

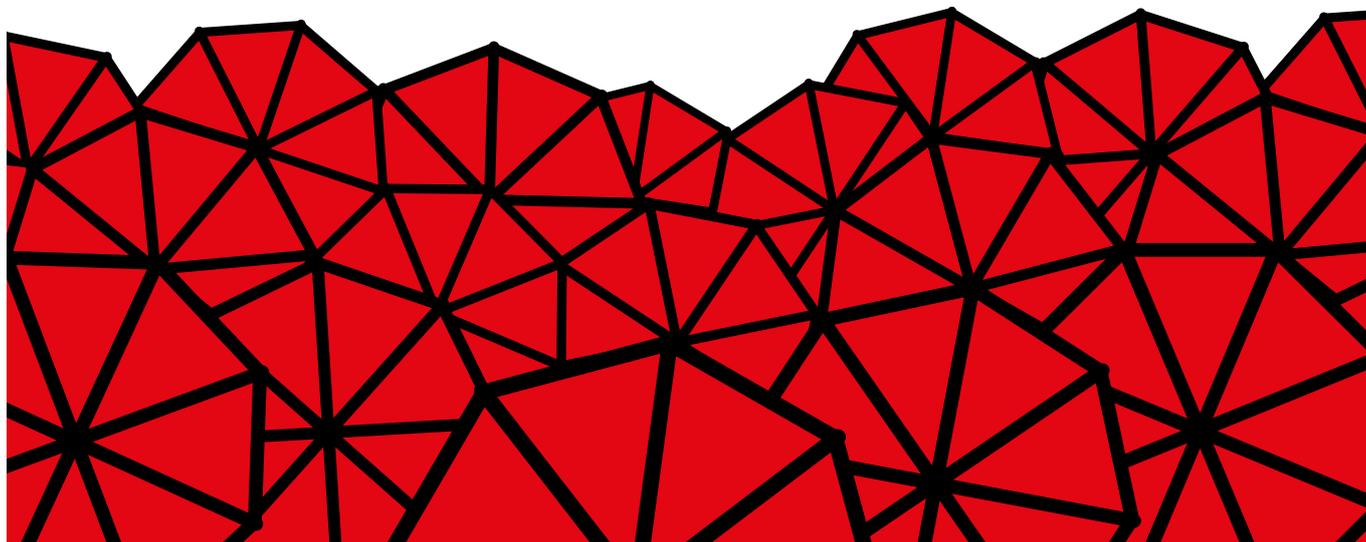


**nswp**

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

**POLICY BRIEF**

# **The Decriminalisation of Third Parties**



# The Decriminalisation of Third Parties

## Introduction

**The global sex workers' rights movement calls for the full decriminalisation of adult sex work, including the decriminalisation of third parties. The term 'third parties' includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.**

The sex workers' rights movement's call to decriminalise third parties is based on the belief, supported by evidence, that the continuing criminalisation of third parties has a direct and harmful impact on

sex workers themselves. Decriminalising third parties will help sex workers organise to root-out exploitation, oppression, and violence (from both state and non-state actors), and to address unfair or abusive working conditions.

This element of the sex workers' rights movement's campaign is often branded by opponents as an attempt to 'legalise pimps and brothel keeping'<sup>1</sup>. This not only undermines

sex workers in their struggle for labour rights and justice, it also mischaracterises the policy, which at its heart is about protecting and enhancing the rights of sex workers. NSWP's call to decriminalise third parties is primarily about giving sex workers greater control over their working environment and their relationships with third parties, and seeks to create a legal and policy environment that enables sex workers to challenge exploitative working practices where they occur.

In a summary of existing research on third parties, it was noted that there is evidence "of both benefits and harm"<sup>2</sup>. Some third parties can be "manipulative, violent, and abusive", while others provide safer working environments for sex workers, recruit and screen clients, provide security, and mediate disputes<sup>3</sup>. NSWP accepts that exploitation and harm occur in relationships between third parties and sex workers and the policy calling for the decriminalisation of third parties does not minimise or ignore this. NSWP, however, entirely rejects the notion that third parties, by their very nature, are always and inevitably abusive or exploitative. Sex workers themselves and the sex workers' rights movement understand issues of exploitation in third party relationships and, crucially, how best to address this. It is this grassroots knowledge that forms the basis of NSWP's call to decriminalise third parties.

