

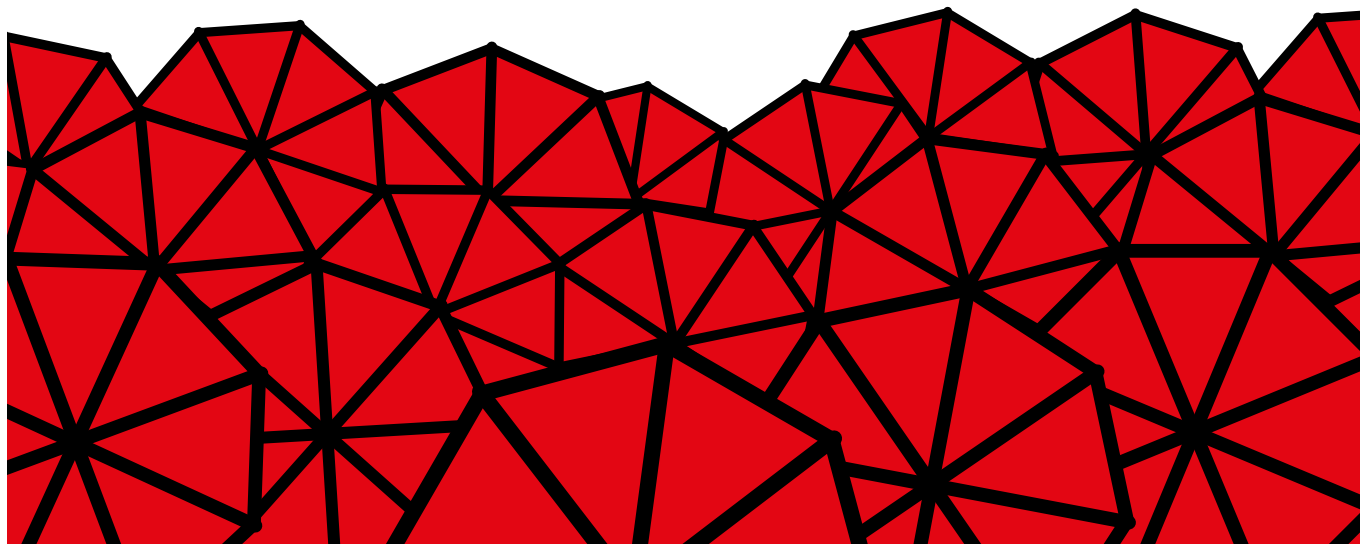


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Global Network of Sex Work Projects
Promoting Health and Human Rights

POLICY BRIEF

Sex Work and Gender Equality



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Introduction

This policy brief highlights the linkages between sex workers' rights and gender equality. It argues the women's movement must meaningfully include sex workers as partners. It advocates for a feminism that recognises sex workers' rights as human rights and highlights shared areas of work under an international human rights framework. Ultimately, there can be no gender equality if sex workers' human rights are not fully recognised and protected.

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Sex workers' rights activists, feminist allies and human rights advocates have long held that the agency of sex workers must be recognised and protected, that all aspects of sex work should be decriminalised, and that sex work should be recognised as work and regulated under existing labour frameworks. Given that the majority of sex workers are women and many come from LGBT communities, protecting sex workers'

rights is imperative to achieving gender equality as defined under The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹ Sex workers and their allies recognise that the discrimination and violence sex workers face are a direct result of the criminalisation of their work and clients, and that structural inequality, such as the feminisation of poverty, gender- and sexual identity-based discrimination, casualisation of labour, and restrictive migration laws, are responsible for reproducing harmful conditions within the sex industry.² These same factors fuel labour migration and human trafficking, which are distinct from each other and from sex work.

Fundamental feminists and others who oppose sex work often conflate these three phenomena, arguing that sex work is a form of gender-based violence that requires elimination. The Nordic Model (a legal framework widely supported by fundamental feminists and 'abolitionist' groups) employs this conflation. It is based on the baseless belief that by ending demand for sex work, governments can effectively reduce trafficking. This conflation is harmful to the rights of all groups involved, as it trivialises their circumstances and negates their ability to exercise consent and agency. It results in over-policing and harassment of sex workers and migrants and is detrimental to the identification of victims of human trafficking. It also ignores trafficking in other fields of labour and positions sex workers as victims without agency.

1 This Policy Brief utilises the CEDAW definition of gender equality. CEDAW, 2004, "The Convention on the Elimination of All Forms of Discrimination against Women" available at <http://www.refworld.org/docid/453882a7e0.html>, para. 8.

2 Amnesty International, 2016, "Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers," available at <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>, 5-6.

The result of such regulatory frameworks is not gender equality, but rather the reinforcement of heteronormative, homophobic, transphobic and misogynistic patriarchy.

The dominant argument that eliminating sex work is necessary for promoting gender equality ignores the voices of sex workers themselves and runs counter to reality: women and gender minorities are the groups most directly harmed by the suppression of sex work. When sex work is criminalised sex workers face harassment from the authorities, arbitrary arrests, evictions, surveillance and persecution. They cannot organise, work together or draw up contracts with third parties. They are unable to assert their rights or determine the conditions under which they work and are therefore significantly more vulnerable to violence, discrimination, and exploitation. The result of such regulatory frameworks is not gender equality, but rather the reinforcement of heteronormative,

homophobic, transphobic and misogynistic patriarchy. It is for this reason that sex workers' rights are central to the feminist and gender equality movements more broadly. Without advancing the rights and needs of those who are most vulnerable, and creating spaces for them to lead these processes, it is impossible to achieve real equality.

