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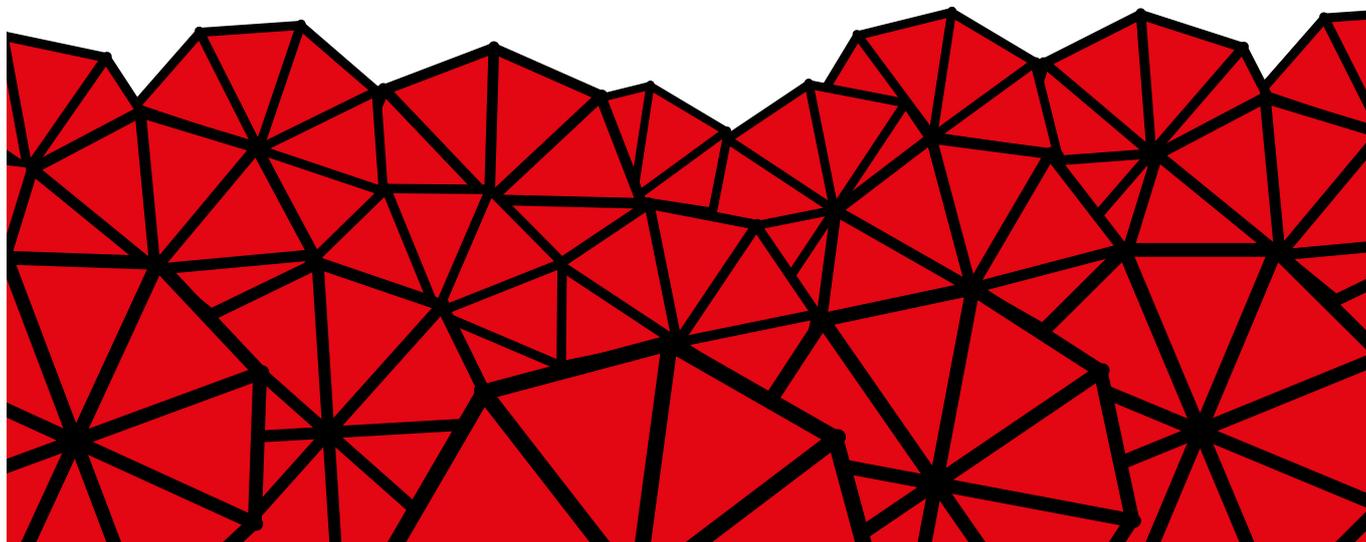
**Global Network of Sex Work Projects**  
Promoting Health and Human Rights

**BRIEFING  
PAPER**

**#07**

**SEX WORK AND THE LAW:**

**Understanding Legal  
Frameworks and the  
Struggle for Sex Work  
Law Reforms**



## **SEX WORK AND THE LAW:**

# **Understanding Legal Frameworks and the Struggle for Sex Work Law Reforms**

**One of NSWP's core values is opposition to all forms of criminalisation and other legal oppression of sex work...**

The global sex workers' rights movement has a long history of campaigning against laws that violate the rights of sex workers. One of NSWP's core values is opposition to all forms of criminalisation and other legal

oppression of sex work that affects sex workers, clients, third parties<sup>1</sup>, families, partners and friends. Advocacy efforts also extend to reforming police practice and law enforcement, which is inseparable from the law itself, and often includes extortion, corruption and the discriminatory targeting of sex workers.

This briefing paper describes the different legislative frameworks used to criminalise and oppress sex work and sex workers, including oppressive regulatory frameworks. It also provides insight into the language and shared principles that NSWP members use when advocating for law reforms that respect and protect sex workers' human and labour rights.

## **Legal Frameworks and Law Reform Strategies**

Law reform strategies and the language used to advocate for these differ across NSWP member groups due to the diversity of legislative frameworks in existence and the historical, cultural and political values in different countries and regions.

Removing criminal laws that target sex work alone would not stop all legal oppression of sex workers, which happens in many different ways. Some NSWP members focus more on reforming *legal* practice rather than the laws themselves. Legal practice refers to how laws are enforced by the police, courts and other branches of the state. In some regions administrative offences and public order laws are used to target sex workers; therefore some NSWP members advocate for changes in the penalties, procedures and practices of administrative and public order law.

<sup>1</sup> The term 'third parties' includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.

It is important in discussing law reform that we provide clear definitions of the different terminologies and approaches adopted by NSWP and its members. The key terms that we use in advocating for sex work law reform are decriminalisation, depenalisation, legalisation and criminalisation.