**Decriminalising third parties will help sex workers organise to root-out exploitation, oppression, and violence...**

1 For example, when Amnesty International adopted its policy supporting the full decriminalisation of sex work, opponents referred to it as a "policy that calls for the decriminalisation of pimps, brothel-owners and buyers of sex". See "Global Advocates Issue a Call to Amnesty International in Open Letter", Coalition against Trafficking in Women, last accessed 16 December 2016 at <http://www.catwinternational.org/Home/Article/617-global-advocates-issue-a-call-to-amnesty-international-in-open-letter>

2 David Brady et al, "Brokers and the Earnings of Female Sex Workers in India", *American Sociological Review*, Vol 80:6 (2015): 1125

3 Ibid.

This policy brief will set out in detail why NSWP and its members call for the decriminalisation of third parties. It will explore some of the key harms that are caused to sex workers as a result of the criminalisation of third parties, showing that laws against organising, managing and facilitating sex work:

- Expose sex workers to increased vulnerability to HIV transmission, in contravention of the International Labour Organization's (ILO) Recommendation 200.
- Force sex workers into more dangerous and harmful working conditions.
- Are used by authorities to prosecute and harass sex workers directly.
- Are used to prosecute the friends and family members of sex workers.
- Are used by authorities to harass sex workers and limit their access to housing and services.

The paper will conclude by reviewing available evidence, showing that the decriminalisation of third parties protects sex workers rights, enabling them to challenge abusive and exploitative working conditions and exert greater control over their working environment.

## Who are Third Parties?

NSWP uses the term 'third parties' because it recognises the diversity of relationships that exist between sex workers and others in the organisation and facilitation of sex work. The term 'third party' refers to "those individuals involved in commercial sex transactions who are

neither sex workers nor clients"<sup>4</sup> and includes a range of individuals, including but not limited to, managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers, and website operators who run sites where sex work is advertised.

NSWP rejects the use of the term 'pimp' to describe third parties, because it reinforces a stigmatising and racialised stereotype and describes one very limited form of third party working relationship.

In a report based on a three-year in-depth study of management practices in the Canadian sex industry, researchers describe the view of third parties that persist in the popular imagination:

*"Pimps, procurers and parasites – merciless exploiters of hapless women; these are the sinister characters that permeate the popular imagination at the mention of the sex industry. The terms speak to deeply ingrained (and often racialized) stereotypes, which, reflected in social attitudes and legal strategies, have a profound impact on the people who work in the sex industry."*<sup>5</sup>

**NSWP uses the term 'third parties' because it recognises the diversity of relationships that exist between sex workers and others in the organisation and facilitation of sex work.**

4 Chris Bruckert and Tuulia Law, "Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry", p.7 available at <http://www.powerottawa.ca/ManagementResearch.pdf> (last accessed 16 December 2016)

5 Ibid.

**...research also painted a complex picture of mobility between sex workers and third parties, noting that the majority of third parties interviewed were also current or former sex workers.**

This research on management in the Canadian sex industry challenges these stereotypes and describes the full range and diversity of third party relationship. The researchers noted third party relationships can involve: *sex workers being hired by third parties* (e.g. to work in an indoor premises); *sex workers working with third parties* (e.g. an individual who organises or facilitates transaction between client and sex worker);

as well as *third parties being hired by sex workers* (e.g. drivers, security and personal assistants)<sup>6</sup>. The research also painted a complex picture of mobility between sex workers and third parties, noting that the majority of third parties interviewed were also current or former sex workers.<sup>7</sup> This is not unusual and many NSWP members across the world report that sex workers move in and out of management roles while sex working, or move onto a management role when retiring from sex work itself.

Third parties are, therefore, a diverse group of people and third party relationships with sex workers are multiple, complex, and defy and challenge the one-dimensional portrayal of ‘pimps, procurers and parasites’.

## Criminalisation of third parties obstructs HIV prevention

The International Labour Organization’s (ILO) Recommendation 200<sup>8</sup> argues that “HIV and AIDS should be recognized and treated as a workplace issue”<sup>9</sup>. Sex workers are clearly covered by the Recommendation, which extends to “all sectors of economic activity, including...informal economies”<sup>10</sup>. In its Recommendation the ILO makes a number of important points with regard to how the workplace should be a site for HIV prevention activities, noting that “prevention of all means of HIV transmission should be a fundamental priority”<sup>11</sup>.

A key element of the recommendation is that HIV prevention programmes should offer “access to all means of prevention”<sup>12</sup>, including condoms, and specifically in the workplace that “safety and health measures to prevent workers exposure to HIV at work should include universal precautions”<sup>13</sup>. The ILO Recommendation, therefore, explicitly accepts that sex workers deserve workplace protection against HIV and that rights-based HIV programming<sup>14</sup>, including access to condoms and other safe sex equipment, is the best way to deliver that protection.

The criminalisation of third parties, however, directly inhibits the implementation of ILO Recommendation 200 for those sex workers who work within a workplace organised or managed by a third party. In contexts where third parties are criminalised, they must take steps to avoid police detection and hide the fact that sex is sold on the premises that they manage. One of the most widely reported ways that third parties attempt to limit their risk of arrest and prosecution is by not making safe sex supplies available on their premises.