A Sex Worker-Inclusive Human Rights Framework for Gender Equality

The universal applicability of human rights, without discrimination, is enshrined in all human rights instruments. CEDAW specifically addresses gender discrimination. Under CEDAW states have an obligation to take measures to ensure women have equal rights, opportunity, and treatment by public and private actors.

Gender equality under CEDAW is defined as both de jure (legal) and de facto (substantive) equality.³ This means that states must take positive action to promote equality and also address laws, policies and institutions that discriminate against women. Action must not only be explicit but lead to substantive outcomes.⁴ This is of particular relevance to sex workers, as it can refer to 'gender-neutral' laws that criminalise behaviour predominantly engaged in by women, for example, purportedly gender-neutral immigration laws that discriminate against occupations dominated by women or labour laws that exclude female-dominated professions from protection.⁵

The Convention is understood to cover both sex- and gender-based discrimination, where gender is understood to include gender identity.⁶ Significantly, the CEDAW Committee takes an intersectional stance in its understanding of non-discrimination:

*Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. 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, education and sexual orientation and gender identity.*⁷

3 CEDAW, 2004, "General recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures," available at <http://www.refworld.org/docid/453882a7e0.html>, para. 8.

4 CEDAW, 2010, "General recommendation 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women," para. 9-10.

5 CEDAW, 2015, "General recommendation No. 33 on women's access to justice," available at <http://www.legal-tools.org/en/doc/643543/>, para. 51(i).

6 CEDAW, 2010, "General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women," para. 5.

7 Ibid, para. 18.

To this end, the CEDAW Committee has recognised women sex workers as a group of women who are disproportionately affected by gendered violence, discrimination and marginalisation, and have specifically expressed concern over states' obligations to protect women sex workers' human rights in the following areas:

- **Stigma:** the stigmatisation of women sex workers by the general public.⁸
- **Discrimination:** general discrimination against women sex workers, including evictions, public shaming and parental rights.⁹
- **Health:** discrimination in access to health services¹⁰ and the health implications of legal frameworks that criminalise third parties and clients.¹¹ In particular, the CEDAW Committee has asserted that "special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups" including women sex workers in HIV efforts.¹²
- **Unintended consequences of efforts to suppress trafficking:** harassment and criminalisation of sex workers in the course of anti-trafficking raids.¹³
- **Access to justice:** barriers that women sex workers face in accessing justice,¹⁴ particularly women sex workers who are victims of violence.¹⁵
- **Right to safe workplaces:** access to safe workplaces for women sex workers,¹⁶ the impact of criminalisation on the security and health of women sex workers, especially those who are indigenous,¹⁷ the effects of removing certain sex-work related employment categories on migrant women sex workers.¹⁸
- **Violence:** the CEDAW Committee has consistently condemned violence against sex workers by state and non-state actors,¹⁹ including the police,²⁰ and has recognised that violence is enabled by the criminalisation of sex work.²¹
- **Criminalisation:** the CEDAW Committee has called on states to end direct and indirect criminalisation of women sex workers.²² This includes administrative penalties and other measures used against sex workers,²³ as well as licensing schemes that impose penalties on sex workers who fail to register.²⁴
- **Migration:** the CEDAW Committee urges states to repeal direct and indirect discrimination against women in visa schemes, and to ensure occupations dominated by migrant women are granted labour protections. The Committee urges states to ensure that women migrant workers have the ability to access remedies when their rights are violated.²⁵

Combatting human rights abuses against sex workers has therefore been recognised as central to achieving gender equality and women's rights goals in international policy. The areas of concern above, as identified by the CEDAW Committee, are core human rights concerns that undermine gender equality and illustrate why sex workers' rights are integral to the goals of feminism. CEDAW's approach to gender equality, which emphasises intersectionality and gender diversity, as well as the Committee's recognition of sex workers' rights as women's rights, should therefore inform the efforts of the global women's movement in tackling gender-based discrimination, particularly by ensuring that sex workers are not left behind in the struggle for equality.

8 For example: CEDAW, 2016, "Concluding observations on the combined eighth and ninth periodic reports of Mongolia (CEDAW/C/MNG/CO/8-9)" para. 20e.

9 For example: CEDAW, 2016, "Concluding observations on the eighth periodic report of Bangladesh (CEDAW/C/BGD/CO/8)" para. 20, 21f.

10 CEDAW, 1999, "CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)" available at <http://www.refworld.org/docid/453882a73.html>, para. 6, 18.

11 CEDAW, 2016, "Concluding observations on the combined eighth and ninth periodic reports of Canada (CEDAW/C/CAN/CO/8-9)" para. 32, 33g.

12 CEDAW, 1999, "CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)," para. 6.

13 CEDAW, 2014, "Concluding observations on the combined fourth and fifth periodic reports of India (CEDAW/C/IND/CO/4-5)", para. 22.