## Decriminalisation

The term *decriminalisation* has historical and political currency for the sex workers' rights movement. It is the term that most clearly reflects the NSWP core value to which all member groups sign on – opposition to all forms of criminalisation and other legal oppression of sex work and sex workers.

### Criminal Laws

Criminal laws punish actions or behaviour that governments have determined to be harmful or damaging to society. The same criminal laws can apply across a whole country or different laws can exist in different regions within a country. Criminal laws are often applied in a discriminatory way across different types of sex work or depending on, among others, a sex worker's race, national or social origin, gender or gender identity, sexual orientation, disability, HIV status, drug use or immigration status.

Criminal laws specific to sex work (often called prostitution<sup>2</sup> laws) can be used to criminalise not only sex workers but also clients, third parties, families, partners and friends. Laws that specifically target sex workers include provisions making it illegal to solicit, advertise, sell sexual services (indoors and/or outdoors) or to work collectively with other sex workers. Clients are criminalised by laws that make it illegal to solicit or to purchase sex. Laws related to owning, managing or being found in a brothel, living off a sex worker's earnings or assisting a sex worker to migrate or move across borders with the intention of selling sexual services potentially criminalise third parties, families, partners and friends. These laws are also used to forcibly detain sex workers under the guise of 'rehabilitation'.

Criminal laws around sex work are often framed as 'protecting' sex workers from victimisation or protecting society from public nuisance.

In effect, however, they deny sex workers agency and limit their rights. Criminal laws perpetuate stigma and discrimination and lead to severe human rights violations for sex workers.

To prosecute sex workers and sex work businesses, the police sometimes confiscate condoms or other personal items as evidence of criminal activity. This practice puts sex workers'

health at risk and breaches privacy. The use of criminal laws against sex work results in more sex workers having criminal records, which can impact on their opportunities including access to housing, employment, education and the right to vote.

**Criminal laws perpetuate stigma and discrimination and lead to severe human rights violations for sex workers.**

<sup>2</sup> The word 'prostitution' is used in this paper solely to refer to the way that laws make reference to sex work. Use of the term 'sex work' in the remainder of the paper is purposeful and political and speaks to NSWP's core value of the recognition of sex work as work.

## Decriminalisation Defined

Some sex worker groups use *decriminalisation* to refer to an absence of the criminal laws that prohibit sex work itself or associated activities like brothel keeping. Other groups refer to *full decriminalisation* as part of a broad range of reforms that are needed to realise sex workers' and other marginalised communities' rights as part of an *anti-criminalisation* strategy, which encompasses the removal of all legal oppression – not just criminal laws. This highlights the fact that in the absence of sex work-specific criminal laws sex workers, clients, third parties, families, partners and friends are still criminalised by other types of laws. Examples include laws against vagrancy, public nuisance, obscenity, drug use or laws against homosexuality or crossdressing. The police and other government officials will continue to use these laws to disproportionately target sex workers.

Confusion around the term 'decriminalisation' is sometimes caused because it has been co-opted by anti-sex worker groups for what they call 'partial decriminalisation'. These groups seek to criminalise clients and third parties, but not sex workers, with the aim of ending the demand for sex work. NSWP and its members reject the idea of 'partial decriminalisation' and see any 'end demand' framework as criminalisation, an approach that also fuels and exacerbates stigma towards sex workers.

Decriminalisation, to some, does not necessarily imply the absence of some form of regulation that aims to respect and protect sex workers' human and labour rights, like occupational health and safety standards. This is distinct from legalisation where state regulation is designed to control and limit sex work and is often enforced by the police.

*"We use this term as it is an historical term, which is spread across different debates and is documented in sex worker literature and research going back decades. In New Zealand, we speak about sex work being decriminalised, e.g., the laws against sex work (soliciting in a public place, brothel keeping, etc.) were repealed, allowing sex workers to operate in work based models that are available to many other occupations. However, we recognise that New Zealand does not have a pure decriminalisation model, but is a mix of decriminalisation and legalisation."* (NZPC, New Zealand)

***"We are campaigning for the decriminalisation of sex work. We would also like to see anti-discrimination laws in addition to this, and positive protective legislative reforms being introduced..."***

