

CEDAW



The Smart Sex Worker's Guide to the Convention on the Elimination of All Forms of Discrimination Against Women



Global Network of Sex Work Projects
Promoting Health and Human Rights

SEX WORK IS WORK: ONLY RIGHTS CAN STOP THE WRONGS

The Global Network of Sex Work Projects (NSWP) exists to uphold the voice of sex workers globally and connect regional networks advocating for the rights of female, male and transgender sex workers. It advocates for rights-based health and social services, freedom from abuse and discrimination and self-determination for sex workers.

NSWP works with thematic experts to provide essential information in an accessible format.

The term 'sex workers' reflects the immense diversity within the sex worker community including but not limited to: female, male and transgender sex workers; lesbian, gay and bi-sexual sex workers; male sex workers who identify as heterosexual; sex workers living with HIV and other diseases; sex workers who use drugs; young adult sex workers (between the ages of 18 and 29 years old); documented and undocumented migrant sex workers, as well as and displaced persons and refugees; sex workers living in both urban and rural areas; disabled sex workers; and sex workers who have been detained or incarcerated.

NSWP is part of Bridging the Gaps – health and rights for key populations. This unique programme addresses the common challenges faced by sex workers, people who use drugs and lesbian, gay, bisexual and transgender people in terms of human right violations and accessing much needed HIV and health services. Go to www.hivgaps.org for more information.

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Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is one of the world’s major human rights treaties. It is often described as “an international bill of rights for women” and its focus is on achieving gender equality.¹ CEDAW, therefore, creates a number of different obligations that States must comply with in order to combat discrimination against women. While people of all genders sell sex, the majority of sex workers are women and sex work is often regarded in the arenas of law and policy as a ‘women’s rights issue’. This makes CEDAW an important human rights treaty for sex workers’ rights activists; the aim of this Smart Guide is to explore how the Convention can be used to advance the rights of women sex workers.

CEDAW was drafted in the 1970s and it uses language that reflects a binary understanding of gender, with the text referring only to ‘women and men’. Nevertheless, one of the goals of CEDAW is to challenge gender stereotypes and to change ideas of what constitutes masculinity and femininity. It is clear that the text of CEDAW applies equally to transgender women, intersex persons and cisgender women, and any reference to ‘woman’ or ‘women’ in this Smart Guide is inclusive of *all* women. Indeed, the CEDAW Committee (the body responsible for monitoring how the Convention is applied by States) has expressed concern for transgender and intersex persons in some of its Concluding Observations, which shows that the current interpretation of the Convention takes account of gender diversity.² It is also important to note that while the Convention is focused on discrimination experienced by women on the grounds of gender, there is an understanding by the CEDAW Committee that women experience disadvantage and discrimination via multiple intersecting identities like “race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity”.³

1 “Overview of the Convention”, UN Women

2 CEDAW Committee, 2016, Concluding observations on Argentina, para 20(e)

3 CEDAW Committee, 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 18

This Smart Guide is the result of collaboration between NSWP and the International Women's Rights Action Watch Asia Pacific (IWRAP-AP). IWRAP-AP is an international women's rights organisation that aims to see human rights actualised in the lives of women. The collaboration between IWRAP-AP and sex workers' rights groups began in 2013 when the Sex workers' rights Advocacy Network for Central and Eastern Europe and Central Asia (SWAN) began working with IWRAP-AP to develop a CEDAW based advocacy strategy. This collaboration led to a Global Expert Group Meeting on the Rights of Sex Workers under CEDAW that was held in Bangkok in July 2016. This meeting brought together women's rights groups and NSWP members from all five regions and led to IWRAP-AP and NSWP developing two publications – the *Framework on Rights of Sex Workers under CEDAW*⁴ and the *Shadow Report Guidelines on CEDAW and Rights of Sex Workers*.⁵

This Smart Guide aims to summarise these important documents and provide NSWP members with increased understanding of CEDAW and its potential for use in advocacy work. The Smart Guide has four sections. First, a brief introduction is provided, both to the actual text of CEDAW and the role of the CEDAW Committee. The second section explores why CEDAW is important for the sex workers' rights movement and why sex worker activists may want to engage with it. Part three provides practical information on how sex workers' rights activists can participate in the CEDAW review processes. The final section provides detailed information on the different Articles of CEDAW and how sex worker activists can document the rights violations that women sex workers face using the Convention.

4 IWRAP-AP and NSWP, 2018, Framework on the Rights of Sex Workers and CEDAW.

5 IWRAP-AP and NSWP, 2018, Shadow Report Guidelines on CEDAW and Rights of Sex Workers.

1 What is CEDAW

The text of CEDAW was drafted in the late 1970s and was adopted by the General Assembly of the UN in 1979 with 130 votes in favour, zero votes against, and 10 abstentions. International treaties however, only officially enter into force after a certain number of States sign the treaty and accept that they are bound by it (this is called ratification). CEDAW, therefore, entered into force on 3 September 1981 after it had been formally ratified by twenty States. By ratifying CEDAW States are legally bound to implement it and they agree to “take all appropriate measures... so that women can enjoy all their human rights and fundamental freedoms.”⁶ The vast majority of countries in the world have ratified CEDAW (currently 189). There are only six UN member States that have not signed and/or ratified the Convention: Iran, Palau, Somalia, Sudan, Tonga and the United States of America. Several States have ratified CEDAW with reservations on certain articles, which means they agree to be bound by the Convention, except for those articles.⁷

There are 30 articles in CEDAW. Articles 1 to 5 set out general obligations on the part of States to address women’s inequality and implement the Convention. Article 6 creates an obligation on behalf of States to address the trafficking of women and “exploitation of prostitution of women”. Articles 7 to 16 set out a range of specific rights that women should enjoy *without discrimination* and that the State should guarantee, such as the right to work (Article 11), the right to participate in public and political life (Article 7), and the right to access health care (Article 12). The remainder of the Convention deals with administrative issues, such as the role of the CEDAW Committee and the procedures used to measure States’ progress in implementing the Convention.