14 CEDAW, 2015, "General recommendation No. 33 on women's access to justice," para. 49, 47a.

15 CEDAW, 1992, "CEDAW General Recommendation No. 19: Violence against women," available at <http://www.refworld.org/docid/52d920c54.html>, para. 15.

16 For example, CEDAW, 2013, "Concluding observations on the combined seventh and eighth periodic reports of Hungary (CEDAW/C/HUN/CO/7-8)" para. 23e.

17 CEDAW, 2016, "Concluding observations on the combined eighth and ninth periodic reports of Canada (CEDAW/C/CAN/CO/8-9)" para. 32, 33g.

18 CEDAW, 2016, "Concluding observations on the combined fourth and fifth periodic reports of Switzerland (CEDAW/C/CHE/CO/4-5)" para. 29f.

19 CEDAW, 1992, "CEDAW General Recommendation No. 19: Violence against women," para. 15, 24h.

20 For example, Cambodia, 2013, CEDAW/C/KHM/CO/4-5, para. 26, 27.

21 Russian Federation, 2015, CEDAW/C/RUS/CO/8, para. 25.

22 CEDAW, 2003, "CEDAW Background paper concerning article 6" para. 12, 14.

23 For example, CEDAW, 2015, "Concluding observations on the combined seventh and eighth periodic reports of Viet Nam (CEDAW/C/VNM/CO/7-8)" para. 21c.

24 CEDAW, 2015, "Concluding observations on the combined third to seventh periodic reports of Senegal (CEDAW/C/SEN/CO/3-7)" para. 22f.

25 CEDAW, 2008, "General recommendation No. 26 on women migrant workers," available at <http://www.refworld.org/docid/4a54bc33d.html>, para. 26.

Sex Work and Feminism

In a global consultation on the connection between sex work and feminism, NSWP members unanimously agreed that the women's movement is a valuable and natural ally to the sex worker movement, pointing to a long history of cooperation with women's and LGBT rights organisations. At the same time, they expressed concern that fundamental feminists (also known as abolitionist feminists) currently

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pose the single largest threat to sex workers. In the most extreme cases, NSWP members reported being attacked by fundamental feminist organisations or their members on a personal basis, with attacks on transgender sex workers being the most severe, demonstrating the connection between homophobia, transphobia and whorephobia within fundamental feminism.

Fundamental Feminism and Abolition

Fundamental feminism views female sexuality as intimately connected to male domination. Some fundamental feminists argue that all sexual relationships with men are inherently subordinating.²⁶ Fundamental feminists therefore do not view sex work as a legitimate form of labour because it embodies male domination over women. These fundamental feminist advocates call themselves 'abolitionists' in problematic historical reference to the anti-slavery movement. They seek to supposedly liberate women by 'abolishing prostitution'.²⁷ This view is based on a heteronormative understanding of sexuality and gender identity. It excludes and mis-genders transgender women and dismisses the existence of male sex workers entirely.²⁸

Fundamental feminists and their allies among the socially conservative right have been highly successful in marketing abolition as a gender equality strategy. Abolition conveniently eliminates a stigmatised and politically distasteful occupation in the guise of addressing the social and moral 'problem' of sex work. The 'Swedish' Model (named for its origin in the Sex Purchase Ban of 1999) is viewed as a legislative ideal, despite the fact that it disproportionately harms women by making them the targets of increased policing and state discrimination. According to the Swedish Sex Purchase Ban, the three main laws that criminalise sex work are those that criminalise third parties, the provision of rental apartments/rooms for the purposes of prostitution, and the purchase of sex.²⁹ Cumulatively, these laws ensure that sex workers face police harassment and evictions, with limited access to justice when their rights have been violated. They cannot work together or organise, obtain assistance in finding or screening clients, rent apartments, hire security guards, or even work from an apartment where they cohabit with a partner, as that partner could then be considered guilty of profiting as a third party. Sex workers are also unable to report their income or pay taxes, and cannot qualify for social insurance or receive benefits. Clients are also less likely to report exploitation if they witness it, and sex workers do not trust the authorities or the legal system.³⁰ Sex workers face great discrimination at the hands of state institutions, including arbitrary interference in the right to a private family life, as well as parental rights.³¹ Additionally, sex workers are forced to work underground and consequently struggle to negotiate safe sex practices and fair prices with clients.

26 Leeds Revolutionary Feminist Group, *Love Your Enemy? – Debate Between Heterosexual Feminism and Political Lesbianism*, (London: Onlywomen Press, Ltd., 1981).

27 International Committee on the Rights of Sex Workers in Europe, 2016, "Feminism Needs Sex Workers, Sex Workers Need Feminism: For A Sex Worker Inclusive Women's Rights Movement" available at <http://www.sexworkeurope.org/news/general-news/feminism-needs-sex-workers-sex-workers-need-feminism-sex-worker-inclusive-womens>, 6.

28 Tina Vasquez, "It's Time to End the Long History of Feminism Failing Transgender Women," *Bitch Media*, 20 May 2016, available at <https://www.bitchmedia.org/article/its-time-end-long-history-feminism-failing-transgender-women>.