*"We are campaigning for the decriminalisation of sex work. We would also like to see anti-discrimination laws in addition to this, and positive protective legislative reforms being introduced, with no police involvement, no complicated licensing for brothels, all by-laws relating to sex work specifically to be removed and a prohibition of using by-laws like loitering or public indecency against sex workers."* (SWEAT, South Africa)

*"Some in the United States use the term 'decriminalisation' but this is only a shorthand for a very thoroughgoing process of law reform that would need to occur state by state and federally. A range of groups in the United States do not use the term 'decriminalisation' because it can narrow activism to focus on the removal of specific laws referencing prostitution which in and of itself would not necessarily fully unravel the complicated and extreme criminalisation of communities of sex workers, people in the sex trade and related communities in the US."* (Best Practices Policy Project, USA)

## Depenalisation

Depenalisation is a term used in contexts where individual sex workers are not regulated through criminal laws but rather through administrative offences and other public order laws.

### *Administrative Offences*

Administrative offences are often created by the state to deal with matters related to public order and security. While they may be viewed as 'minor' offences compared to crimes, they are still enforced by the police and often still result in harsh punishments including large fines and imprisonment. In many cases, administrative offences play a larger role than criminal laws in regulating sex work and in other cases they overlap or are used in tandem with criminal law.

Administrative offences directly and indirectly oppress or regulate both individual sex workers and sex work businesses. Some countries have sex work-specific administrative offences while others have more general offences that are used to target sex workers, such as loitering, public indecency or public dress codes. Punishments for these offences can include restrictions in freedom of movement where sex workers are not permitted into certain areas of a city, compulsory HIV/STI testing or forced rehabilitation of sex workers.

### *Public Order Laws*

Public order laws regulate the use of public space and may impact on how and where sex workers and sex work businesses can exist. They may incorporate mandatory licensing for sex work businesses or zoning restrictions including 'prostitution-free' zones. These can impact negatively on sex workers depending on how they are implemented. For example, licensing regimes that require sex workers and businesses to display their licences publicly with full names can increase stigmatisation and lead to unfair labour practices. Zoning restrictions that locate sex workers in more isolated areas can impact on worker health and safety and increase the risk of violence.

Non-compliance with public order laws may result in penalties that are often out of proportion and overly harsh. Punishments frequently involve fines but they can also include detention at a police station or lengthy prison sentences. Imprisonment is often used for repeat offences or if fines are unpaid.

Different types of public order laws, administrative offences and legal practices often work in combination. In some contexts, for example, if a sex worker receives a fine for an administrative offence that prohibits individual sex work, they may be detained and receive an order for compulsory testing under a separate public health law. These laws are often accompanied by loosely worded guidelines that give authorities room for interpretation, and

some NSW members report that this can be used as cover for unlawful police practices such as extortion or violence.

***These laws are often accompanied by loosely worded guidelines that give authorities room for interpretation, and some NSW members report that this can be used as cover for unlawful police practices such as extortion or violence.***

### *Depenalisation and Decriminalisation: Related but Distinct*

*Depenalisation and decriminalisation are closely intertwined but have different meanings. Depenalisation focuses on removing or reforming administrative offences and public order laws so that they are no longer used as a way to target and penalise sex workers. Decriminalisation, on the other hand, is focused on the removal of criminal laws and other legal oppression.*

In countries where administrative offences and public order laws are used against sex workers, criminal laws may also exist to criminalise other aspects of sex work, like third party involvement. As a result, NSWP and its members call for decriminalisation and depenalisation. NSWP uses the term 'decriminalisation' to encompass the repeal

of both the criminal laws and administrative offences/public order/public health laws that are used against sex workers.

**“There is confusion because individual sex work in public space is [an administrative offence] but all of the activities associated with sex work (organising, mediating, providing space) are criminal offences, and the public tends to think that all activities are criminal ones.”**

*“Depenalisation is what sex workers want to be added in the legal framework of Republic of Macedonia. This will avoid the wrong interpretation and usage of laws by governmental institutions.”*  
(STAR-STAR, Macedonia)

*“There is confusion because individual sex work in public space is [an administrative offence] but all of the activities associated with sex work (organising, mediating, providing space) are criminal offences, and the public tends to think that all activities are criminal ones.”* (HOPS, Macedonia)

### **Legalisation**

Legalisation is a term that is often confused with decriminalisation. Decriminalisation refers to the removal or absence of criminal or other laws that oppress sex workers, whereas legalisation is the introduction of laws that aim to impose state regulation and control sex work. Examples include local planning laws that restrict the number, location and rules of operation for sex work businesses, or public health laws that require mandatory registration and/or the compulsory STI or HIV testing of sex workers.

