

# Decent Work



## The Smart Sex Worker's Guide



**nswp**

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



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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.**

The Global Network of Sex Work Projects uses a methodology that highlights and shares the knowledge, strategies, and experiences of sex workers and sex worker-led organisations. Smart Guides are the result of desk research and a global e-consultation with NSWP member organisations, including case studies from some members.

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](http://www.hivgaps.org) for more information.

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Protest at 2006 International AIDS Conference

# Introduction

In most countries, sex workers are subject to exploitative and often unsafe working conditions, and don't benefit from the same labour regulations and protections as other workers. They are not covered by any health and safety laws in their workplaces, lack bargaining power with managers, and don't receive benefits such as paid sick and maternity/paternity leave, maximum working hours, minimum wages, legal rights regarding unfair dismissal, or compensation for injuries at work. Sex workers are also excluded from social protection schemes, including health insurance, pensions, unemployment, and disability benefits. These are challenges commonly faced by informal workers globally, however, for sex workers in particular, the precarious conditions that they face are worsened by the criminalisation of sex work and the increased stigma, discrimination and violence that result from it.

Sex work is work and is recognised as informal labour. In a 2016 report, the International Labour Organization (ILO) documented non-standard employment around the world, finding that common challenges faced by informal workers included lack of income during maternity leave, receiving less training, and lacking protection against illness or work-related injuries. Furthermore, informal workers face social challenges as a result of their employment status, such as disadvantages when trying to secure loans and mortgages.<sup>1</sup> To address these issues ILO developed the Decent Work Agenda,<sup>2</sup> which proposes standards for ensuring that people perform their work in decent conditions.

Continuing the fight for the decriminalisation of sex work and national recognition that sex workers are included in ILO's Decent Work Agenda would be the first policy steps in addressing deficits in working conditions. This guide sets out how sex work fits within international labour standards, and in particular the Decent Work Agenda. It provides examples of how elements of sex work are recognised as decent work, how that is being implemented, or how it is missing from current legislation in different countries. It will make recommendations for how sex work can be better integrated into national and international frameworks for labour standards, based on consultations with NSWP member organisations. Whether in criminalised, penalised, legalised, or decriminalised settings, the fight for decent working conditions in sex work is possible and has succeeded to varying degrees, which will be presented in six best practice examples. This guide is intended as a tool for sex workers' rights organisations to use when campaigning for labour rights as fundamental to sex workers' rights in their respective countries, using ILO's Decent Work framework.

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1 International Labour Organization, 2016, "Non-standard Employment around the World: Understanding challenges, shaping prospects."

2 "Decent Work," ILO.



# Background: Sex Work as Work and the Decent Work Agenda

The idea of decent work was first articulated by the Director-General of ILO in 1999, when he described it as “productive work in conditions of freedom, equity, security and dignity” under which rights are protected and adequate remuneration and social coverage are provided.<sup>3</sup> In 2015, ILO established the Decent Work Agenda to put forth solutions to precarity in informal work. Decent work has become a term used to describe the minimum standards that all workers should be entitled to in formal or informal labour settings. The four pillars of ILO’s Decent Work Agenda, which are integrated within the Sustainable Development Goals for 2030, are: employment creation; rights at work; social protection; and social dialogue, which apply to both formal and informal types of work. Decent work is work that delivers a fair income, safety at work, social protection, prospects for personal development and social integration, the opportunity for workers to participate in decision-making that affects their work, and equal opportunity for men and women. Through its Decent Work Country Programmes, ILO “promotes decent work as a key component of national development strategies.”<sup>4</sup>

As a tri-partite organisation, ILO brings governments, workers, and employers into dialogue to integrate the pillars of decent work into national labour policy frameworks. Access to all stakeholders, including employers or providers of work, is crucial for ILO to be able to be effective as a mediator for decent work standards. In the case of sex work, there is often no formal employer, or those taking on employer-like roles are criminalised. As a result, ILO’s tri-partite approach is difficult to extend to the context of sex work, and the constituents with whom ILO consults are often unaware of the living and working conditions of sex workers. In the absence of expert knowledge from sex workers, there is also a discourse conflating sex work with trafficking that often shapes the views of both ILO and their constituents. In order to ensure that sex workers are not entirely excluded from decent work dialogues, sex worker-led organisations must be included in ILO’s discussions.

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3 ILO, 1999, “Report of the Director General: Decent Work.”

4 “Decent Work Country Programmes (DWCPs),” ILO.