29 For further information on the harms of criminalising third parties, see Global Network of Sex Work Projects, 2016, "Criminalisation of Third Parties and its Impact on Sex Workers' Human Rights" available at <http://www.nswp.org/resource/criminalisation-third-parties-and-its-impact-sex-workers-human-rights> and Global Network of Sex Work Projects, 2015, "Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers" available at: <http://www.nswp.org/resource/the-real-impact-the-swedish-model-sex-workers-advocacy-toolkit>.

30 Jay Levy and Pye Jakobsson. "Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers." *Criminology & Criminal Justice* 14, no. 5 (2014): 593-607.

31 Global Network of Sex Work Projects, 2015, "Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers"

The Nordic Model has not only greatly increased the difficulty and danger of doing sex work in Sweden, it has also failed to decrease the incidence of sex work.

The Nordic Model has not only greatly increased the difficulty and danger of doing sex work in Sweden, it has also failed to decrease the incidence of sex work. One thing that the Nordic Model has achieved with absolute certainty is an increase in popular support for criminalisation of selling sex in addition to third party and purchase laws.³² Nearly two decades of ‘abolition’ have not eliminated sex work but have instead yielded greater stigmatisation of sex workers, increasing the burden of discrimination on women (including transgender women) sex workers, and further marginalising transgender and male sex workers through deliberate erasure.

The Conflation of Sex Work and Trafficking^{33, 34}

Sex work, migration and human trafficking are often conflated by those seeking to abolish sex work and prevent migration for the purposes of sex work. One argument used to support the 1999 Sex Purchase Act in Sweden suggested that eliminating demand for sexual services would result in an end to demand for trafficking. This was supported by the U.S. Department of State’s Trafficking in Persons report, and has been the leading argument used by proponents of abolition ever since. This argument continues despite the fact that demand for cheap, low-skilled labour, restrictive immigration laws and global inequality are the main drivers of trafficking.

This baseless conflation has had disastrous results for sex workers, especially migrant sex workers, and has greatly increased their vulnerability to exploitation. It has been used by law enforcement to justify more restrictive immigration laws, increased surveillance and raids. In turn, stricter laws increase reliance on third parties, and fear of law enforcement often forces migrant sex workers to work clandestinely and in isolation. It is also harder for migrant sex workers to seek justice when their rights are violated, particularly if they are undocumented or lack the correct residence or work permits. This vulnerability is amplified in settings where selling sex is directly criminalised.

The conflation of sex work, migration and human trafficking also ignores the prime position of sex workers to detect and combat exploitation within their workplaces, and that sex worker-led organisations already have in place strategies to identify and respond to exploitation. The UN has taken the following position on the subject:

The trafficking and enforced sexual slavery of any person is abhorrent, and undoubtedly merits criminal prohibition. However, the conflation of consensual sex work and sex trafficking in such legislation leads to, at best, the implementation of inappropriate responses that fail to assist either of these groups in realizing their rights, and, at worst, to violence and oppression.³⁵

32 Susanne Dodillet and Petra Östergren. “The Swedish sex purchase act: Claimed success and documented effects.” In *Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague. 2011.

33 Global Network of Sex Work Projects, 2011, “Briefing Paper #3: Sex Work is not Trafficking,” available at <http://www.nswp.org/resource/sex-work-not-trafficking>.

34 TAMPEP, 2015, “Briefing Paper – TAMPEP on the situation of national and migrant sex workers in Europe today,” available at <http://www.nswp.org/resource/tampep-the-situation-national-and-migrant-sex-workers-europe-today>.

35 UN General Assembly, 2010, “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,” available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=109&t=9.

What Sex Worker-Inclusive Feminism Looks Like

“We demand the inclusion of sex workers in the feminist movement. Their inclusion brings invaluable insights, energy, diversity and experience of mobilisation to our movement and challenges our assumptions about gender, class and race. Sex workers were some of the world’s first feminists, and our community is diminished without them.”³⁶

FEMINISTS FOR SEX WORKERS

While the mainstream women’s movement has had mixed responses to sex work, intersectional progressive feminist organisations have been consistent in recognising sex workers’ rights as human rights.

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These organisations recognise the ways in which criminalisation and structural inequalities shape conditions within the sex industry, and they support the decriminalisation of sex work as the best way to ensure the self-determination of sex workers. They support the sex workers’ rights movement and recognise it as integral to the realisation of gender equality, including by meaningfully involving and empowering sex

workers as partners and experts.³⁷ In practice, this solidarity ranges from publicly supporting sex workers’ rights, centring sex workers as a key impacted group in advocacy work and promoting and sharing sex workers’ rights campaigns, to funding sex worker-led organisations, building the capacity of sex workers and their organisations, litigating in support of sex workers’ rights, involving sex workers as board members and creating space for sex workers’ voices to be heard in policy forums.

For instance, International Women’s Health Coalition (IWHC) and Mama Cash have served as conduits of information between sex workers’ rights organisations and their governments at UN missions. They have also made a point of engaging in advocacy work identified by sex workers’ rights organisations, rather than setting the agenda and framing discourse themselves. As a feminist funder, Mama Cash also supports sex workers’ rights by providing grants to sex worker-led organisations around the world. The Third Wave Fund, in the United States, also supports and acts in solidarity with organisations by and for young sex workers of colour in the United States.