6 Ibid. at p.30–33

7 Ibid. at p.13

8 International Labour Organisation, “Recommendation 200 concerning HIV and AIDS and the World of Work”, available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R200](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R200) (last accessed 16 December 2016)

9 Ibid. at para 3

10 In the minutes of the meeting where the Recommendation was discussed and adopted it is noted explicitly that “sex workers were included in Paragraph 2(a) on all workers working under all forms or arrangements at all workplaces”. This was noted after an amendment had been proposed by the Netherlands to explicitly mention sex workers in the recommendation. See International Labour Organisation, 2010, “International Labour Conference Provision Record 13 (Rev.) 99th Session, Geneva, Fifth item on the agenda: HIV/AIDS and the World of Work – Report of the Committee on HIV/AIDS”, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_141773.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_141773.pdf) (last accessed 16 December 2016)

11 International Labour Organisation, “Recommendation 200 concerning HIV and AIDS and the World of Work”, para 3

12 Ibid. at para 16

13 Ibid. at para 31

14 NSWP, 2013, “Global Report: Good Practice in Sex Worker-Led HIV Programming”, available at <http://www.nswp.org/sites/nswp.org/files/Global%20Report%20English.pdf> (last accessed 16 December 2016)

Research carried out in China between 2014–2016<sup>15</sup> reported that law enforcement activities meant that managers were reluctant to display or provide condoms openly in their premises and discouraged them from allowing healthcare workers access, instead claiming there were no sex workers present in the venue.<sup>16</sup> The researchers noted:

*“Managers of entertainment venues used to allow access to health workers for HIV prevention work with sex workers. But following police crackdowns on sex work, such as the wave of “vice raids” in 2014, managers have told health staff that no target groups worked at their venues, and they were afraid to display condoms.”<sup>17</sup>*

In Scotland, after a police crackdown on indoor sex work venues where managers were charged with brothel-keeping<sup>18</sup>, the local health clinic reported that:

*“since [the police operation] many managers of these premises are reluctant to have condoms stored there. Women who are present when [the] outreach service attends can take condoms, but others working on other days have no supplies provided at their place of work, and may therefore have to source supplies themselves. This could lead to increased risks of unprotected sex.”<sup>19</sup>*

In the USA, police routinely used condoms as evidence to prosecute sex work offences, including those against third parties. Human Rights Watch reported in 2012<sup>20</sup> that this was the case in four major US cities (New York, Los Angeles, Washington, DC, and San Francisco). In New York, the Queens District Attorney considered condoms “useful items of evidence”, emphasising the importance of condoms as evidence in ‘sex trafficking’ and ‘promoting prostitution’ cases: “We spend a lot of focus on going after pimps and sex traffickers for promoting prostitution, kidnapping, and sex trafficking. In that context as well, condoms may be one way the pimp will facilitate prostitution, by providing them.”<sup>21</sup>

These country examples, and many others from across the world, demonstrate that the criminalisation of third parties prevents an effective response to HIV, in direct contravention of public health best practice and ILO’s Recommendation 200. Laws that criminalise third parties directly put sex workers’ health at risk.

## Criminalisation of third parties forces sex workers to compromise their safety

In addition to impeding sex workers’ access to proper healthcare and HIV prevention tools, the criminalisation of third parties forces sex workers into more dangerous and unsafe working conditions in a number of ways.

Working indoors has been shown in many research studies to provide a safer working environment for sex workers<sup>22</sup>, but the criminalisation of third parties is frequently used as a way to shut down brothels and other venues, removing the possibility for sex workers to work indoors. In Cambodia, brothels were largely tolerated until the introduction of the Suppression of Human Trafficking and Sexual Exploitation Act in 2008, which defines almost all third party involvement in sex work as a form of exploitation<sup>23</sup>. The International HIV/AIDS Alliance reports that, as a result of this law, many brothels were closed down, forcing sex workers to work on the street. This meant that they were “forced into more precarious settings for their work, placing them at even greater danger of rape and sexual assault, sometimes at the hands of the police.”<sup>24</sup>

15 Asia Catalyst, 2016, “The Condom Quandary: A Study of the Impact of Law Enforcement Practices on Effective HIV Prevention among Male, Female, and Transgender Sex Workers in China”, available at [http://asiacatalyst.org/wp-content/uploads/2014/09/The-Condom-Quandary-Report\\_en.pdf](http://asiacatalyst.org/wp-content/uploads/2014/09/The-Condom-Quandary-Report_en.pdf) (last accessed 16 December 2016)

16 Ibid. at pp.50–53

17 “Sex Workers and Condoms”, ChinaFile, last accessed 16 December 2016 at <http://www.chinafile.com/viewpoint/sex-workers-and-condoms>

18 Paul Hutcheon, “More charges of brothel-keeping after sauna raids”, *The Herald*, 16 September 2013, accessed 16 December 2016 at [http://www.heraldscotland.com/news/13123023.More\\_charges\\_of\\_brothel\\_keeping\\_after\\_sauna\\_raids/](http://www.heraldscotland.com/news/13123023.More_charges_of_brothel_keeping_after_sauna_raids/)

19 Edinburgh City Council, 2015, “Sex Work in Edinburgh—A Harm Reduction Framework—Year One Progress Report”, p.4

20 Human Rights Watch, 2012, “Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities”, available at <https://www.hrw.org/report/2012/07/19/sex-workers-risk-condoms-evidence-prostitution-four-us-cities> (last accessed 16 December 2016)

21 Ibid. at p31. After successful campaigning all four of these US cities stopped or limited their use of condoms as evidence. The practice remains commonplace in many other countries.