The police are often used as regulators to ensure that sex workers and sex work businesses comply with the rules in a legalised framework. Non-compliant sex workers or sex work businesses are at risk of fines, increased police surveillance, raids on business premises and prosecution. This leads to a two-tiered system of legal and illegal sex workers, which can result in exploitative working conditions and human rights violations for those who are illegal. Criminal sanctions may be applied for non-compliance of legalisation conditions.

Some people also confuse the framework of legalisation with the concept of sex work being legally recognised or 'legal', which are in fact quite distinct ideas. NSWP campaigns for *legal recognition* of sex work as work and for the granting of legal rights for sex workers. *Legalisation*, on the other hand, can be highly stigmatising, and attempts to impose state control or limit sex work. Legalisation, in practice, can mean

many restrictions on how, when and where sex work happens, creating a tier of illegal, non-compliant workers, and often gives police and other state authorities excessive enforcement powers. Some sex worker groups use the *language of legalisation* to voice a desire for labour and industry standards that would accompany the legal recognition of sex work as work, while rejecting laws and policies that stigmatise, limit or control sex work in a discriminatory manner.

## Criminalisation

Criminalisation refers to a legislative framework that has laws making sex work or activities associated with sex work (such as brothel keeping) a crime. The criminal laws are enforced by the police and other law enforcement agencies and result in the arrest, prosecution and punishment, including imprisonment, of sex workers.

NSWP members oppose all forms of criminalisation of sex work, including that of sex workers, clients, third parties, families, partners and friends. Some countries do not have criminal laws specific to sex work but use other criminal laws to oppress sex workers, and this is a form of criminalisation also opposed by NSWP members.

## Criminalisation has a devastating effect on the health and human rights of sex workers.

Criminalisation has a devastating effect on the health and human rights of sex workers. It often means a criminal record upon conviction, which can affect sex workers' access to services and housing, ability to migrate, their reputation, and future employment opportunities, as well as restricting their rights of access to,

or custody of, their children. Sex workers often have to work in isolation when working within a criminalised legal system, which can leave them vulnerable to extortion and violence. Furthermore, criminalisation fuels the stigma faced by sex workers, which creates a climate of impunity for those who commit violence against them.

There is often an incorrect distinction made between 'full' or 'partial' criminalisation. As outlined above, some refer to legislation that criminalises clients but not sex workers as *partial criminalisation*. In Sweden and other countries, some government officials and anti-sex work lobbies may mistakenly or purposefully refer to these legislative models as decriminalisation. However, NSWP rejects the idea that sex work can be 'partially' criminalised. NSWP members are clear that the criminalisation of any aspect of sex work is harmful to sex workers. Therefore, NSWP also opposes the criminalisation of third parties and rejects laws against brothel keeping. Criminalisation, including of clients and third parties, increases police repression of sex workers, permits discrimination against sex workers in accessing services and fuels all forms of stigma. This results in serious harm to sex workers, including experiences of violence and barriers to accessing justice.

## Other Legal Oppression of Sex Work

In addition to the sex work-specific laws that criminalise and penalise sex workers there are a number of other laws that in practice are used to oppress and/or impose state control of sex workers and sex work. While the legal context differs widely across the world most countries have some combination of the following types of laws.

### 1 Criminal Laws Not Specific to Sex Work

There are many criminal laws not specific to sex work but which directly or indirectly impact sex work and harm sex workers, clients, third parties, families, partners and friends.

- ▶ **Anti-trafficking laws** are criminal laws that can be, and often are, used against sex workers who migrate for work, pleasure, adventure, and/or better living and working conditions. Trafficking offences are regarded as serious and can result in arrest, detention, forced ‘rehabilitation’, prosecution and long prison sentences.

Anti-trafficking laws are often unsophisticated and apply broad stereotypes to migrant workers. They rarely distinguish between voluntary legal migration, voluntary migration using agents (people smuggling outside the legal channels) and people trafficking.

Anti-trafficking laws are often supported by initiatives that encourage workplace raids in the name of ‘rescuing’ victims of trafficking. These initiatives are seriously harmful for migrant (and non-migrant) sex workers who are often detained and deported as a result of raids. In the case of non-migrant sex workers, they can also be evicted from their homes or forced into ‘rehabilitation’ programmes. Often they are only released to family members, regardless of the fact that they may no longer live with their family, or their family may not be aware of their sex work. In India, sex workers are asked to provide verbal undertakings or assurances that they will leave sex work, as a condition to being released into the ‘custody’ of family members, and often remain ‘on probation’ for a number of years.