Organisations such as the Association for Women in Development (AWID) have drawn attention to human rights abuses perpetrated against sex workers, standing in solidarity with sex workers on key issues and in defence of their rights and activism. As a significant international feminist network devoted to global feminism, AWID has substantially promoted and campaigned for the rights of sex workers, including in support of decriminalisation. They have included sex worker-led organisations as members, involved sex workers as board members and created space for sex worker leaders and issues in international forums.

³⁶ Feminists for Sex Workers, 2017, “Feminist Manifesto in Support of Sex Workers’ Rights,” available at <https://feministsforsexworkers.com/>.

³⁷ International Committee on the Rights of Sex Workers in Europe, 2016, “Feminism Needs Sex Workers, Sex Workers Need Feminism: For A Sex Worker Inclusive Women’s Rights Movement.”

The Indian Centre for Advocacy on Stigma and Marginalisation (CASAM) and CREA, have worked in partnership with sex workers to promote sex workers' rights and women's rights, including building coalitions with other like-minded multi-sectoral partners and sex worker-led organisations. In South Africa, the Women's Legal Centre partners with the national sex worker-led network Sisonke and Sex Workers Advocacy and Education Taskforce (SWEAT) to hire sex workers as paralegals, build the capacity of SWEAT to conduct legal advocacy, and take on sex worker legal cases. In addition, both of these organisations are steering committee members with Sonke Gender Justice in the Asijiki Coalition for the Decriminalisation of Sex Work, which has a number of other women's rights and reproductive justice organisations as members.

Around the world, feminist organisations that focus on women's access to sexual and reproductive health and rights have integrated sex workers' rights into their core advocacy work in recognition of the disproportionate impact of women's rights issues on sex workers. In

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addition to IWHC, this includes the Center for Health and Gender Equality, the Women's Global Network for Reproductive Rights (WGNRR) and the Abortion Rights Coalition of Canada. The integration of sex workers' rights also extends to feminists concerned with other women's rights issues such as migration and human trafficking. Notably, the Global Alliance Against Trafficking in Women has brought a uniquely feminist and post-colonial perspective to the international anti-trafficking debate, fighting the conflation of migration, sex work, and human trafficking, and looking at the role of global structural inequalities in creating vulnerability to exploitation.

In the consultation NSWP members also referred to their alliances with LGBT rights groups as successful collaborations. For example, in Kyrgyzstan, sex worker-led groups and LGBT organisations cooperated on submitting a shadow report to CEDAW and implementing CEDAW Committee recommendations at the community level.

Discrimination is Intersectional – Equality Should Be Too

“Sex work stigma is a result of patriarchal societal norms surrounding sexuality. These norms require people of all genders to subscribe to antiquated notions of gender and sexuality which require emotional and sexual labour to be provided for free (typically by women for men). As sex workers often offer sexual services AND emotional labour for payment, they are subject to treatment that undermines not only gender equality but also racial equality and class equality.”

SEX WORKER-LED ORGANISATION, USA

...indirect and direct criminalisation of sex work, coupled with sex work stigma, remain the greatest obstacles to sex workers' human rights.

A global consultation with NSWP members revealed that indirect and direct criminalisation of sex work, coupled with sex work stigma, remain the greatest obstacles to sex workers' human rights. Members highlighted that oppression in all its forms, whether on the basis of gender identity, sexual orientation, race, class/caste, migration status, ability, or health status, impacts gender equality and sex workers' rights. Oppression harms women (including transgender women) who are sex workers, which in turn makes gender equality impossible. If the oppression that sex workers face is not viewed as a result of broader structural inequality and discrimination, including gender inequality, and if sex workers' rights are not included as part of a broader gender equality strategy, the most marginalised sex workers and most marginalised women will continue to be left behind.

This section follows some of the areas of concern highlighted by the CEDAW Committee, drawing on examples given by NSWP members to illustrate that the problems sex workers face are detrimental to achieving gender equality.

"Stigma and discrimination violate the fundamental equality of all persons."

SEX WORKER-LED ORGANISATION, ZIMBABWE

Stigma, discrimination and the right to safe workplaces: In the Netherlands and Germany, despite the fact that sex work is legalised, women and transgender sex workers continue to be excluded from general progress towards gender equality. Stigma prevents sex workers from being perceived or treated as legitimate labourers entitled to the same respect and rights as the rest of the workforce. Stigma also prevents sex workers from finding employment in the formal labour market, should they wish to change occupation. Members reported that sex workers face great difficulty in breaking the cycle of poverty because of a lack of economic and social security, protection from violence, safe working environments, housing, and access to basic benefits and government programmes. Even in New Zealand, where sex work is decriminalised, sex workers still face employment and housing discrimination if their work history is discovered.

Violence and access to justice: Although violence against women is a central issue for the women's movement, this work often fails to address police violence, harassment and arbitrary arrest, which continue to be a problem for sex workers around the world. In Brazil, police corruption and the use of illegal arrests to obtain information from sex workers was reported. Specifically, as sex establishments are illegal and often necessitate bribery, police coerce sex workers into informing against the owners of establishments run by opposing mafias. In Malawi, the police use the threat of detention to rape sex workers. In Italy, the law allows police to forcibly relocate migrants and locally mobile sex workers to their country or city of origin. Women are the main targets of this type of policing, which legitimises the de facto limitation of their freedom of movement.