22 Kathleen N. Deering et al. “A systematic review of the correlates of violence against sex workers.” *American journal of public health* 104.5 (2014): e42-e54.

23 Law on Suppression of Human Trafficking and Sexual Exploitation Act 2008, available at [https://www.unodc.org/res/cld/document/khm/2008/law\\_on\\_suppression\\_of\\_human\\_trafficking\\_and\\_sexual\\_exploitation\\_html/Cambodia\\_03\\_-\\_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf](https://www.unodc.org/res/cld/document/khm/2008/law_on_suppression_of_human_trafficking_and_sexual_exploitation_html/Cambodia_03_-_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf) (last accessed 16 December 2016)

24 “The perils of criminalizing sex work”, International HIV/AIDS Alliance, last accessed 16 December 2016 at [www.aidsalliance.org/our-impact/making-it-happen-old/612](http://www.aidsalliance.org/our-impact/making-it-happen-old/612)

25 Ibid.

26 Canadian Alliance for Sex Work Law Reform, Criminalizing Third Parties in the Sex Industry: Impacts and Consequences, available at <http://www.safersexwork.ca/wp-content/uploads/2014/07/Infosheet-on-Third-Parties.pdf> (last accessed 16 December 2016)

27 Chris Bruckert and Tuulia Law, "Beyond Pimps, Procurers and Parasites: Mapping Third Parties in the Incall/Outcall Sex Industry", p 87

28 "How Technology Killed Pakistan's Historic Red Light District", NDTV, last accessed 16 December 2016 at [http://www.ndtv.com/world-news/how-technology-killed-pakistans-historic-red-light-district-1448937?utm\\_content=buffer5c27b&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.ndtv.com/world-news/how-technology-killed-pakistans-historic-red-light-district-1448937?utm_content=buffer5c27b&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

29 Chi Adanna Mgbako, *To Live Freely in This World: Sex Worker Activism in Africa* (New York: New York University Press, 2016) at p.142

30 "Prostitution and the internet: More bang for your buck", *The Economist*, last accessed 16 December 2016 at <http://www.economist.com/news/briefing/21611074-how-new-technology-shaking-up-oldest-business-more-bang-your-buck>

31 Bishaka Datta, "Sex work is legal so why has the Indian government blocked escort websites", *Scroll.in*, 15 June 2016, accessed 16 December 2016 at <http://scroll.in/article/810019/sex-work-is-legal-so-why-has-the-indian-government-blocked-escort-websites>

32 Eric Steuer, "The rise and fall of redbook, the site that sex workers couldn't live without", *Wired.com*, 24 February 2015, accessed 16 December 2016 at <https://www.wired.com/2015/02/redbook/>

33 Stephanie Clifford, "Raid of Rentboy, an Escort Website, Angers Gay Activists", *The New York Times*, 26 August 2015, accessed 16 December 2016 at <http://www.nytimes.com/2015/08/27/nyregion/raid-of-rentboy-an-escort-website-angers-gay-activists.html>

34 Sam Levin, "Backpage CEO's arrest hurts free speech and sex workers' rights, activists say" *The Guardian*, 7 October 2016, accessed 16 December 2016 at [https://www.theguardian.com/society/2016/oct/07/backpage-ceo-arrest-free-speech-sex-workers-rights?CMP=share\\_btn\\_tw](https://www.theguardian.com/society/2016/oct/07/backpage-ceo-arrest-free-speech-sex-workers-rights?CMP=share_btn_tw)

35 Ibid.

36 Sex Workers Project, 2016, "Sex Workers Project Respond to Arrest of Backpage CEO Carl Ferrer", available at <http://sexworkersproject.org/downloads/2016/20161012-swp-statement-on-ferrer-arrest.pdf> (last accessed 16 December 2016)

37 State of California Department of Justice: Office of the Attorney General, 2016, "Attorney General Kamala D. Harris Announces Criminal Charges Against Senior Corporate Officers of Backpage.com for Profiting from Prostitution and Arrest of Carl Ferrer, CEO", available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-criminal-charges-against-senior> (last accessed 19 December 2016)