Demonstration,  
Labour Day 2010



Even though sex workers are in need of the same rights and protections as other workers, they have not yet been explicitly included in the Decent Work Agenda.<sup>5</sup> As an international body that communicates with governments, to have ILO recognise sex work as work would be a significant step for advancing the inclusion of sex workers in decent work policies at the national level. In ILO's Recommendation 200 concerning HIV/AIDS and the world of work<sup>6</sup>, the official report of the Committee that agreed the recommendation records the clear understanding that sex work is covered by this instrument, which recognises formal and informal economies. It explicitly records that "sex workers were included in Paragraph 2(a) on all workers working under all forms or arrangements at all workplaces"<sup>7</sup>. However, to effectively support the fight for sex workers' rights and the implementation of decent working conditions in sex work, sex work must be explicitly recognised as a form of work by international bodies such as ILO. By approaching sex work from a labour perspective recognising sexual service providers as workers in need of the same protections and regulations as all other kinds of workers, sex work can be carried out in a healthy and dignified manner.

Recognising sex work as work is the first step in applying the pillars of decent work to sex work. Exploitation is not inherent to sex work, but denying sex workers labour rights and criminalising them allows exploitation to continue. The benefits of a labour rights approach to sex work are well-documented. Decriminalisation is the foundation for making sex work decent work, as well as ensuring the right to choose working arrangements, inclusion in industrial relations and access to the same rights to social protections and benefits as all other workers.<sup>8</sup> Taking steps to make labour rights organisations more inclusive of sex workers also helps to progress the understanding of sex work as work.<sup>9</sup> Raising awareness within the broader labour rights movement, through the inclusion of sex workers' rights activists, provides a platform for campaigning for decriminalisation, and beyond to advancing the decent sex work agenda. As the global sex workers' rights movement campaigns for the recognition of sex work as work, it is increasingly important to re-emphasise how the standards of decent work must apply to sex workers.

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5 Karin Siegmann, "Decent work for sex workers' as ILO's centenary treat," *Global Labour Column* 317 (2019)

6 ILO, 2010, "Recommendation 200 Concerning HIV and AIDS and the World of Work."

7 ILO, 2010, "PR No. 13 - Fifth item on the agenda: HIV/AIDS and the world of work - Report of the Committee on HIV/AIDS," pp. 27-29.

8 NSWP, 2017 "Policy Brief: Sex Work as Work," pp. 1-18.

9 ICRSE, 2017 "Understanding Sex Work as Work: A Brief Guide for Labour Rights Activists," pp. 1-12.



# The challenges in advocating for sex work as decent work

NSWP consulted with member organisations regarding the existing frameworks that enable decent working conditions for sex workers in their countries. The responses revealed that while there are some policies and schemes that are inclusive of sex workers, the criminalisation of many aspects of sex work in most countries hinders sex workers' access to social protection, rights at work, representation at work and the other pillars of decent work.

The member consultation responses revealed that due to sex work not being recognised as work in most countries, sex workers are generally not covered by the occupational health and safety standards that apply to other workers. Furthermore, laws against third party employment relationships within sex work prevent sex workers from demanding these standards to be maintained by managers:

***“Sometimes sex workers manage to get a contract of employment as a waitress, hostess, and the dimension of sex work is hidden. In theory, they would have the right to health and safety, but the (brothel) bosses do not make any effort because they know that no one is going to complain, otherwise it attracts the attention of the authorities and the police can shut down the workplace.”***

STRASS, FRANCE

Due to the impossibility in most countries of arranging sex work as a formal employment relationship, sex workers are excluded from basic labour regulations and protections that other types of workers enjoy. Since contracts between sex workers and venue (e.g. brothel) operators are not legally recognised, many agreements about working terms and conditions are negotiated verbally. However, the sex worker is often at the mercy of the owner to respect these agreements. In criminalised contexts venue owners can take advantage of workers by demanding fines or setting unfair conditions for those wishing to leave. The Russian Sex Worker Forum, for example, reported that:

***“Often, when a sex worker wants to leave a salon / brothel, she is forced to work for two weeks or bring another sex worker to replace or forced to pay a “leaving penalty”. This is illegal. There are cases when sex workers announced their departure in advance, after which the owner stopped giving out the money they earned, and at night they were driven out and left on the street. This is done to intimidate sex workers by the employer.”***

RUSSIAN SEX WORKERS' FORUM, RUSSIA

When it comes to obtaining social protections, such as pensions, unemployment, and disability benefits, etc., most member organisations reported that sex workers cannot access these under the category of ‘sex worker’. To obtain social protections, sex workers may register as ‘self-employed’ under a different occupation, or under another job they may be doing alongside sex work. Even in countries where it is possible to access social protections as a sex worker, this is only possible with documents confirming legal residency. As a result, many migrant sex workers are excluded from social protection schemes. As a member organisation from Angola, for example, confirmed:

***“Sex workers don’t have rights to the same social protections offered to the rest of the population.”***

ACÇÃO DE SOLIDARIEDADE E SAUDE  
COMUNITARIA (A.S.S.C.), ANGOLA

Similarly, sex workers in many countries cannot organise officially as sex worker-led organisations and cannot form or join established trade unions. When sex workers do organise to fight for their rights, then they must often give their collective a name that does not indicate that they are sex workers:

***“Sex workers can form and join associations/collectives/organisations. However, sex workers cannot register the organisations/groups under the name of sex workers. It must have to register like non-sex workers citizens.”***

HIV/AIDS RESEARCH AND WELFARE CENTRE  
(HARC), BANGLADESH

The barriers to collectivising or being able to join trade unions are directly related to sex work not being recognised as work under the law. Attempts to officially register sex worker collectives by some member organisations were turned down on the grounds that “such a profession does not exist” (Russian Sex Workers’ Forum). The lack of recognition of sex work as work is the root cause for many of the challenges that sex workers face in trying to uphold their rights as workers.

Sex workers also face difficulties in accessing financial services, such as business loans, personal loans, mortgages, and other credit and savings schemes that can support their economic empowerment and security<sup>10</sup>. Applying for a bank account, for example, is often impossible as a sex worker, as financial institutions tend to assume that sex work is always connected to illegal activities, such as trafficking and money laundering:

***“There is discrimination on the part of banks which have the right to refuse a customer. These refusals are common because banks are forced to fight “money laundering” and they assume that sex work is illegal.”***

STRASS, FRANCE

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<sup>10</sup> NSWPF, 2020, “Briefing Paper: Economic Empowerment for Sex Workers.”

This shows how the conflation of sex work with human trafficking directly impacts on sex workers' ability to access financial services normally available to other workers. Another problem reported was that financial institutions often require people to show proof of income and other documents as evidence of being integrated in the labour market. As a member organisation in Mexico reported, sex workers often do not have these documents:

***“Access to financial services is limited for people who practice sex work, given the number and type of official documents that are requested to access financing, including proof of income, social security number, or its registration with the tax administration system. Generally, those who do only sex work do not have these documents.”***

COLECTIVO SERES, MEXICO

When sex workers are not able to enter into formal employment relationships that enable them to be documented as workers, they are inevitably excluded from institutions that help them to find security and stability. A vicious cycle persists, in which failure to recognise sex work as work undermines the achievement of legal working conditions, which in turn prevents sex workers from integrating into society and forces them to keep working in economic 'grey' zones.

Self-stigma among sex workers was mentioned as an additional barrier to labour rights activism. When sex workers internalise the stigma from others, they are less likely to participate in advocacy for better working conditions. New Generation Humanitarian NGO in Armenia reported:

***“Capacity building and empowerment of sex workers is one of the main directions of our organisation's activity. We build leadership and activism among the sex workers so that they can advocate for their rights and freedoms.”***

While labour policy frameworks are created and implemented by governments and other stakeholders in political, economic and social institutions, sex workers must be empowered to play an active role in demanding their voices are heard in paving the way for improvements in their working conditions.

The responses from the consultation revealed several barriers and challenges; however, as the next section will show, some sex workers' rights organisations are already leading the way in advancing the decent work agenda for sex workers.

# Best practice initiatives promoting decent sex work

**This section looks at five sex worker-led decent work initiatives from five different countries and one project in ILO that focusses on introducing decent work measures into informal work sectors that overlap with sex work.**

## Health insurance and sick pay for sex workers in France

In many countries, sex workers struggle to access health insurance, and in the event of missing work due to illness, sex workers simply lose money. This is often because formal employment is illegal for sex workers in most countries due to anti-procurement laws that conflate sex work with trafficking. Therefore, whereas workers in other sectors may receive health insurance through an employer, this is not a possibility for sex workers. Even in countries where sex workers can register as freelance workers and obtain health insurance with this status, insurance rates are often much higher than for people who are formally employed. When sex workers try to apply for insurance schemes, they face a risk of discrimination from insurance companies, as a representative from the sex worker collective STRASS in France explained:

***“Most of the health insurance companies refuse to protect sex workers, but the irony is that it’s a legal obligation to actually have health insurance. The problem is that once you say you are a sex worker nobody wants to cover you, so you’re like okay, I have the legal obligation to have an insurance, but no insurance wants to sign a contract with me, so it’s like what do I do?”***



In response to this problem, STRASS managed to connect with a small insurance company open to accepting sex workers as members. A few members researched various insurance providers around the country until they finally came across one that had a history of insuring people in non-standard, self-employed professions, and that was founded on the principle of solidarity among workers doing 'niche' jobs, who all contributed to a collective pot to mutualise medical costs. They reached out to the company as a collective of sex workers and explained their hardship. The director of the company was sympathetic to the case presented and open to insuring sex workers. In collaboration with STRASS, the company set up a scheme for sex workers to which they can apply without having to provide any explanation for their occupation and with the guarantee of anonymity, meaning that 'sex work' will not appear anywhere on the registration documents. Reimbursement costs are not denied based on the applicant being a sex worker and sex workers are offered advice in a "benevolent manner and without judgment"<sup>11</sup>. The insurance prices are affordable as the insurance is based on mutualisation, which means that health costs are shared collectively between all members of the mutual insurance company.