6 “Overview of the Convention”, UN Women.

7 See list of the States that have signed and ratified CEDAW as well as those that have issued reservations at “[Depositary: Chapter IV Section 8 – CEDAW](#)”, United Nations Treaty Collection

The CEDAW Committee is a key part of the Convention structure and an important institution for activists to be aware of, as it is responsible for monitoring the progress that States make in implementing the Convention. The Committee is made up of 23 experts on women's rights. They are elected by the States that have ratified the Convention and each state is able to nominate one candidate when elections take place. When the Committee is being elected the States must make sure that there is a fair and equal spread of members from different geographical regions and also that "different forms of civilization" and different legal systems are represented.⁸ Members of the CEDAW Committee serve a term of four years and in 2018 96% of its members were women.⁹

The CEDAW Committee has a range of powers. All of the States that have ratified the Convention have to submit regular reports to the Committee to update them on how they are implementing CEDAW in their countries. The Committee then reviews these reports during public hearings and issues *Concluding Observations* to the State on how it can better implement the Convention. The review process is one of the key ways in which activists can influence the national observations coming from the CEDAW Committee. The Committee is also able to make General Recommendations, which cover particular themes or articles in the Convention and these are directed to all States that have ratified the Convention. For example, General Recommendation 32¹⁰ provides guidance to States on the gender-related dimensions of asylum, refugee, nationality and statelessness, while General Recommendation 34¹¹ addresses the rights of women living in rural areas. A complete list of the General Recommendations issued by the CEDAW Committee can be found on the UN website.¹²

8 Convention on the Elimination of Discrimination Against Women (CEDAW), Article 23.

9 "Committee on the Elimination of Discrimination Against Women: Membership", United Nations Human Rights: Office of the High Commissioner.

10 CEDAW Committee, 2014, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women

11 CEDAW Committee, 2016, General recommendation No. 34 on the rights of rural women

12 "CEDAW General Recommendations", United Nations Human Rights: Office of the High Commissioner.

There is also an Optional Protocol¹³ to the Convention, which gives the CEDAW Committee two additional forms of power. If a State has ratified the Optional Protocol then individuals or groups from that country can submit complaints to the Committee arguing that their rights guaranteed under the Convention have been violated. The Committee considers these complaints, examines the evidence and then reaches a conclusion as to whether or not the State has violated the Convention. If the CEDAW Committee finds that the State has breached the Convention, it will provide the State with a list of (non-legally binding) recommendations for addressing the rights violations.¹⁴ The Committee has a follow-up procedure to monitor the State's compliance with their decisions, and will enter into dialogue with the State in order to satisfactorily resolve the complaint. The examination of individual complaints represents an opportunity for the Committee to develop their interpretation of the Convention and further clarify the extent of State obligations.

Finally, the Optional Protocol allows the Committee to initiate inquiries into situations of grave or systematic violation of women's rights. For example, the Committee has conducted inquiries into the ban on abortion for women in Northern Ireland¹⁵ and into laws that severely limit access for women to sexual and reproductive health care in Manila in the Philippines.¹⁶ It is important to note that only 109 countries have currently ratified the Optional Protocol – significantly fewer than the total number of States ratifying the Convention itself.¹⁷

13 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

14 United Nations Human Rights: Office of the High Commissioner, Individual Complaints Procedures under the United Nations Human Rights Treaties, 11

15 CEDAW Committee, 2018, Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

16 CEDAW Committee, 2015, Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

17 Details of the countries that have ratified the Optional Protocol can be found at <http://indicators.ohchr.org/>, last accessed 13 June 2018.

2 Why is CEDAW important for the sex workers' rights movement

Sex work, and the rights of women sex workers as a group, are not specifically addressed in CEDAW. Article 6 of the Convention is, however, often discussed in debates about sex work. Article 6 states: “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” This Article has two components. The first addresses the trafficking of women, *for all purposes*, which covers trafficking both within and outside of the sex industry. When the CEDAW Committee has addressed trafficking specifically for the purposes of sexual exploitation it is often

argued that an ‘appropriate measure’ States should take is to *reduce the demand for sex work*, which will in turn reduce trafficking.¹⁸ The second component of Article 6 uses the phrase “exploitation of prostitution of women” – an ambiguous statement open to interpretation. The record of discussions that took place when CEDAW was drafted show that the term “exploitation of prostitution” was chosen deliberately to distinguish it from a duty to suppress *all* prostitution.¹⁹ The practices intended to fall under the term “exploitation of prostitution” however, remain unclear, partly because the term ‘exploitation’ has no agreed definition in international law.²⁰

18 E.g.: CEDAW Committee, 2016, Concluding observations on the United Republic of Tanzania, para 25 (h); CEDAW Committee, 2015, Concluding observations on Malawi, para 25 (g); CEDAW Committee, 2010, Concluding observations on Botswana, para 28; CEDAW Committee, 2009, Concluding observations on Japan, para 40.

19 Janie Chuang, “Article 6” in CEDAW Commentary, eds. Freeman et al. (Oxford: Oxford University Press, 2011), 176.

20 United Nations Office on Drugs and Crime, 2015, Issue Paper: the concept of exploitation in the trafficking in persons protocol.