The report goes on to note that some sex workers, after the brothel closures, "reported being less likely to go for an HIV test as their lives had become more erratic."<sup>25</sup>

Laws criminalising third parties are so broad in many countries that it can prevent sex workers hiring anyone to help or assist them in their work, most crucially to help them with security. The Canadian Alliance for Sex Work Law Reform discusses the impact this has on street based sex workers, who are prevented from undertaking the most basic security measures such as "paying a friend to record license plate numbers of clients, and/or act as security at the outdoor location where they provide services."<sup>26</sup>

The criminalisation of third parties also prevents clear and direct communication in the process of facilitating sex work. Canadian research on management in the sex industry identifies this problem:

*"in order to avoid coming to the attention of the police...third parties are discreet and use 'code' language in both promotion and in interactions with clients...If third parties are not communicating frankly with clients they are also less likely to be capable of matching clients and sex workers in terms of, for example, personality, style and services. This leaves sex workers to navigate fees, explain services and costs, and impose boundaries the client may not have been anticipating."*<sup>27</sup>

In the digital age, much sex work advertising is occurring on the internet, in countries as diverse as Pakistan<sup>28</sup>, Kenya<sup>29</sup> and across the USA<sup>30</sup>. The people who run these websites are third parties and running the website is viewed as an illegal activity in many jurisdictions. There are reports that the Indian government has blocked access to more than 240 escort advertising sites in the country.<sup>31</sup> In the United States, there is a worrying trend of sex work advertising sites being shut down by authorities, with those responsible for running the sites charged with a number of third party offences. Websites and their operators targeted for such actions in the United States include myredbook.com<sup>32</sup>, Rentboy.com<sup>33</sup>, and most recently Backpage.com<sup>34</sup>.

Websites for advertising online provide sex workers with added layers of security, including the ability to screen clients and interact with other workers to share safety information. It also allows sex workers greater control over their work by allowing them to decide which clients to see and when and how to work. Closing these websites using laws against third parties forces sex workers into more dangerous working conditions. The Sex Workers Outreach Project of Sacramento has reported that, after the closure of myredbook.com, a number of sex workers "had transitioned to the street and subsequently experienced rape, arrest or both."<sup>35</sup> The Sex Workers Project in New York City argues that closing third party websites "leav[es] sex workers more isolated and vulnerable to harm" and creates "dire instability for those who rely on these sites to make ends meet." They note also that "some sex workers move to street-based work, where people are more likely to face violence"<sup>36</sup> The closure of sex work advertising websites is often justified on the basis that these websites help facilitate 'sex trafficking'.<sup>37</sup> NSWP argues however that closing these websites not only harms sex workers working consensually, but forces those who may be exploiting others to adopt more clandestine methods, making attempts to combat trafficking even more difficult.

## Sex workers are prosecuted under third party laws

Sex working populations around the world often have large overlaps with other criminalised or stigmatised populations, for example: LGBT people; people who use drugs; and migrants. As such, laws used to criminalise sex workers are not necessarily laws specifically concerning sex work. For example, laws against male homosexuality are frequently used to harass and further criminalise both male and (erroneously) transgender sex workers. The same applies to laws against third parties in the sense that they, in theory, do not directly criminalise sex workers, but in practice do exactly that.

In many countries where the exchange of sex or sexual services for money is not itself criminalised, but third parties are, sex workers are prosecuted using third party laws. For example, In Malawi the police

**...police have used third party laws against 'living on the earnings of prostitution' to justify arresting sex workers themselves in absence of laws against selling sex.**

have used third party laws against 'living on the earnings of prostitution' to justify arresting sex workers themselves in absence of laws against selling sex.<sup>38</sup> In the UK, where it is legal to sell sex, sex workers are often arrested for brothel-keeping when they work collectively, even if only with one other sex worker. In 2009<sup>39</sup>, UK authorities pursued the prosecution of a sex worker under brothel-keeping laws, even though she had been working with another woman for

safety, after suffering violence in the past. In these cases, third party laws become a tool that can be used by state actors to harass and threaten sex workers.

The effects of these laws are significant for sex worker safety. In order to avoid prosecution under, for example, brothel-keeping laws, sex workers choose to work alone instead of with friends or colleagues. This exposes sex workers to increased risks of violence. It also means that sex workers who work collectively are much less likely to report violence against them to authorities for fear of prosecution. Violent perpetrators are able to exploit these vulnerabilities and act with an increased sense of impunity.