As a way to prevent incarceration and very likely deportation, migrant sex workers will sometimes identify themselves as victims of trafficking and speak out against the people they work with or for, or the people who assisted them in migrating. To avoid ‘raid and rescue’ operations sex workers may adapt and change the way they work, forcing the industry underground, which puts migrant sex workers’ rights, health and safety at greater risk and creates a fear of accessing services amongst migrant sex workers. The framing of all sex work as exploitation within

anti-trafficking laws means that labour exploitation, where it exists, remains unaddressed. It further invisibilises the agency of sex workers in their choice of work.

If victims of trafficking are identified they are often charged with criminal offences related to whatever activity they have been trafficked into. They are then further punished by being returned to the country and situation they were trafficked from, without consideration of their need for protection or being offered the opportunity to seek asylum.

*“Trafficking of human beings is illegal, but the law is incomplete and does not have the victim at the centre. Even victims of trafficking identified by specialized NGOs are not offered proper protection and asylum”*  
(VAMP and Sangram, India)

**To avoid ‘raid and rescue’ operations sex workers may adapt and change the way they work, forcing the industry underground...**

- ▶ **Drug laws** that make the possession and use of drugs illegal are used to arrest sex workers and third parties where sex work and drug use overlaps. Sex workers and sex work settings are often more visible and seen as an easy target by the police. Drug arrests sometimes result in the issuance of orders prohibiting sex workers from entering areas where key health and social services exist. Sex workers are also forced into drug rehabilitation centres, often with a precondition that they give up sex work. In some countries mandatory minimum prison sentences are given for violations of drug laws and judges are given no discretion to consider the circumstances of the case and order less severe punishments.
- ▶ **Laws against gender expression and gender identity**, including laws against cross-dressing, target trans<sup>3</sup> sex workers.
- ▶ **Laws against homosexuality** target male and trans sex workers who have sex with men.
- ▶ **Laws against indecency, obscenity or immorality** are often very broad and general and can be used against sex workers.
- ▶ **HIV exposure and transmission laws** are criminal laws used against people living with HIV when they fail to disclose their HIV status prior to sexual contact, expose someone to HIV, transmit the virus to someone or share drug paraphernalia. In some jurisdictions, people living with HIV face significant penalties and imprisonment for failing to disclose their HIV status even if they engage in safe sexual

**...they demonise people living with HIV while seriously compromising their right to confidentiality.**

practices with their partners. These laws fail to recognise the shared responsibility that exists between sexual partners to make decisions regarding their own sexual health, and they demonise people living with HIV while seriously compromising their right to confidentiality. The laws also pressure sex workers to disclose their HIV status in conditions in which they may be vulnerable to stigma, discrimination

and violence. Furthermore, in some countries information about a person's HIV status (sometimes accompanied by a photograph of the individual) has been distributed widely in the media, placing people at risk of retaliatory attacks and breaching their right to privacy.

- ▶ **Laws against obstruction of justice** are often vague and grant police authority and power to arrest people for non-specific acts. So, for example, sex workers can be charged with not cooperating with police or questioning police practices upon arrest or threat of arrest.
- ▶ **Vagrancy laws** broadly target people deemed 'undesirable' who might be suspected of criminal activity, and target sex workers disproportionately and in a discriminatory way. Some of these are status crimes and penalise being a sex worker in public. Others criminalise the act of being in public for an extended period of time.

<sup>3</sup> Trans is a term used to be inclusive of various communities. Sex workers across the world use different terminology to refer to trans communities, which include but are not limited to: transgender, transsexual, transvestite, gender non-conforming, hijra and two-spirited.

## 2 Public Health Law and Policies

Public health laws allow the government and authorities to create rules and regulations with the intention of preventing ill health. Public health laws can be repressive and typically do not take into account the lived realities of stigma and discrimination faced by sex workers. They also position the police as enforcers of health and safety practices, which is inappropriate and counterproductive. These laws can exist in isolation or sometimes be integrated into criminal law.

Public health laws and policies used against sex work include the following.