Article 6 therefore, presents some challenges for women sex workers. Firstly, the CEDAW Committee's recommendation that 'end demand' policies be implemented to address trafficking is problematic. We know that these cause harm to sex workers, including putting their livelihoods at risk, increasing the stigma they face, and intensifying police power over them.²¹ Secondly, there is no consensus as to the definition of 'exploitation of prostitution' and fundamentalist feminists and abolitionist groups frequently argue that *all* sex work is exploitative. This is deeply problematic as it prevents careful analysis of the working conditions in which sex work takes place, which is required to identify situations that may amount to exploitation. Given that sex work is often part of the informal economy this makes women sex workers, especially migrant women sex workers, particularly vulnerable to labour exploitation. It is crucial therefore, to challenge the argument that all sex work violates Article 6 of CEDAW because this distracts from an examination of how the conditions women sell sex in impact their health, human rights and wellbeing. An alternative argument made by fundamentalist feminists and abolitionist groups is that all forms of third party relationships between women sex workers and managers constitute exploitation and are therefore contrary to the provisions of CEDAW.²² This too is problematic as we know that women sex workers are capable of entering into business relationships with a range of third parties for many reasons and these are not inherently exploitative. Suggesting that all relationships

between women sex workers and third parties are exploitative fails to take account of the diversity of these relationships.²³

Given the vagueness of language used in Article 6 of CEDAW and the potential for the Convention to be used to advance fundamental feminist and abolitionist groups' perspectives on sex work it is essential for sex workers and sex workers' rights activists to engage with the Convention and **shape the CEDAW Committee's recommendations on sex work**. Not only can sex workers' rights activists challenge the harmful interpretations of Article 6 that are proposed by fundamentalist feminists and abolitionist groups but they can also play an active role in **claiming CEDAW as a human rights treaty that protects women sex workers** rather than one that it used to support harmful policies and interventions based on fundamentalist feminists and abolitionist groups' ideology. Activists can do this by documenting the human rights violations experienced by women sex workers and explaining how these violate the guarantees set out in CEDAW.

21 Global Alliance Against Traffic in Women (GAATW), 2011, Moving Beyond 'Supply and Demand' Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking, 33–34.

22 Coalition for the Abolition of Prostitution (CAP International), 2016, "Prostitution under international human rights law: An analysis of states' obligations and the best ways to implement them", 11–12.

23 E.g.: Chris Bruckert and Tuulia Law, 2013, Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry.

International human rights law is a living instrument, constantly evolving as societies grow and change. As such there is nothing unusual in women sex workers demanding the interpretation of CEDAW evolve to ensure the recognition of their rights and protection under the treaty. We know that women sex workers experience harms based on their sex working status that human rights law – and CEDAW in particular – has the power to address. It is useful to remember that since CEDAW entered into force in 1981, the Committee has engaged with the rights of a range of different groups that may not necessarily have been considered by those who originally drafted the Convention. These groups include working migrant women; women living with HIV; women involved with the criminal justice system; lesbian women; and transgender women. It is important for women sex workers to be aware of this – it demonstrates that the CEDAW Committee can develop its interpretation of the Convention to include the rights of specific groups who face marginalisation.

While the CEDAW Committee does not yet have a clear position on sex work as a general issue, it has already recognised the duty of States to address violence against women sex workers and has consistently recommended that women sex workers be decriminalised. This position was most recently affirmed in the CEDAW Committee’s General Recommendation 35 on gender-based violence against women, which will be discussed in more detail below. The CEDAW Committee has noted that the continued criminalisation of sex work has had a disproportionate, negative impact on women sex workers.²⁴ In observations regarding Hungary the Committee has stated it should “[a]dopt measures aimed at preventing discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed at national and local levels.”²⁵ These examples show that the CEDAW Committee shares the concerns of the sex workers’ rights movement and seeks to promote the rights of women sex workers and prevent instances of abuse and exploitation in the sex industry. This is especially important given the push from fundamental feminists and abolitionist groups who argue that eradication of the sex industry is the path to gender equality.

24 E.g.: CEDAW Committee, 2006, Concluding Observations on China, para. 56; CEDAW Committee, 2010, Concluding Observations on Fiji, paras 24– 25.

25 CEDAW Committee, 2013, Concluding Observations on Hungary, para. 23(e).

3 How to engage with CEDAW and the review process

As discussed above, this Smart Guide has two main aims. First, to provide sex workers' rights activists with information on how CEDAW can be used as part of their advocacy efforts in their own local, national, or regional contexts. In countries that have ratified CEDAW (a global majority), activists can refer to the Convention to challenge the State on its failure to protect the rights of women sex workers, though the efficacy of referencing this strategy may vary from country to country.

The second aim is to assist activists in engaging with the CEDAW review process at the UN, which is set out in Article 18 of the Convention. State parties are obliged to submit a report on the progress made in implementing the Convention one year after it has been ratified and thereafter every four years. The ongoing four yearly reports are called **periodic reports**. After the State submits its periodic report the Committee holds a pre-session working group where it considers the report and prepares a list of questions for the state party to respond to in writing before the formal review meeting. Sex workers' rights groups can engage through the preparation and submission of **shadow reports** to the Committee either at the pre-session working group meeting or at the review meeting itself. See diagram below for details of the complete review procedure.

Shadow reports are written documents which provide the Committee with country-specific information on how the state is implementing (or failing to implement) the Convention. They are used to highlight areas where the State is failing in its obligations under the Convention and include recommendations for laws, policies and practices that need to be changed. Shadow reports prepared by sex worker-led groups may detail the many ways in which the rights of women sex workers are infringed upon in their country, why this is in breach of CEDAW, and crucially, what must be done to address these rights violations. Shadow reports have previously been submitted by sex workers' rights groups and samples can be found on the NSWSP website.²⁶ The shadow reports must be submitted three weeks before the session at which they are to be considered. It is recommended that sex worker-led groups submit their shadow reports for the review session itself rather than the pre-session working group. This means that the shadow report can respond critically to the State's periodic report and advise the committee of any misleading content, or any gaps in the information provided.

²⁶ E.g.: Silver Rose, 2015, [Shadow report](#); Empower, 2017, [Shadow report](#).

The Reporting Cycle Under the Human Rights Treaties

The cycle begins one year after entry into force of the treaty (two years for CRC and ICESCR) and repeats according to the periodicity: every two years for ICERD, every four years for ICCPR, CEDAW and CAT, and every five years for ICESCR, CRC and ICRMW.