## Family and friends of sex workers can be prosecuted under third party laws

The friends and family members of sex workers can also be prosecuted as third parties. In the US in 2014, a woman was convicted of 'promoting prostitution' and labelled a sex offender after she drove her friend, a sex worker, to work.<sup>40</sup> The Legal Assistance Centre in Namibia notes that its country's laws on 'living on the earnings of prostitution' could apply to all the family members of a sex worker:

*"The offence of knowingly living off of the earnings of prostitution could also lead to absurdities, as it is not limited to persons who actively seek to control or encourage prostitution for their own profit, but would apply equally to a child who knows what his mother or father or sibling does to get money for the groceries."*<sup>41</sup>

38 Southern African Litigation Centre, 2013, Memorandum on s146 of Malawi Penal Code, available at <http://www.southernafricalitigationcentre.org/2013/08/07/living-on-the-earnings-of-sex-work-in-malawi-a-typical-tale-of-misinterpreting-the-law-to-conveniently-criminalise-sex-workers/> (last accessed 16 December 2016)

39 "Press Release: Prosecution dropped against sex worker for lack of evidence", English Collective of Prostitutes, last accessed 16 December 2016 at <http://prostitutescollective.net/2012/01/05/prosecution-dropped-against-sex-worker-for-lack-of-evidence-2/>

40 Mark Govaki, "Woman appeals prostitution case, sex offender label" Dayton Daily News, accessed 16 December 2016 at <http://www.daytondailynews.com/news/news/crime-law/woman-appeals-prostitution-conviction-sex-offender/nmq4P/>

41 Legal Assistance Centre Namibia, 2002, "Whose Body is it?: Commercial Sex Work and the Law in Namibia", available at <http://www.lac.org.na/projects/grap/Pdf/commsex.pdf> (last accessed 19 December 2016)

## **Criminalising sex workers' support networks in an effort to stop others 'promoting or profiting from prostitution' puts sex workers in more danger.**

A number of third party laws around the world state that men 'who live with or are habitually in the company of' sex workers are deemed to be 'living on the earnings of prostitution', a criminal offence.<sup>42</sup> This effectively criminalises any male partner of a sex worker and sends a

dangerous message that sex workers' relationships are by default exploitative.

These laws and the way they are used against friends and family members forces sex workers to isolate themselves in order to protect their loved ones. Isolation is a major contributing factor to sex workers being at higher risk of violence. Criminalising sex workers' support networks in an effort to stop others 'promoting or profiting from prostitution' puts sex workers in more danger.

## **Third party laws can be used by the police to limit sex workers' access to services such as housing**

In Sweden and Norway, where the purchase of sex is criminalised but selling sex decriminalised, the authorities are known to use third party laws to harass sex workers, for example, through forced evictions. Many third party laws across the world criminalise landlord for leasing a property knowing that sex will be sold on the premises. From 2007 to 2014, police in Norway conducted Operation Homeless, which involved identifying premises where sex was sold, informing the landlord, and "recommend[ing] eviction of sex workers from the location as a way for landlords to avoid prosecution".<sup>43</sup> Amnesty International reports that around 400 premises in Oslo were closed and sex workers, a large majority of whom were migrant women, were evicted during the time of Operation Homeless. Although Operation Homeless has officially ended, Amnesty International's research shows that evictions of sex workers using third party laws continue.<sup>44</sup>

Forced eviction using third party laws has severe consequences on sex workers in a number of ways. There are obvious and immediate harms to being made homeless and additional financial consequences of, for example, losing large deposits that have been put down on apartments. As Mary, a Nigerian sex worker working in Norway, stated to Amnesty:

*"Sometimes, they would just give us a few minutes to get out. We would have to run around and get things. We would lose the money we had paid."*<sup>45</sup>

Eunice, a Nigerian woman, told Amnesty International of her experience of eviction:

*"I have been given minutes to leave my apartment. You don't have time to get all your things. [I had to go and] sleep in the train station."*<sup>46</sup>

These kinds of operations also make sex workers distrust the police. Many of the sex workers Amnesty spoke to in Norway would not report violence to the police for fear of, among other things, "being evicted from their homes [and] permanent exclusion from the rental market"<sup>47</sup>.

This evidence from Norway and Sweden<sup>48</sup> clearly shows how third party laws can facilitate direct police repression of sex workers, even in legal frameworks where sex workers themselves are supposedly decriminalised.

42 This particular wording originates from (and remains in) British law but was transposed into the law of many of the counties that the British colonized e.g. section 145 of the Malawi Penal Code.

43 Amnesty International, 2016, "The Human Cost of Crushing the Market: Criminalisation of Sex Work in Norway", available at <https://www.amnesty.org/en/documents/eur36/4034/2016/en/> (last accessed 19 December 2016) at p.31

44 Ibid. at p.33

45 Ibid. at p.36

46 Ibid. at p.36

47 Ibid. at p.55

48 NSWP, "The Real Impact of the Swedish Model on Sex Workers: Advocacy Toolkit", available at <http://www.nswp.org/resource/the-real-impact-the-swedish-model-sex-workers-advocacy-toolkit> (last accessed 19 December 2016) at p.4:2

## Third party relationships under decriminalisation

Laws and policies which criminalise third parties fail to acknowledge that sex workers need protections to be put in place, in order to address cases of exploitative or harmful contractual or employment based relationships with others. Criminalising these relationships necessitates

**Criminalising these relationships necessitates that they be hidden from authorities and placed outside the bounds of regulation.**

that they be hidden from authorities and placed outside the bounds of regulation. The blanket criminalisation of third parties assumes that all third party relationships, regardless of context and circumstance, are exploitative and leaves sex workers without access to legal measures to challenge exploitation or abuse when it does happen. In contexts where third parties have been decriminalised (examples include New Zealand

and New South Wales, Australia) there is evidence to show that sex workers are empowered in their interactions with third parties and have access to legal rights and mechanisms to challenge bad practice.