Health: Sex workers are often viewed as vectors of disease. However, in many countries condoms are used as evidence against sex workers by the authorities. This is a grave violation of women's right to health, particularly sexual and reproductive health. In Italy, sex workers have been subjected to mandatory HIV testing. In cases when sex workers were found to be HIV positive, the police have circulated their description and location in the media under the guise of protecting public safety. In India, government interventions with sex workers focus predominantly on HIV rather than on promoting sex workers' rights, and sex workers are never consulted about decisions that affect them. The sexual and reproductive health and rights of sex workers remain largely unfulfilled due to a focus on HIV to the exclusion of their broader health needs related to family planning, safe pregnancy and gender-based violence.³⁸ Not only does this mean that sex workers have less access to healthcare than women in general, but it ignores the fact that comprehensive healthcare and fulfilment of fundamental rights are necessary in ending the HIV epidemic.³⁹

Migration: Migrant sex workers, including internal migrants, are particularly vulnerable to exploitation and over-policing. In Peru, migrant sex workers coming to the capital from rural areas struggle to find

premises for work and are often charged exorbitant fees by third parties. In Australia, the authorities keep migrant Asian women under surveillance using racial profiling, often resulting in their detention and deportation for engaging in sex work. On the streets, migrant and indigenous sex workers are particularly targeted for harassment and arrest by law enforcement on the pretext of loitering and solicitation laws. These laws are also

deployed against transgender sex workers of colour in the United States, demonstrating how xenophobia, racism and transphobia converge with whorephobia to damage women's rights.

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Transphobia and Homophobia Harm Gender Equality

"The vast majority of non-cis female sex workers are members of the LGBT community; thus, addressing the criminalisation of and discrimination against all sex workers would significantly improve the lives of individuals who are marginalised in relation to white, cis-gender, heterosexual men in our country."

SEX WORKER-LED ORGANISATION, USA

"We are all human beings with the same rights, and we should be protected by the law. We are part of the community, and side-lining people creates stigma and discrimination."

SEX WORKER-LED ORGANISATION, SOUTH AFRICA

Transphobia and homophobia are structural forms of violence that are deeply rooted in patriarchy. The women's movement cannot achieve gender equality without working to dismantle these forms of oppression, and the first step in doing this is to centre the human rights of LGBT sex workers.

38 CHANGE, 2016, "All Women, All Rights, Sex Workers Included: U.S. Foreign Assistance and SRHR of Female Sex Workers," available at http://www.genderhealth.org/media_and_publications/publications/category/policy_briefs/.

39 Ibid.

In the United States the situation has become so dire that the deaths of transgender women of colour have been deemed a state of emergency.

Transgender sex workers face some of the highest levels of violence and exclusion around the world. This is exacerbated by legal frameworks that criminalise sex work and gender expression. Transgender people face discrimination in access to education, employment, housing, justice and appropriate healthcare, especially transgender-specific healthcare.⁴⁰ For many transgender people, sex work is a resilience strategy employed in response to this exclusion. In many countries, transgender sex workers are frequently undocumented migrants who have fled violence, family rejection and poverty.⁴¹ Between 2008 and 2016 there were nearly 1,000 known murders motivated by transphobic hate globally. 65% of these were perpetrated against sex workers.⁴² In Europe, 86% of transgender murders were perpetrated against sex workers, one-third of whom were migrants. 93% of those murders that were committed in Italy involved migrant sex workers.⁴³ In the United States the situation has become so dire that the deaths of transgender women of colour have been deemed a state of emergency.⁴⁴

Similarly, male sex workers are often completely erased by dominant feminist discourses on sex work. This view of sex work is a form of homophobia. Many male sex workers are perceived as minorities who can be conveniently ignored to fulfil the fundamental feminist narrative.⁴⁵ The marginalisation of male sex workers ignores the role of broader, structural homophobia as a barrier to healthcare, safety and rights for male sex workers, especially when combined with whorephobia. Bearing in mind that homosexuality and gender non-conforming behaviour are criminalised in over 70 countries, eight of which employ the death penalty, the marginalisation of LGBT sex workers is a grave violation of their human rights, and harms gender equality.⁴⁶ The following story illustrates how the denial of women's rights intersects with whorephobia, transphobia and homophobia to reinforce patriarchy and undermine gender equality.

"The gender equality situation in Zimbabwe is precarious, and women are seen as being inferior to men. Women face great difficulty in accessing basic healthcare, as facilities often have policies that discriminate against them, such as requiring women to bring their partner with them if they wish to seek treatment for an STI. Many sex workers avoid hospitals and treatment as a result. Women are also subjected to arbitrary arrests, especially relating to loitering laws. These same loitering laws are used to profile LGBT persons as well, and MSM [men who have sex with men] are additionally targeted and criminalised under sodomy laws. Due to this criminalisation, LGBT persons are denied the right to life, liberty, and security of person, and human rights defenders in this field have been known to disappear.