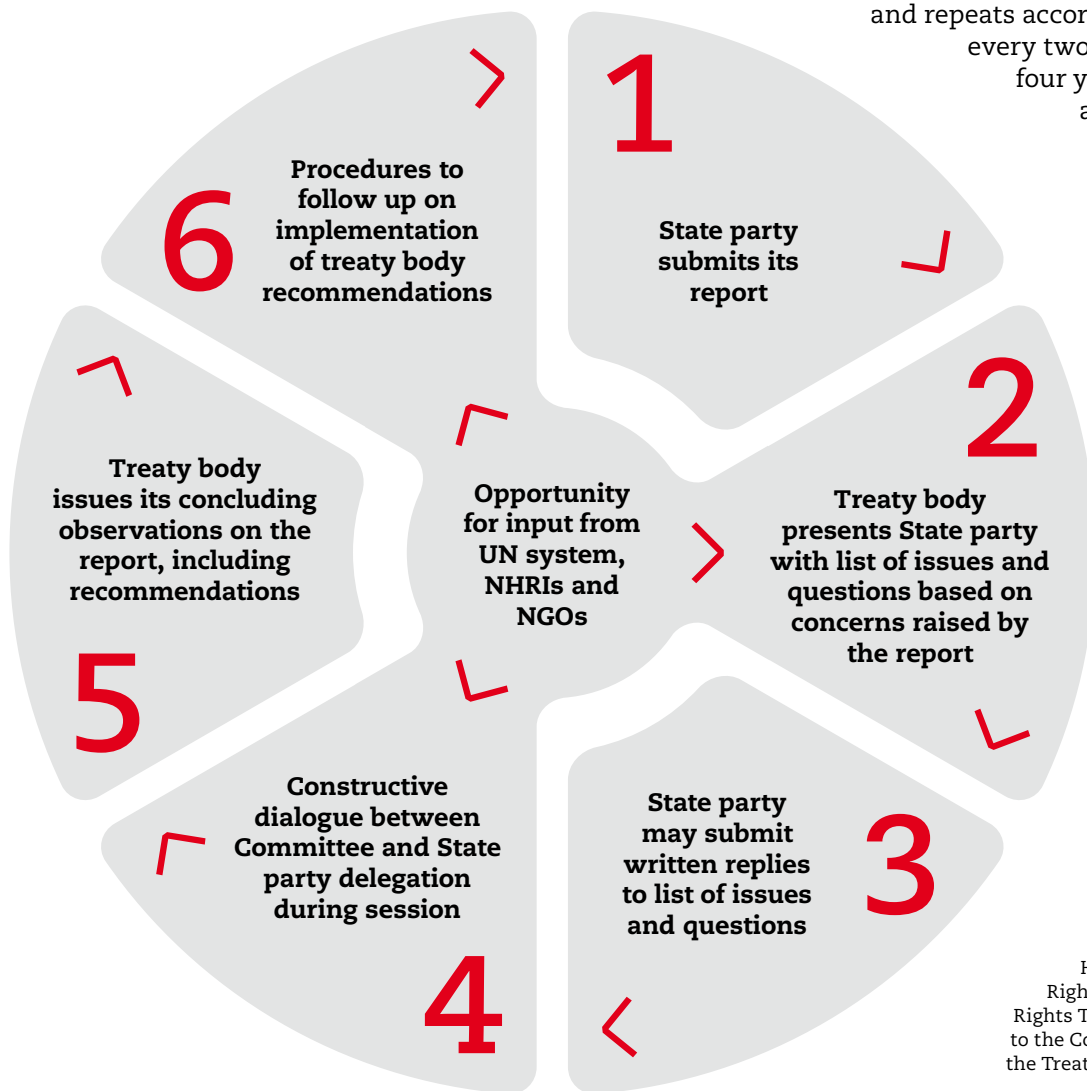


Figure Source: Based on:
Office of the United Nations
High Commissioner for Human
Rights: The United Nations Human
Rights Treaty System: An Introduction
to the Core Human Rights Treaties and
the Treaty Bodies. Geneva: Office of the
UNHCHR June 2005, p.20

The *Shadow Report Guidelines on CEDAW and Sex workers' rights* prepared by IWRAW-AP and NSWP provide detailed information on how to produce a shadow report.

There is no specified format for shadow reports but it may be useful to structure the report following the Convention itself, addressing each of the different articles of the Convention as relevant. The Guidelines contain a number of questions that sex workers' rights activists can use as a guide to structure their shadow report and help provoke thought on issues of possible interest to the CEDAW Committee. The questions are provided for inspiration and are organised according to the articles of the Convention – reports need not address every question, and should reflect the activists' priorities in context.

The report should be concise and activists may want to select the most important priorities to focus on in their report. Importantly, the reports should include recommendations and proposed solutions that the State can implement to address cited rights violations. They should include a clear executive summary that helps the Committee quickly identify the focus of the report and which parts of the report that they should read more carefully. Shadow reports must not exceed 3,300 words in length if being submitted by one NGO or 6,600 words if submitted by NGO coalitions. They should be submitted by email to cedaw@ohchr.org and can be in any official UN language (Arabic, Chinese, English, French, Russian and Spanish). Please note that the UN does not translate the reports for the CEDAW Committee so it is advisable to also provide an English translation (all Committee members have a working knowledge of English). To find out when different countries are due to provide their periodic reports for consideration by the CEDAW Committee you can check the calendar provided on the UN website.²⁷

27 *“Human Rights Bodies: expected dates of consideration”*, United Nations Human Rights: Office of the High Commissioner

4 Sex workers' rights under CEDAW

This section will explore the text of CEDAW in more detail and explain how the Convention can be used as part of sex workers' rights advocacy. It will cover two main elements of CEDAW-based advocacy. The first is how to use existing CEDAW Committee comments on sex work to support existing advocacy. While the CEDAW Committee has not developed a comprehensive position on sex work, it has made a number of pronouncements on the issue in its General Recommendations and Concluding Observations.

The second aim is to demonstrate that many of the rights violations faced by women sex workers are covered by CEDAW and should be documented as violations of the Convention. This information can then be used in direct engagement with the CEDAW Committee through the production of shadow reports, which will ultimately help push forward an interpretation of CEDAW as it applies to sex workers' rights.