NSWP calls for the decriminalisation of third parties because the evidence indicates this is the most effective way to ensure that sex workers have greater control and power in their working relationships. While managing and organising in the sex industry remains criminalised, sex workers will continue to experience barriers to enjoying their legal rights. Research from New Zealand before decriminalisation highlighted this very problem, with sex workers describing harsh systems of fines and other unfair working practices in brothels. The criminalised status of the sex industry meant that “the potential for the operators of sex businesses to exploit their workers was large and virtually unchecked”<sup>49</sup>. As one New Zealand sex worker described:

*“the management has all the benefits of being an employer, but none of the obligations – not to any health and safety regulations, employment requirements such as holiday pay, sick pay, a system of warnings before dismissal; but we are charged shift fees, bonds, we have to provide medical certificates if we are sick, and give notice when we leave. The situation is entirely unacceptable.”*<sup>50</sup>

Since the sex industry was decriminalised in New Zealand, sex workers have gained recourse to employment and human rights protections. Sex workers are able to take their managers to the Disputes Tribunal if they withhold wages or financially exploit them in other ways. Sex workers also have wider protections from discrimination and harassment and, in a widely covered case from 2014, a sex worker won a case of sexual harassment taken against the manager of a brothel where she worked in Wellington. The Human Rights Tribunal awarded her NZ\$25,000 compensation for “humiliation, loss of dignity and injury to feelings”, noting unequivocally that:

*“Sex workers are as much entitled to protection from sexual harassment as those working in other occupations. The fact that a person is a sex worker is not a licence for sexual harassment, especially by the manager or employer at the brothel. Sex workers have the same human rights as other workers. The special vulnerability of sex workers to exploitation and abuse was specifically recognised by the Prostitution Reform Act 2003 which not only decriminalised prostitution but also had the purpose of creating a framework to safeguard the human rights of sex workers and to promote their welfare and occupational health and safety.”*<sup>51</sup>

49 Jan Jordan 2005, “The Sex Industry in New Zealand: a Literature Review”, available at <http://www.justice.govt.nz/assets/Documents/Publications/sex-industry-in-nz.pdf> (last accessed 19 December 2016) at p.60

50 Ibid. at p.60

51 DML v Montgomery and M&T Enterprises Ltd 2014 NZHRRT 6, available at <https://www.justice.govt.nz/assets/Documents/Decisions/2014-NZHRRT-6-DML-v-Montgomery-and-MT-Enterprises-Ltd.pdf> (last accessed 19 December 2016)

Crucially, the Prostitution Reform Act also decriminalised third parties in New Zealand and introduced tough laws against coercion in the sex industry. A ruling of the kind seen in the Montgomery case would not have been possible if third parties had remained criminalised, as they would have remained out of the scope of labour and human rights law.

Research from New Zealand further demonstrates the benefits of decriminalising third parties, in findings which indicate that sex workers have increased control over their working environments. This is especially the case with regard to accepting or refusing clients in managed premises. In research conducted in the city of Christchurch before decriminalisation, sex workers spoke widely “of management practices which did not allow them the opportunity of refusing clients”<sup>52</sup>. This was contrasted with further research done in Christchurch in 2006, after decriminalisation, where sex workers reported that they were less likely to feel obliged to accept a client that they did not want to. The research concluded that “managed workers [were] also significantly more likely to report refusing to do a client...which may indicate that management systems are now more supportive and less coercive”.<sup>53</sup> That is not to say that examples of poor management practices do not exist, but that post decriminalisation “these reports were in the minority.”<sup>54</sup>

NSWP calls for the complete decriminalisation of third parties, through removing existing criminal laws and penalties against organising,

managing, and facilitating sex work, as well as living off the earnings of sex work. NSWP believes that consensual third party involvement in the sex industry should be regulated in line with existing labour laws and business regulations, with criminal law reserved only for instances of force, violence, and coercion.