Male sex workers are subjected to degrading treatment at the hands of the police when they are arrested, as they are often tortured and forced to sleep in filthy cells. The police also require bribes in order to release anyone they have arrested, with the result that sex workers are often denied the chance to appear before a magistrate and have a fair hearing. Migrant sex workers are also an especially vulnerable group, as the authorities subject them to rape, torture, and deportation when they are discovered, and other sex workers bully and ostracise them.

SEX WORKER-LED ORGANISATION, ZIMBABWE

40 Global Network of Sex Work Projects, 2014, "Briefing Paper #9: The Needs and Rights of Trans Sex Workers," available at <http://www.nswp.org/resource/briefing-paper-the-needs-and-rights-trans-sex-workers>.

41 Ibid.

42 Carsten Balzer / Carla LaGata and Lukas Berredo, 2016, "Trans Murder Monitoring Annual Report 2016," available at <http://transrespect.org/wp-content/uploads/2016/11/TVT-PS-Vol14-2016.pdf>.

43 Ibid.

44 Vasquez, "It's Time to End the Long History of Feminism Failing Transgender Women."

45 Global Network of Sex Work Projects, 2014, "Briefing Paper #8: The Needs and Rights of Male Sex Workers," available at <http://www.nswp.org/resource/briefing-paper-the-needs-and-rights-male-sex-workers>.

46 Ibid.

The Way Forward

The CEDAW Committee has identified sex workers as a key affected group of women. It has highlighted several areas of concern, ranging from labour and health rights to gender-based violence and discrimination, all of which harm the equality and self-determination of sex workers who are women. These issues are therefore necessarily

shared areas of work, making the meaningful inclusion of sex workers imperative to the full realisation of women's rights goals.

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In the consultation NSWP members emphasised that the inclusion of sex workers would greatly strengthen the women's movement, enabling a more intersectional and innovative approach to addressing oppression. The sex worker movement is emphatically community-based; a valuable model of grassroots empowerment encompassing diverse backgrounds and skill levels

and demonstrating what activism founded on the politics of inclusion really looks like. Furthermore, the sex worker movement represents all the ideals that feminism stands for, such as freedom, self-determination and autonomy. It is propelled by the courage and 'puta politics' of sex worker activists, who are fearless about their work, their sexualities and their politics. Thus, when the women's movement includes sex workers, it strengthens its own fight by protecting sexual self-determination and freedom of occupational choice for people of all genders.

"The natural acceptance of diversity is a very precious element of the sex worker movement that the feminist movement needs to take in."

SEX WORKER ORGANISATION, NETHERLANDS

"There is no movement that does not have intersections with sex workers. We are passionate about housing, poverty, income equality, ending discrimination and stigma, peer social support, safe drug use and harm minimisation, healthcare in all its forms, indigenous rights, migrant and refugee rights, freedom to work, freedom of movement, body positivity, sex positivity, labour rights, and de-stigmatising sex work for the health, wellbeing and safety of sex workers. We aim to show the public the connections between sex workers and these issues that are common to many. It's not only advocates, but the public who have a stake."

SEX WORKER-LED ORGANISATION, NEW ZEALAND

At the same time, the sex workers' rights movement needs the support and expertise of the women's movement. While sex workers have long been able to independently organise and lobby for their rights, NSWP members emphasised that feminists can influence powerful players in the higher-level spaces that they occupy. This would not only benefit sex workers, but also the women's movement more broadly by creating policy space for leveraging gender equality. Members noted that the women's movement has been very successful in building multi-sectoral alliances, as well as making significant legal and policy progress. As a result, the movement has valuable knowledge and resources that could support the sex worker movement and would advance sex workers' human rights.

“We keep reproducing inequality because we are afraid to lose what little ground we have gained. But we can’t have women’s rights if sex workers don’t have rights, because sex workers are women, too.”

SEX WORKER-LED ORGANISATION, BRAZIL

NSWP members reiterated that the women’s movement must push back against fundamental feminists and fight for inclusive feminism

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that promotes self-determination. Members suggested that the women’s movement consider building a coalition of like-minded organisations to support sex workers and fight the conflation of sex work and trafficking. Members also called on the women’s movement to recognise sex work as work and as a resilience strategy employed by marginalised communities – a tool for fighting oppression, particularly gender-based discrimination (including transphobia), but also homophobia, racism, ableism and poverty.

“When feminists oppose sex work, they deny the emancipation of sex workers as women’s emancipation. Modern society is still a patriarchy – women’s labour in the domestic sphere is unrecognised and unpaid, many women are financially dependent upon their husbands, and some still need to ask men for permission in order to move and act freely. At the same time, in a capitalist economy, workers are bound to employers – they cannot stop working when they wish, and the terms of their labour are dictated by their employers. Throughout their lives, women experience varying forms of dependency, but sex workers are autonomous – they experience more freedom than women in other spheres of this patriarchal society.

Thus, when feminists do not recognise this, they harm women. First, they deny their emancipation, and second, they do not recognise their self-determination. In this case, they also do not recognise the mechanism of emancipation for sex workers. They discriminate against a large group of women who have the courage to travel for work, to abandon their home country in search of a better life; women who want to be free from patriarchy and men, society, and obligations. If sex work is their only means to do this, feminists cannot refuse to recognise them, feminists must not deny that they are courageous and empowered women. To do this is blind, and not only is it whorephobic but also transphobic and racist.”