It is impossible to address every possible rights violation that women sex workers face, and which may be covered by CEDAW, and so the focus will be on the following core rights:

- **The right to equal protection of the law and freedom from discrimination.**
- **The right to freedom from stigma and prejudice.**
- **The right to freedom from violence.**
- **The right to work.**
- **The right to health.**
- **The right to privacy and freedom from arbitrary interference.**
- **The right to marriage (or not to marry) and family life.**
- **The right to economic and social security.**

Each of these rights is covered in detail in the *Framework on the Rights of Sex Workers and CEDAW* prepared by IWRAW and NSWP. The following is a summary of that information.

The right to equal protection of the law and freedom from discrimination

The current position

As discussed above, CEDAW is primarily an anti-discrimination convention that seeks to achieve equality for women. Articles 1–5 impose various general obligations on States to act to eliminate discrimination against women. These obligations include: creating gender equality provisions in national constitutions (Article 2 (a)), adopting laws against gender discrimination (Article 2 (b)), and removing all laws that might constitute discrimination against women (Articles 2 (g) and (f)). Article 3 describes the general duty of States to take all appropriate measures to ensure the “full development and advancement of women” so they can exercise and enjoy all human rights and fundamental freedoms equally with men.

While women sex workers are protected by CEDAW from the discrimination they face as women, they are also protected from the discrimination they face specifically as sex workers. It is important to remember that the discrimination and stigma faced by women sex workers is frequently rooted in stereotypes regarding women’s roles in family and community. Article 5 of CEDAW creates an obligation for States to challenge and change gender stereotypes that lead to discrimination.

Therefore, it is obvious that the discrimination faced by sex workers *because they do sex work* constitutes violation of the Convention. Indeed, there are several examples of the CEDAW Committee specifically highlighting discrimination faced by sex workers in their Concluding Observations, which confirms that this discrimination is a violation of CEDAW, and that States have an obligation to address it. For example, in 2013, the Government of Hungary was asked by the CEDAW Committee to “[a]dopt measures aimed at preventing discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed at national and local levels.”²⁸ In 2015, Malawi was asked to address discrimination against sex workers in healthcare and other service provision.²⁹ The Committee also expressed concern in 2010 that the Government of Malawi’s plan to subject sex workers to compulsory HIV testing would lead to discrimination.³⁰ Furthermore, the Committee directed Tanzania in 2016 to “[r]epeal discriminatory provisions of the Penal Code and eliminate discriminatory practices faced by women in prostitution, including when accessing health-care services.”³¹

28 CEDAW Committee, 2013, Concluding Observations on Hungary, para. 23(e).

29 CEDAW Committee, 2015, Concluding observations on Malawi, para 25(f).

30 CEDAW Committee, 2010, Concluding observations on Malawi, para 38.

31 CEDAW Committee, 2016, Concluding observations on the United Republic of Tanzania, para 25 (g).

Sex workers face discrimination in many aspects of their lives, from accessing basic services like housing and healthcare, to discrimination in the criminal justice system when trying to report crimes perpetrated against them. It is also important to remember that sex workers have varying experiences of discrimination depending on factors such as their gender, race, ethnicity, nationality, class, age and sexual orientation. While CEDAW has begun to recognise some of the problems faced by women sex workers and identify certain practices as discriminatory, it is still grappling with its approach to the issue of sex work more generally.

Advocacy opportunities

The criminalisation of sex work has a massive influence on the creation and reinforcement of societal stigma against women sex workers. This stigma directs the State and society to view women sex workers as second class citizens, making them vulnerable to a range of discriminatory practices. It is crucial that the CEDAW Committee is made aware of these direct links between criminalisation, stigma and discrimination. While the Committee is concerned by the stigma experienced by women sex workers, it has not yet reached a position on the legal or policy changes required to address this. It does not, for example, have a position on whether the full decriminalisation of sex work is consistent with the Convention. The Committee has, in fact, recommended on several occasions that States adopt some form of ‘end

demand’ policy to address issues of exploitation in the sex industry.³² Even more concerning is that they have suggested that States “consider adopting the use of sanctions against purchasers of sexual services”, which appears to be a direct endorsement of the Swedish model.³³

Activists must make clear to the Committee that the criminalisation of sex work exacerbates violations of women sex workers’ human rights and perpetuates the stigma and discrimination they face. Full decriminalisation requires the removal of all such punitive laws, policies and practices used against sex workers, clients and third parties who are involved in facilitating or managing sex work. It is vital, especially considering the push for ‘end demand’ approaches, that activists document how the criminalisation of clients and third parties perpetuates stigma and discrimination, and in many instances, makes life worse for sex workers by cutting off their income and maintaining state and police power over them. In addressing the stigma faced by women sex workers, the answer cannot be to achieve equality with men, who still face stigma, whether they are selling or buying sex.

32 See, for example, CEDAW Committee, 2016, Concluding observations on the United Republic of Tanzania, para 25 (h); CEDAW Committee, 2015, Concluding observations on Malawi, para 25 (g).

33 CEDAW Committee, 2013, Concluding observations on Cambodia, para 27.

Freedom from Violence

Current position

The CEDAW Committee has interpreted the non-discrimination provisions of the Convention as including gender-based violence, which means that States are obliged to protect women from such experiences. In addition, the Committee has already recognised that involvement in sex work makes women more vulnerable to violence.³⁴ For example, in General Recommendation 19, the Committee states that “[p]rostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence”.³⁵ The Committee helpfully acknowledges here the clear links between the criminalisation of sex work and sex workers’ experiences of violence. In General Recommendation 35 the Committee goes further and urges States to address gender-based violence through specific measures, including repealing all laws that “enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence”, specifically mentioning “legislation that criminalizes...women in prostitution”.³⁶ This is a clear direction to decriminalise the selling of sex in the context of its role in perpetuating violence against women sex workers. It is also important to remember that transgender women, and transgender women sex workers specifically, experience extremely high rates of violence. They experience criminalisation, stigma and

discrimination as both transgender women and sex workers and the CEDAW Committee has acknowledged that being transgender does increase vulnerability to violence.³⁷

The CEDAW Committee has also acknowledged that perpetrators of violence against women sex workers include both the State and private individuals. In its 2015 Concluding Observations to Kyrgyzstan, the Committee expressed concern specifically about “widespread violence and discrimination against women in prostitution, in particular by the police.”³⁸ It urged the government to apply the Convention to all women without discrimination and to protect them from all forms of discrimination and violence by public and private individuals. The reference to violence “by public and private individuals” reflects the Convention’s design to eliminate all discrimination faced by women, regardless of the perpetrator. This means that States have a duty to prevent *all* violence against women sex workers, whether perpetrated by the State or by private individuals such as clients or local vigilantes.