- ▶ **Mandatory condom use programmes** (sometimes known as 100% Condom Use Programmes, or CUP) have been implemented both in countries where sex work is criminalised and in those where it is not. The 100% CUP was an initiative of the World Health Organization (WHO) and began in Thailand in 1991. Condom use programmes often feature agreements between public health officials and police authorities stating that the police will not raid brothels that comply

**...sex workers did not play an active role in the creation and development of the so-called 100% CUP, which decreased their autonomy and ignored substandard and abusive working conditions.**

with the condom use regulations. This has the result of increasing police power over sex workers and increased opportunity for corrupt police practices. Sex worker groups report that the majority of free condoms distributed by the programme are provided to brothel owners rather than to sex workers, increasing employers' control over worker health and safety. Owners then give the condoms to clients, further limiting the sex worker's control over their use once in private. Apart from receiving some basic HIV education, sex workers did not play an active role in the creation and development of the so-called 100%

CUP, which decreased their autonomy and ignored substandard and abusive working conditions. In some countries the programme also includes highly coercive STI and HIV testing of sex workers.

*"The 100% Condom Use policy needs to be repealed. Instead, implement programmes that support sexual autonomy and safe, fair working conditions."* (EMPOWER, Thailand)

*"As an organisation, we do not support the section requiring all reasonable steps to be taken to ensure safer sex is practiced. A number of sex workers do find this useful as they can tell their clients unsafe sex is against the law, and therefore ensure the client uses a condom. However, this section can also be used against sex workers and for this reason we do not support it. Again, sex workers should not be singled out, but normal public health along with occupational safety and health laws should be applied."* (NZPC, New Zealand)

- ▶ **Mandatory registration** with the police or health authorities is imposed on sex workers in some countries. This breaches sex workers' confidentiality and privacy and affects their opportunities for employment outside of sex work, education and access to justice, by maintaining a record of their work as sex workers in a stigmatised context. Sex workers are often reluctant to register because of the stigma and consequent discrimination surrounding sex work. Non-registration creates an illegal or unrecognised tier of workers and their access to health and other services is further limited.

**...coercive medical practices that violate sex workers' rights to be free from degrading treatment, as well as their rights to bodily integrity and privacy.**

- **Compulsory STI and HIV testing** are coercive medical practices that violate sex workers' rights to be free from degrading treatment, as well as their rights to bodily integrity and privacy. It can lead to increased requests from clients for unsafe sex practices based on the awareness that sex workers are required to be tested regularly.

Compulsory testing also perpetuates unfounded stereotypes of sex workers as transmitters of STIs and HIV. Even where testing is not compulsory by law, targets for testing are sometimes set by NGOs, making the testing seem compulsory in practice. This alienates sex workers from health services and can lead to highly coercive programming and poor standards of care. In some countries, HIV testing is mandatory upon arrest and there are provisions, including in some states in India, to segregate sex workers who are found to have STIs or HIV. In many countries police will

force sex workers to visit special hospitals where they have to pay for health checks. In some places, the health status of sex workers is registered in databases.

*"All compulsory testing is counterproductive and discriminating ... there should be better possibilities for voluntary, anonymous testing and honest information about risks, instead of fear mongering."* (Hydra, Germany)

- **Regulations around HIV non-disclosure, transmission or exposure** exist within both public health law and criminal law. Some countries use public health laws and regulations to force people living with HIV to disclose their HIV status to their sexual partners. Criminal sanctions may be used against those who do not comply with the disclosure regulations.

*"Police are not well qualified to undertake a role as the 'safe sex police' nor does current epidemiology support the need for this."* (Scarlet Alliance, Australia)

### **3 Labour and Employment Laws**

Many countries do not recognise sex work as labour and as such do not have specific labour or employment laws applicable to sex work. Where sex work is not recognised as labour it leaves sex workers without redress against employers that exploit them, and without the right to unionise. They have no access to compensation for work-related injuries, illness or death, and can be forced to work in physically unsafe and unhealthy work environments, often in a system where costs are too high for them to access health care.

Some countries do recognise sex work in labour law and have labour codes and occupational health and safety standards designed specifically for the sex industry. In these contexts, sex work may be recognised in areas such as tax law, industrial rights, insurance and local planning, and sex workers have the same associated rights, obligations and entitlements as other groups of workers. Some labour and employment laws around sex work apply a minimum age restriction of 18, mandatory registration requirements and zoning restrictions for both individual sex workers and sex work businesses.

