her current research interests include sex work, politics, gender, sexuality, knowledge production and activism.

Laura Saldía

Laura Saldivia Menajovsky is an Argentine lawyer. She holds a doctorate in law from Yale Law School. She is a constitutional law professor at University of Palermo. She has taught also constitutional law, human rights, discrimination, and sexuality and the law at National University of General Sarmiento and National University of La Matanza (Buenos Aires, Argentina). She is a former *Human Rights Senior Legal Advisor* at the National Secretariat of Human Rights, Argentina. She was also in charge of Research Programs at the Institute of Public Policy on Human Rights of MERCOSUR. Her fields of research include law and sexuality, laicism, globalization, equality and no discrimination. Among her most recent publications is her book *Subordinaciones Invertidas: Sobre el Derecho a la Identidad de Género*.

Ryan Thoreson

Ryan Thoreson is a legal anthropologist whose work focuses on the politics and practice of human rights advocacy. His research interests include conflict of law theories; sexual rights movements in the US, South Africa, and the Philippines; and activist engagement with soft law instruments and limitations on human rights guarantees. He is currently a researcher in the LGBT Rights Program at Human Rights Watch and the Cover-Lowenstein Fellow at Yale Law School. Ryan holds a law degree from Yale Law School, a doctorate in anthropology from the University of Oxford, where he studied as a Rhodes Scholar, and a bachelor's degree in government and studies of women, gender, and sexuality from Harvard University. He is the author of *Transnational LGBT Activism: Working for Sexual Rights Worldwide* (University of Minnesota Press, 2014) and co-editor of *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa* (OutRight, 2011).

María José Barajas

Lawyer graduated from Universidad Pontificia de Comillas in Madrid, Spain; with specialization in International Relations. She holds a Masters' degree in Europe's International Solidarity Action from Carlos III University in Madrid and a Master's degree in International Relations: Dynamics of Cooperation, Conflicts and Negotiation, at the Alfonso X "El Sabio" University also in Madrid. She was part of the Center for the Promotion and Defense of

Sexual and Reproductive Rights - PROMSEX (Peru), as Assistant to the Executive Secretary of the Latin American Consortium Against Unsafe Abortion - CLACAI, a network comprising activists, researchers, healthcare providers and other professionals of the Latin American region. Currently, she is Human Rights and Training Expert at *Capital Humano y Social Alternativo*, a Peruvian NGO engaged in the fight against human trafficking.

Sofia Gruskin

Sofia Gruskin directs the Program on Global Health & Human Rights at the USC Institute for Global Health and holds appointments as Professor of Preventive Medicine at the Keck School of Medicine and as Professor of Law and Preventive Medicine at the Gould School of Law. A pioneer in global health and human rights, she is also an adjunct professor in the Department of Global Health and Population at the T.H. Chan School of Public Health at Harvard University, where she previously served as Associate Professor, Director of the Program on International Health and Human Rights, and Co-Director of the Inter- Departmental Program on Women, Gender and Health. Her work, which ranges from global policy to the grassroots level, has been instrumental in developing the conceptual, methodological and empirical links between health and human rights, with a focus on non-communicable disease, child and adolescent health, HIV/AIDS, sexual and reproductive health, gender-based violence and health systems.

Editors

Richard Parker

Richard Parker divides his time between New York City, USA, and Rio de Janeiro, Brazil. He is Professor of Sociomedical Sciences and Anthropology and a member of the Committee on Global Thought (<http://cgt.columbia.edu/>) at Columbia University in New York City in the USA, where he also directs the Center for the Study of Culture, Politics and Public Health in the Department of Sociomedical Sciences of the Mailman School of Public Health. He also holds a long-term appointment as Visiting Professor in the Institute of Social Medicine and the Rio Center for Global Health at the University of Rio de Janeiro State in Brazil. Professor Parker is also

the Director and President of the Brazilian Interdisciplinary AIDS Association (ABIA), one of the leading non-governmental AIDS organizations in Brazil (<http://www.abiaids.org.br>), as well as the founder and Co-Chair of Sexuality Policy Watch, a global coalition of researchers, policymakers and activists from a wide range of countries and regions with secretariat offices in Rio de Janeiro and New York City (<http://www.sxpolitics.org>), *the founder and Chair of Global AIDS Policy Watch* (<http://www.gapwatch.org>), *a knowledge network and policy watchdog initiative focusing on the global HIV epidemic*, and Editor-in-Chief of *Global Public Health* (<http://www.tandfonline.com/loi/rgph20#.UiemgryE71s>), published by Routledge. Presently he is a visiting professor at the Institute of Collective Health at the Federal University of Rio de Janeiro (IESC- UFRJ).

Sonia Corrêa

Since the late 1970's Sonia Corrêa has been involved in research and advocacy activities related to gender equality, health and sexuality. Between 1992 and 2009 she was the research coordinator for sexual and reproductive health and rights at DAWN – Development Alternatives with Women for a new Era – the Southern Hemisphere feminist network. In that capacity she closely followed United Nations negotiations directly impacting on gender and sexuality related matters: the International Conference on Population and Development (ICPD – Cairo 1994), the IV World Conference on Women (IV WCW –Beijing, 1995) and also their respective reviews.

She is a research associate at the Brazilian Interdisciplinary Association for AIDS, in Rio de Janeiro. Since 2002, with Richard Parker, she co-chairs Sexuality Policy Watch (SPW), a global forum comprised of researchers and activists engaged in the analyses of global trends in sexuality related policy and politics. She has extensively published in Portuguese and English. This list includes, among other, *Population and Reproductive Rights: Feminist Perspectives from the South* (Zed Books, 1994) and *Sexuality, Health and Human Rights* co-authored with Richard Parker and Rosalind Petchesky (Routledge, 2008). In 2016-2017 she was a visiting professor at the Gender Department of the London School of Economics and is one of the editors of the Palgrave book series *Global Queer Politics*.

Copy editor

Seona Smiles

Seona Smiles is a consultant, editor and journalist based in Fiji, with long experience in the global South, particularly the Pacific Islands region. She has a postgraduate qualification in Pacific Media and has worked in communications and on projects for a number of regional and international organizations including DAWN (Development Alternatives with Women for a New era). She is a feminist and strong supporter of the women's movement in Fiji since its beginnings in the early 1970s.