34 CEDAW Committee, 2017, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para 12.

35 CEDAW Committee, 1992, General Recommendation No. 19: Violence against women.

36 CEDAW Committee, 2017, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para 29(c)(i).

37 CEDAW Committee, 2017, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, paras 12 and 29(c)(i).

38 CEDAW Committee, 2015, Concluding observations on Kyrgyzstan, para 21 (c).

Advocacy opportunities

While the CEDAW Committee has acknowledged the links between criminalisation, stigma and sex workers' experiences of violence, their position on whether sex work itself is a form of violence against women remains unclear. For example, in General Recommendation 19 it is stated that "...the depiction and other commercial exploitation of women as sexual objects rather than as individuals...contributes to gender-based violence".³⁹ As noted above, there is no clear definition of what constitutes "exploitation of prostitution" under Article 6. This means many States view all sex work as a form of exploitation amounting to violence – and therefore to trafficking – regardless of the specific circumstances. This position is supported by abolitionist feminists. A key contribution that sex workers' rights activists can make to positively develop the CEDAW position on sex work is to document the specific practices in sex work that do amount to exploitation and violence, which helps challenge the assertion that *all* sex work is a form of trafficking and violence.

The CEDAW Committee has also, in General Recommendation 19, noted that experiences of war and armed conflict "lead to increased prostitution, trafficking in women and sexual assault, which require specific protective and punitive measures".⁴⁰ This position must also be challenged, and experiences of violence again differentiated from the various strategies for survival that women may adopt within the context of war and armed conflict. Even in highly unstable environments, including armed conflict

or displacement, it remains crucial to approach issues of sex work (in this context often described as 'transactional sex' or 'survival sex') with nuance. Research shows that women refugees had a range of different experiences and feelings regarding selling sex.⁴¹ It is therefore unhelpful to argue that selling sex in times of war and conflict is always and inevitably a form of violence. Instead, it is imperative to look at the complexity of individuals' situations and recognise their ability to act with agency. A blanket assertion that selling sex in unstable environments is a form of violence or exploitation may lead to 'solutions' that do more harm than good.⁴² Rather than using "punitive measures" as suggested by the CEDAW Committee, which may serve only to impede the earning of crucial income through selling sex, it is important to respond to the complex needs of migrants and refugees as they themselves express them. This does not mean ignoring the very real experiences of harm and exploitation experienced by women in all contexts of conflict, displacement and migration, rather focusing on the material conditions in which sex is sold. Activists can play a key role in documenting and highlighting these conditions and making recommendations for laws and policies that seek to improve them.

39 CEDAW Committee, 1992, General Recommendation No. 19: Violence against women, para 12.

40 CEDAW Committee, 1992, General Recommendation No. 19: Violence against women, para 16.

41 Women's Refugee Commission, 2016, Mean Streets: Identifying and Responding to Urban Refugees' Risks of Gender-Based Violence.

42 Olivera Simic, "Rethinking 'sexual exploitation' in UN peacekeeping operations" Women's Studies International Forum, Vol 32(4), (2009): 288–295.

Right to work

The current position

In Article 11(1)(a) of CEDAW it is stated that “the right to work is an inalienable right of all human beings”, meaning it is a right that can never be taken away. This was included in CEDAW to help guarantee women’s economic freedom.⁴³ Article 11 also guarantees a range of other work-related rights including the right to free choice of employment, the right to social security, and the right to health and occupational safety protections at work. Article 7 of CEDAW provides a right for women to participate “in non-governmental organizations and associations concerned with the public and political life of the country”, which certainly includes self-organising and forming trade unions. Articles 7 and 11 together can be used to support sex workers’ rights to organise and unionise in the same way as other workers do.

In the context of its statements on sex work, the CEDAW Committee uses the term “economic empowerment” although it is unclear exactly how this term should be defined. For example, it encourages States to introduce economic empowerment and rehabilitation programmes for women who are exploited in prostitution.⁴⁴ They also recommend that States improve the economic situation of women generally, which they say will eliminate their vulnerability to exploitation and traffickers.⁴⁵ Even in countries that have legalised sex work the CEDAW Committee mentions the empowerment of women in sex work – for example, in respect to the Netherlands, the Committee “encourages the State party to allocate adequate funding for the empowerment of prostitutes”.⁴⁶ While the term “empowerment” remains vague, recommendations that States create greater opportunities and economic freedom for women are to be welcomed. It is clear that one of the best ways to ‘empower’ women sex workers is to fully decriminalise sex work and support their rights to challenge labour exploitation.

43 Marsha A. Freeman et al. (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford: Oxford University, 2012), 286.

44 CEDAW Committee, 2010, *Concluding observations on Botswana*, para 28; CEDAW Committee, 2009, *Concluding observations on Japan*, para 40.

45 CEDAW Committee, 2010, *Concluding observations on Botswana*, para 28; CEDAW Committee, 2009, *Concluding observations on Japan*, para 40.