**...employers routinely misclassify sex workers as independent contractors to avoid paying tax and welfare contributions...**

Where sex work is recognised in labour law it can still be difficult for sex workers to enforce or exercise their rights. For example, employers routinely misclassify sex workers as independent contractors to avoid paying tax and welfare contributions while still controlling sex workers' time and schedule as if they were employees. Even if sex workers are able to have themselves recognised as employees they may still be reluctant to bring forward labour claims for fear of retaliation and losing income.

*"We want labour law, not criminal law, used for sex work." (Myanmar Network of Sex Workers, Myanmar)*

*"Any changes to labour laws to include sex workers should not create an underclass of unregulated workers who do not benefit from rights, and should be structured in a way that benefits the largest number of sex workers." (Sex Workers Project at the Urban Justice Center, USA)*

#### **4 Immigration Laws**

Immigration laws regulate the rights of entry/exit and rights to reside, work and access health and social care services in a country. There are very few countries where work visas are available for sex work, even where sex work is recognised as a form of labour. This puts migrant and mobile sex workers at risk of exploitative working conditions given that they are often working without permission. If someone is known as, is suspected of, or admits to being a sex worker, some countries will enact travel bans forbidding entry onto their territory. Some countries

**This puts migrant and mobile sex workers at risk of exploitative working conditions...**

require an HIV test as a condition of entry, which impedes mobility and migration of HIV-positive sex workers who are denied entry to those countries based on their health status. Many countries have laws that permit immigration authorities to deport someone who is legally in a country if they are found to be working without a permit or have been convicted of a criminal offence, sometimes after serving a prison sentence. Anti-trafficking laws that often misclassify workers as having been trafficked also put migrant sex workers without relevant documentation at risk of deportation.

*"Sex workers legally enter through immigration but when they are arrested for sex work, they are arrested under trafficking laws. Most don't speak English and are not provided with a translator to tell them what is on the document. Their possessions are taken from them. They are also subject to drug testing." (PAMT and Asia Pacific Transgender Network, Malaysia)*

## 5 Tax Laws

Tax law is the body of law that regulates how the government collects money from economic transactions. In most countries, all income-generating activities are taxable. In some places where sex work is legal, sex workers need to register and pay tax.

Like other groups of workers and self-employed persons, some sex workers declare their full earnings to the government while others do not. Lack of legal recognition and criminalisation creates barriers to sex workers legally complying with tax laws. Sex workers who pay their own taxes as self-employed contractors while actually working for a third party may inadvertently alert governments to businesses that do not comply with tax laws, leading to possible retaliation from the business owner. In countries where sex work is recognised as work, some sex workers

are over-scrutinised by tax departments, which impacts on their confidentiality and privacy. Some sex workers are exposed to 'special' or excessive taxes by governments in their region.

*"Taxing systems [in Germany] single out sex work as work that is unique and workers that should be handled differently and subject to special laws, this should be changed. All separate tax models should be abolished."*

(Bufas, Germany)

**Lack of legal recognition and criminalisation creates barriers to sex workers legally complying with tax laws.**

## 6 Religious or Traditional Laws

Some countries regulate sex work through religious laws, which differ according to country and context. Religious laws are subject to varying interpretations and are not consistently applied. In some countries

religious laws are considered civil law and only apply to those who choose to follow the religion. Under certain religious laws, punishment for sex outside marriage and sex work-related offences includes imprisonment, state-sanctioned physical assault or even the death penalty. In some regions, gender transgressions (e.g. "dressing as the opposite sex") are forbidden in religious law and trans sex workers who violate this law are often imprisoned. Religious laws also often prohibit homosexual activity, which impacts on male sex workers who have sex with men and female trans sex workers who are perceived as men.

**Under certain religious laws, punishment for sex outside marriage and sex work-related offences includes imprisonment, state-sanctioned physical assault or even the death penalty.**

In countries that do not have religious laws, governments may still be influenced by religious doctrine and religious councils. For example, evangelical lobbies', Catholic clergies' and other fundamentalist religious groups' values around 'immoral or deviant' behaviour may significantly influence secular laws that, for example, prohibit contraception (including condom use) and sex outside of marriage, or limit sexual and reproductive health care.

## 7 International Laws

International laws can be both harmful and helpful to sex workers. Sex workers are increasingly using international human rights law to advocate for change, and human rights treaties can help support sex worker campaigns for law reform. The same treaties, however, can also cause, contribute to, or condone the human rights violations that sex workers experience.