By calling for decriminalisation of third parties, NSWP explicitly rejects replacing criminal law with layers of excessive regulation. This leads to the creation of a two-tiered sex industry, with a small ‘legal’ sector where a select group of individuals are able to comply with the high levels

of regulation (e.g. payment of large fees for a brothel license), while other sex work businesses continue to operate illegally and the sex workers within those continue to work without any legal protections. Regulating the organisation and management of sex work in line with existing labour laws and business regulations provides sex workers with the protections they deserve, while the unfair and excessive state control that is fostered in a system of legalisation simply replicates the harms of criminalisation and therefore must be rejected.

**NSWP believes that consensual third party involvement in the sex industry should be regulated in line with existing labour laws and business regulations, with criminal law reserved only for instances of force, violence, and coercion.**

52 Gillian Abel, Lisa Fitzgerald, and Cheryl Brunton, 2007, “The Impact Of The Prostitution Reform Act On The Health & Safety Practices Of Sex Workers”, Department of Public Health and General Practice, University of Otago, available at <http://www.otago.ac.nz/christchurch/otago018607.pdf> (last accessed 19 December 2016) at P.133

53 Ibid.

54 Ibid.

## Conclusion and Recommendations

This paper has documented some of the ways in which the criminalisation of third parties increases sex workers' vulnerability. There is a growing international consensus that the best way to

**There is a growing international consensus that the best way to protect the human rights of sex workers is to decriminalise sex work, including third party involvement.**

protect the human rights of sex workers is to decriminalise sex work, including third party involvement. The international organisations that now advocate this policy include: the Joint United Nations Programme on HIV/AIDS (UNAIDS)<sup>55</sup>; UNFPA and WHO<sup>56</sup>; Open Society Foundations<sup>57</sup>; the American Jewish World Service<sup>58</sup>; the Global Alliance against Traffic in Women (GAATW)<sup>59</sup>; and the International Community of Women Living with HIV<sup>60</sup>.

Amnesty International recently adopted a policy supporting the full decriminalisation of sex work, including third parties, explicitly recognising that the continuing criminalisation of third parties presents a direct threat to the realisation of sex workers' human rights:

***“Amnesty International calls for the decriminalisation of all aspects of adult consensual sex work due to the foreseeable barriers that criminalisation creates to the realization of the human rights of sex workers...Amnesty International considers that to protect the rights of sex workers, it is necessary not only to repeal laws which criminalise the sale of sex, but also to repeal those which make the buying of sex from consenting adults or the organization of sex work (such as prohibitions on renting premises for sex work) a criminal offence. Such laws force sex workers to operate covertly in ways that compromise their safety, prohibit actions that sex workers take to maximize their safety, and serve to deny sex workers support or protection from government officials...This policy does not argue that there is a human right to buy sex or a human right to financially benefit from the sale of sex by another person. Rather, it calls for sex workers to be protected from individuals who seek to exploit and harm them and it recognizes that the criminalisation of adult consensual sex work interferes with the realization of the human rights of sex workers.”***<sup>61</sup>

NSWP, therefore, makes the following recommendations in light of the harm caused to sex workers by the criminalisation of third parties:

- 1 NSWP calls on all national governments to repeal laws criminalising consensual third party involvement in sex work, including laws against brothel-keeping, procuring, and 'living on the earnings of prostitution'.
- 2 NSWP calls for the organisation and management of sex work to be regulated according to existing labour laws and business regulations.

55 UNAIDS, 2012, “Guidance Note on HIV and Sex Work”, available at [http://files.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://files.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf) (last accessed 20 December 2016), Annex 1: p.6

56 World Health Organization, United Nations Population Fund, UNAIDS & NSWP, 2012, “Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low and middle-income countries: Recommendations for a public health approach”, available at [http://www.who.int/hiv/pub/guidelines/sex\\_worker/en/](http://www.who.int/hiv/pub/guidelines/sex_worker/en/) (last accessed 20 December 2016), p.16

57 Open Society Foundations, 2015, “Ten Reasons To Decriminalize Sex Work” available at <https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>

58 American Jewish World Service, 2013, “Sex Worker Rights: (almost) Everything you wanted to know but were afraid to ask”, available at <http://www.nswp.org/resource/sex-worker-rights-almost-everything-you-wanted-know-were-too-afraid-ask> (last accessed 20 December 2016), p.6

59 Global Alliance Against Trafficking in Women (GAATW), “GAATW-IS Comment: Amnesty International calls for the decriminalisation of sex work” (last accessed 20 December 2016), available at <http://www.gaatw.org/resources/e-bulletin/2-uncategorised/819-gaatw-is-comment-amnesty-international-calls-for-the-decriminalisation-of-sex-work>

60 International Community of Women Living with HIV (ICW), 2015, “ICW Sex Workers, Sex Work and HIV Position Statement 2015” (last accessed 20 December 2016), available at <http://www.iamicw.org/resources/document-library/icw-sex-workers-sex-work-and-hiv-position-statement-2015>

61 Amnesty International, 2016, “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/> (last accessed 19 December 2016) at pp.2-3

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



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