46 CEDAW Committee, 2010, *Concluding observations on the Netherlands*, para 31.

Advocacy opportunities

The criminalisation of sex work constitutes the biggest barrier to sex workers realising their right to work and to having their rights at work protected, as envisaged by Article 11. Criminalisation allows exploitative working practices to thrive in the sex industry, and sex workers are given no protections or access to labour rights to fight against this. Examples of exploitative working practices faced by sex workers are given by the Thai sex worker group *Empower* in their study of working conditions in the Thai sex industry. They include: being forced to work extra-long hours; not being given adequate rest breaks; systems of illegal ‘fines’ imposed by managers; unsafe working conditions; and no holiday or sick pay.⁴⁷ Sex workers’ rights advocates can encourage the CEDAW Committee to recognise the risk of exploitative working practices within sex work and the duty of States, based on Article 11, to extend labour rights protection to all women sex workers. Activists should also encourage CEDAW to analyse the various risks of exploitation experienced in different sex work environments through their documentation efforts.

Documenting labour exploitation practices in the sex industry is particularly important given the push by abolitionist feminists to have the CEDAW Committee recognise all sex work as exploitation and a form of gender-based violence. The Committee has yet to provide any definitive comments on what is meant by “exploitation of prostitution” in Article 6, nor have they given any clear reading of how the work-based rights in Article 11 apply to women sex workers. Therefore, documentation by sex worker advocates addressing the workplace violations that women sex workers *do* experience, and how these could be addressed through access to labour rights protections are crucial. This will help the Committee differentiate exploitative sex work from sex work that is done with safe working conditions and fair pay, just as it makes this distinction in other sectors such as domestic work or agriculture.

⁴⁷ Empower, 2016, *Moving Toward Decent Sex Work: Sex Worker Community Research, Decent Work and Exploitation in Thailand*, 69–77.

Right to privacy and freedom from arbitrary interference

The current position

The right to privacy is widely recognised in human rights law as critical to the pursuit of gender equality, though it is not specifically included in the text of CEDAW. Rights to privacy have been used in several important cases pertaining to sexual and reproductive rights, such as LGBT rights and abortion rights.⁴⁸ Privacy for women sex workers can cover several different areas, including the right to privacy regarding their homes and bodies, the right to privacy in their decision-making, and protection from invasions of privacy – such as being outed publicly as a sex worker.⁴⁹ Even though privacy is not explicitly mentioned in the Convention, the CEDAW Committee has made strong statements concerning the protections needed by women and girls when making decisions about sexual and reproductive health, which clearly overlaps with the privacy considerations described above.

There are several ways in which States breach women sex workers' rights to privacy. In some countries for example, women sex workers are forced by the state to register as sex workers. In others, women sex workers have their working status disclosed to family members or to the public without their consent. Forced testing for HIV and other STIs also occurs and certainly breaches a right to privacy. Sex workers are known to be forcibly evicted from their homes and workplaces as part of police raids, and during these raids their property is often confiscated. Privacy rights are breached in other ways during raids, such as women sex workers being forced to undergo invasive strip and body searches. The media sometimes accompany police on these raids and photos of women sex workers are taken and published without their consent, which further constitutes a violation of privacy rights.

Advocacy opportunities

Sex workers' rights advocates should document the breaches of privacy that women sex workers routinely face and to bring this to the attention of the CEDAW Committee. This should cover all forms of privacy breaches as noted above. The CEDAW Committee already recognises certain practices as rights violations when they are performed against non-sex working women (e.g. public shaming, strip searches, virginity checks, etc.). Given the Committee recognises these practices as violations, they should be encouraged to extend their analysis to the many similar ways in which women sex workers' privacy is violated.

48 IWRAP-AP and NSWP, Framework on the Rights of Sex Workers under CEDAW, 43.

49 Alice, M. Miller, 2009, Sexuality and human rights: discussion paper, International Council on Human Rights Policy.

Right to health

The current position

CEDAW recognises rights to health in Article 12, which requires that State parties “take all appropriate measures to eliminate discrimination against women in the field of health care...”. Article 12 creates an obligation for States to provide women with pregnancy and post-natal related health services. There are a number of other CEDAW articles that address health-based rights in addition to Article 12 – Article 10 requires States ensure that women have “[a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”; Article 11 (as discussed above) gives women the right to access occupational and reproductive health services regardless of occupation; Article 14 addresses particular issues faced by rural women, noting that access to health care facilities and family planning information is especially difficult for them.

While the language used in CEDAW places a strong emphasis on sexual and reproductive health, health-based rights are certainly not limited to this area. The duty of States to eliminate all discrimination against women in health care means that health-based rights under CEDAW must extend beyond sexual health and must include access to a full range of services. Women sex workers, like all women, are affected by various health issues, and different groups of women sex workers may have different needs. For example, recognising that many women sex workers are mothers means that maternal and reproductive health is a crucial issue for sex workers. Migrant women – especially undocumented migrant women – sex workers face further barriers when accessing health services and it must be recognised that this group is especially vulnerable when it comes to realising their right to health. Transgender women sex workers also have particular health needs that States must adequately address. It is important to remember that the right to health under human rights law has a very broad interpretation, covering all forms of physical, mental, emotional and social wellbeing. This means that any discrimination faced by women sex workers in accessing all forms of health care is potentially a violation of CEDAW.

Advocacy opportunities

Women sex workers face many violations of their rights to health, which should all be brought to the attention of the CEDAW Committee. Perhaps most importantly, activists should document examples of how criminalisation of sex work violates women sex workers' health-based rights. For example, it is known that HIV rates amongst cisgender women sex workers are disproportionately high⁵⁰, and even higher among transgender women sex workers. Studies propose that the decriminalisation of sex work could prevent 33–46% of new HIV infections in the next decade.⁵¹ Stigma and marginalisation faced by sex workers also contributes to psychological stress and may compromise their mental health and emotional wellbeing.

Not only does the criminalisation of sex work and the discrimination faced by women sex workers lead to negative health outcomes, stigma also presents a barrier to sex workers accessing health care services. Health care providers may outright refuse to treat women sex workers or may deny them treatment for certain conditions (such as HIV). Discrimination experienced when accessing healthcare services may be more severe for transgender women sex workers and refugee or migrant sex workers.