One example is the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW can be useful to sex workers, for example, through using CEDAW ‘shadow reports’ as a platform to highlight human rights violations. On the other hand, Article 6 of CEDAW requires states to take “all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women.” An overly broad definition of exploitation can result in government support for oppressive and abusive anti-trafficking programmes that seriously harm sex workers. The ambiguity of CEDAW means it can be used to promote sex workers’ rights and freedoms but can also be used by governments to limit those same rights and freedoms.

**The ambiguity of CEDAW means it can be used to promote sex workers’ rights and freedoms but can also be used by governments to limit those same rights and freedoms.**

Other laws that impact on sex workers include:

- ▶ **Laws governing foreign assistance** – the *US Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act* contained within it an ‘Anti-Prostitution Pledge’ (APP). The APP requires public health groups that are not based in the US but receiving US funds to pledge their opposition to sex work as a condition of receiving funding for their HIV prevention work. The APP states that no funds may be used to provide assistance to any group or organisation that does not have a policy explicitly opposing ‘prostitution’. In June 2013, the Supreme Court ruled that the APP was unconstitutional on the grounds that it violated the right to freedom of speech for US organisations. However, all other recipients of US government HIV/AIDS funding – including international groups – remain subject to the requirement.

## Conclusion: Principles for a Legal Framework That Respects, Protects and Recognises Sex Workers' Human and Labour Rights

This paper highlights the many different legal frameworks that are used to sanction, oppress and otherwise regulate sex workers and sex work. Sex workers across the globe use different language in their fight against this oppression, using various terms to describe their current and desired legislative frameworks, and often focus on reforms that go beyond changing the criminal law. While the terms used to describe legislative frameworks may be nuanced, the calls for reform are underpinned by clearly shared objectives and principles that respect, protect and recognise sex workers' human and labour rights.

These principles have been informed by, and are reiterated in, the NSW Core Values that all members sign up to:

- 1 Acceptance of sex work as work.**
- 2 Opposition to all forms of criminalisation and other legal oppression of sex work (including sex workers, clients, third parties\*, families, partners and friends).**
- 3 Supporting self-organisation and self-determination of sex workers.**

\* The term 'third parties' includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.

### Legal recognition of sex work as work

Legal recognition of sex work is underpinned by the absence of a criminal framework and the establishment of a labour rights framework. NSW members call for sex work to be recognised as work with the same rights and protections that are available for other forms of work, including access to labour regulations and occupational health and safety standards. In addition, non-compliance by sex workers and employers with these regulations and standards should be recognised within its context of historical social and occupational stigma. Sex workers also need to be able to challenge prejudice or stigma suffered from service providers (public or private) and state authorities, via effective complaints procedures and anti-discrimination laws and policies.

Removal of oppressive legal regimes does not guarantee the absence of oppression itself. To counter this oppression, anti-discrimination laws need to recognise sex workers as a historically oppressed group.

**“Sex work would be treated as work, with the same protections offered to sex workers as those offered to other employees and independent contractors...”**

*“Sex work would be treated as work, with the same protections offered to sex workers as those offered to other employees and independent contractors. The same employment laws, the same occupational health and safety laws, the same tax laws, the same public health laws. Sex workers should be entitled to the same protection by the authorities (police, administrative*

*tribunals or regulatory agencies and the judiciary). The only exception should be a law that prevents discrimination based on occupation, but this should not only be sex workers included in this, but also others, such as the police, nuns, public servants, etc.” (NZPC, New Zealand)*

## **Removal of all forms of criminalisation and other legal oppression against sex work**

(including sex workers, clients, third parties, families, partners and friends).

Sex workers want full decriminalisation of sex work. Globally, it is agreed that any criminalisation or legal oppression is detrimental to sex workers and a non-punitive response is required.

## **Self-organisation and self-determination of sex workers**

Sex workers want to be able to associate, organise and unionise in order to achieve full labour rights. Sex workers also want to have agency over their own lives without external interference or labelling by the law or by wider society.

## **No laws that limit sex workers' rights and freedoms**

Sex workers do not want special or distinct laws that aim to 'protect' them from the public or from themselves, but rather demand that labour and industry standards are applied to sex work. This may mean regulations specific to sex work but these regulations must not limit sex workers' rights and freedoms.

*"We do not require special laws just withdrawal of punitive laws."*  
(BHESP, Kenya, Africa)

## **Programming and service development to be guided by sex workers**

Community-based organisations, health promotion, STI and HIV prevention programmes, and services designed for sex workers, are proven to be most effective when they are sex worker-led and informed by sex workers' realities.



**nswp**

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