SEX WORKER, ITALY

Conclusion: Envisioning Successful Partnerships for Gender Equality

Discrimination and structural inequality negatively impact sex workers' human rights and govern their experiences within the sex industry.⁴⁷ At the same time, studies show that wherever sex workers have been able to determine their working conditions, they have been able to improve them.⁴⁸

Accordingly, a feminism that supports the human rights of sex workers begins by accepting the following:⁴⁹

- Human rights are universal, and sex workers' rights are human rights.
- Sex workers must be at the centre of developing sex work policies and programmes.
- A human rights-based approach to sex work advances gender equality.

Based on the recommendations advanced by NSWP, these foundational principles should guide collaborative work in the following areas to advance sex workers' rights and gender equality: the right to associate and organise, the right to be protected by the law, the right to be free from violence, the right to be free from discrimination, the right to privacy and freedom from arbitrary interference, the right to health,

the right to move and migrate, and the right to work and possess free choice of employment.⁵⁰

Eliminating gender-based discrimination as described by CEDAW should serve as a launching point for advocacy.

When sex workers and feminists unite, both movements stand to win. The physical, emotional and sexual violence that are systematically perpetrated against sex workers are attacks on gender equality that undermine the principle of

non-discrimination. The women's movement cannot afford to reproduce the same inequalities it was meant to fight; there can be no gender equality without equality for sex workers.

Sex workers have a long history of fighting for emancipation and inclusion, ideals that the women's movement was founded on. Both movements have a community-based ethos that supports agency and self-determination, and opposes sexism, misogyny, gender-based violence, the feminisation of poverty, and the casualisation of labour.⁵¹ Intersectional feminism has come to acknowledge the role of racism, class-based discrimination, ableism, homophobia, and transphobia in gendered forms of oppression. The sex worker movement therefore calls on feminists to see these problems as part and parcel of structural inequality and to acknowledge that the criminalisation of sex work exacerbates them and undermines gender equality.

The only way forward is to commit to changing this together.

The women's movement cannot afford to reproduce the same inequalities it was meant to fight; there can be no gender equality without equality for sex workers.

47 Amnesty International, 2016, "Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers."

48 UNAIDS, 2012, "Guidance Note on HIV and Sex Work" available at http://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work.

49 Global Network of Sex Work Projects, 2013, "NSWP Consensus Statement on Sex Work, Human Rights, and the Law" available at <http://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law>.

50 Ibid.

51 International Committee on the Rights of Sex Workers in Europe, 2016, "Feminism Needs Sex Workers, Sex Workers Need Feminism: For A Sex Worker Inclusive Women's Rights Movement," 12-19.

Recommendations for Policymakers

Legal and policy reform should follow a tripartite approach, as set out in the obligation to respect, protect, and fulfil the right to non-discrimination. Accordingly, policymakers must repeal all discriminatory measures, instigate protective measures, and implement policies and programmes that promote substantive equality. Specific recommendations are that policymakers:

- Remove all legislation that directly and indirectly criminalises sex work, and recognise sex work as an occupation that is given the same protection as other occupations under international labour rights conventions.
- Oppose the conflation of trafficking, sex work and migration, and promote the rights of migrants to safe, legal channels of migration and decent work as defined by the International Labour Organization.
- Ensure that national legislation prohibits discrimination in all forms. Implement affirmative action measures to achieve substantive equality across the spectrum of civil, political, economic, social and cultural rights, paying special attention to key populations among women and LGBT people, as they have traditionally experienced higher levels of discrimination. Recall that gender equality is intersectional, and therefore requires the dismantling of discrimination in all spheres.

Recommendations for the Women's Movement

- Recognise sex workers as experts in their own lives and as an integral part of the gender equality struggle. Meaningfully include them as equal partners. Let sex workers speak for themselves and listen to them.
- Utilise an inclusive and intersectional understanding of gender and gender equality that recognises diversity in needs and experiences. Combat all forms of oppression that intersect with gender identity and sexual orientation, and recognise that they are also barriers to gender equality.
- Fight for feminism that is sex worker-inclusive and transgender-inclusive, and actively counter whorephobia and transphobia in solidarity with sex workers.
- Recognise that women sex workers, including transgender and non-gender binary sex workers, are most affected by discrimination, gender-based violence and barriers to accessing justice and comprehensive health services; ensure that advocacy and services include them.
- Empower sex worker groups through capacity-building. Share knowledge and resources with sex worker-led organisations, facilitate their access to key advocacy spaces and foster the exchange of information and skills.
- Build alliances with likeminded multi-sector actors who support the use of rights-based programming. Ensure horizontal (across disciplines) as well as vertical (between community-based organisations, politicians, and international networks/organisations) cooperation.
- Hold governments accountable using the human rights treaties that they have ratified, particularly CEDAW, recalling that non-discrimination is a legally binding international human rights norm.

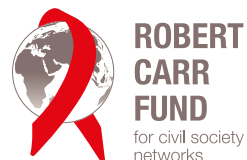
This policy brief is the result of desk research and gathering case studies from NSWP members.



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