It is important that claims to health rights for women sex workers under CEDAW be focused on equal rights of access to necessary and appropriate services that encompass a wide range of health issues. The links between criminalisation, stigma and poor health outcomes for women sex workers should be demonstrated. In addition, activists may want to document the impact of state policies that seek to control women sex workers through the use of public health measures such as mandatory testing. These are clear violations not only of the right to health but also other rights, such as privacy. The CEDAW Committee should be encouraged to recognise that many health-related regulations that exist in countries with legalised sex work are problematic and amount to a breach of women sex workers' rights to bodily autonomy.

50 Stefan Baral et al., "Burden of HIV among female sex workers in low-income and middle-income countries: a systematic review and meta-analysis," *The Lancet Infectious Diseases*, 12(7), (2012): 538–549.

51 Kate Shannon et al., "Global Epidemiology of HIV among female sex workers: influence of structural determinants," *The Lancet*, 385 (9962), (2015): 55–71.

Right to marriage and family life

The current position

Article 16 of CEDAW aims to eliminate discrimination against women in matters of marriage and family life. Under this article States must ensure that women have: full rights to enter marriage; the right to choose a spouse; and the right to only enter marriage with full consent. Women must have the same rights and responsibilities during marriage and in the process of divorce. Article 16 provides a guarantee that women should be given the same parental rights as men in all matters relating to their children. It also guarantees women the right to freely choose an occupation (the same right is articulated in Article 11). These provisions make it clear that women sex workers cannot be denied their right to marry and to create a family life based on their involvement in sex work, nor can they be deemed unfit mothers purely because they are sex workers, as such actions constitute discrimination.

While the language of Article 16 focuses on marriage, it is important to recognise that families take many shapes and forms – marriage is just one way of creating a family. The CEDAW Committee has recognised many different forms of families and marriage including civil, religious and customary marriages as well as de facto unions and registered partnerships for same sex couples. Also, women not wishing to marry or found a family must also be acknowledged as full participants in society with the same rights as everyone else.

Advocacy opportunities

Sex workers' rights to marriage and family life can be violated in several ways. In Tajikistan, for example, men are allowed access to a state-run database to discover the profession of their wives or intended brides. Women sex workers all over the world routinely have their children removed from them by the state due to their involvement in sex work, and it is common for the ex-partners of women sex workers to use their sex working status against them in custody disputes. Women sex workers also face barriers in registering their children's births and obtaining the necessary documentation to access benefits and services for their children.

The CEDAW Committee has not yet applied family life rights to the situations faced by women sex workers. Sex workers' rights advocates should document examples of the ways in which the criminalisation of sex work and related state policies prevent women sex workers from enjoying their full rights to marriage and family life. It is crucial that the CEDAW Committee recognise women sex workers as full members of society and guarantee non-interference with their family life. Women who choose to live outside of traditional marriage and family relationships (which applies to some women in sex work) must be recognised as equal citizens with fully realised human rights.

Right to economic and social security

The current position

CEDAW contains a very broad provision in Article 13, requiring States to eliminate discrimination against women in “other areas of social and economic life”. This means that Article 13 can be used to protect rights that relate to the social and economic fields even if they are not explicitly mentioned in CEDAW itself. The CEDAW Committee has also recognised that the Convention is part of the wider field of international human rights law, which aims to ensure that all rights are protected for all people.⁵² The right to protection from discrimination in the areas of social and economic life include areas such as the right to adequate housing, the right to sanitation, the right to basic public services and the right to protection from poverty and social exclusion. Under Article 13 there are some specific economic and social rights mentioned, including that States are under obligation to guarantee women the right to family benefits, the right to bank loans and other forms of financial credit, and the right to participate in recreational activities, sports and all aspects of cultural life.

Advocacy opportunities

Women sex workers often face discrimination in social and economic life. They are discriminated against when accessing housing, either because it is known that they are sex workers or because they are unable to provide evidence of economic activity. Women sex workers may be forcibly evicted from their homes if they are discovered to be working, which may have dire economic consequences for both sex workers and their families. Failure to recognise sex work as legal work means that women sex workers face barriers when accessing social services, such as health and education. Children and families of sex workers are also discriminated against when accessing education and other services. Women sex workers are routinely prevented from accessing banking and other financial services because of the criminalisation of their work and subsequent stigma. These examples should be documented as violations of CEDAW. While the CEDAW Committee has given less attention so far in its work to economic and social rights, this is an area where sex workers face routine rights violations. Sex worker advocates should therefore document all the social and economic disadvantages that women sex workers face as potential violations of CEDAW, especially under legal regimes where sex work is directly or indirectly criminalised.

⁵² CEDAW Committee, General Recommendation No. 28 on the Core Obligation of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para 3.

Conclusion

The aim of this Smart Guide has been to inspire activists to integrate CEDAW-based advocacy into their sex workers' rights activism. Women sex workers deserve the protections offered by CEDAW and are as entitled as any other group of women to the rights enshrined in the treaty. The CEDAW Committee has already made a number of pronouncements on sex work, some of which may be helpful for fighting against the criminalisation of sex work and the subsequent stigma and discrimination that women sex workers face. Perhaps more importantly however, an opportunity exists for women sex workers to influence and shape the CEDAW Committee's perspectives on

sex work, and to help positively develop interpretation of the Convention. Activists play an important role in documenting rights violations and presenting their own analyses of how these fit within CEDAW. One key objective of this human rights documentation is to present the CEDAW Committee with an analysis of the diversity of women sex workers' experiences, an insight into the realities of their lives, and an understanding of the issues they see as priorities. It is hoped that this work will contribute to an evolution of international human rights – and CEDAW advocacy specifically – where sex workers' rights are fully integrated and shaped by what women sex workers need and want.



nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

SOLIDARITY IN ACTION

Even before the HIV epidemic, sex workers were organising themselves. NSWP, as a global network of sex worker-led organisations, has strong regional and national networks across five regions: Africa; Asia-Pacific; Europe (including Eastern Europe and Central Asia); Latin America; and North America and the Caribbean.

NSWP has a global Secretariat in Scotland, UK, with staff to carry out a programme of advocacy, capacity building and communications. Its members are local, national or regional sex worker-led organisations and networks committed to amplifying the voices of sex workers.



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