11 "Protection sociale des TravailleurSEs du sexe en France," STRASS Syndicat du travail sexuel.



In this way, low-earning sex workers are also able to access health insurance. Sex workers do not have to be registered with tax authorities to apply for the insurance, nor do they need to be members of STRASS. A social security number is necessary, however, which can pose a barrier to migrant sex workers seeking this insurance.

This new health insurance scheme has now been in operation for three years and STRASS has also recently negotiated a sick pay fund (*prévoyance*) through the company, which covers sex workers' income in the event of long-term illness or for hospitalisation costs in the event of an accident, also based on mutualisation. STRASS is also working on getting a pension system in place for sex workers. Paying into the official state pension system regularly for sex workers is also a challenge, as many are independent contractors.

The scheme that STRASS has set up is an example of how an essential component of decent work – health insurance and sick pay – has been introduced for sex workers through the self-organisation of sex workers. Like other types of work that involve regular physical activity or mental exertion, sex work carries health risks. Insurance gives sex workers more security in their working lives as well as in their personal lives when they are unable to work.

## Can Do Bar – a workplace for sex workers by sex workers

***“When the only tool is a hammer, everything is dealt with like a nail. New tools are needed.”***

EMPOWER, THAILAND

This quote from the Thai sex worker collective Empower's community research report on moving towards decent work in sex work<sup>12</sup> illustrates the urgency of applying labour laws (new tools) rather than criminal laws (the hammer) to sex work. The long-term solution to sustainable decent working conditions is therefore the decriminalisation of sex work – and with this legal reform, an end to the exploitation of the criminalisation of sex work. However, if sex workers continue to be undermined by the law in the fight for better working conditions, they must organise to find innovative ways of introducing decent work standards in their profession.

Sex workers in Empower have already taken steps towards making decent work a reality for themselves. In 2006, they created a working model of a just, fair workplace for sex workers called the Can Do Bar in Chiang Mai, Thailand. Unlike other sex work venues in Thailand, the Can Do Bar's infrastructure complies with Thai Occupational Health & Safety Standards.

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12 EMPOWER Foundation, 2016, “Moving Toward Decent Sex Work.”



Celebrating in Can Do Bar  
with family from ASEAN  
and Pacific Sex Worker  
Organisations, February 2015



The bar staff are employed in accordance with the Thai Labour Protection Act and are enrolled in the National Social Security Scheme according to the law. The Can Do Bar also provides workers with opportunities for promotion and to advance their skills. Although there is no formal union or association connected to Can Do Bar, the workers regularly meet and play a central role in bringing about changes in the workplace.

According to activist Liz Hilton, the idea to build the Can Do Bar started with a group of about ten sex workers who realised that if they wanted to see improvements in their working conditions, they could not rely on the government. Lobbying for changes to the legal framework was taking place, but until these changes were implemented, sex workers had to continue to work under poor labour conditions. Therefore, the sex workers in Chiang Mai decided to build the 'ideal' workplace themselves. They began to collect money and raised enough to design, build and open the Can Do Bar. The design also included looking at Thai Occupational Health and Safety Law and applying that to the physical environment of the bar, which the women did mostly themselves. To implement the occupational health and safety measures, the women worked with a professor who specialised in occupational health. Together, the sex workers looked at the labour law and the Thai Social Security Act and applied those conditions to those working in the bar. Women who could not afford to contribute money could contribute their labour and become part owners.

The sex workers behind Can Do Bar call their creation an "experitainment", because they simply tried and applied for conditions that previously people in the industry believed could not be achieved by sex workers. For example, despite being told for years that sex workers could not join the social security system, they managed to obtain a social security scheme for all workers in the bar that covers unemployment benefits, pension, maternity leave and other basic labour rights for workers. The Can Do became a working model for other bars in Thailand. Some bars have picked up aspects of the model, such as the social security scheme for all workers. The installation of fire exits was something that was pioneered by the Can Do Bar to promote safety at work. In Thailand, many sex workers working in bars had died in fires because there were not enough fire exits or those that existed were not accessible. Small changes like these made a significant difference to the work safety standards for sex workers at a local level.

The Can Do Bar shows what sex workers mean by 'decent sex work', which should not be something special or unusual. Instead, decent work in sex work can be implemented using already existing tools of existing labour standards and regulations.



## Aotearoa New Zealand Sex Workers' Collective's New Workers' Kit

Like workers in all sectors that demand a high level of physical and mental effort, sex workers can benefit from support services that help them to develop healthy work practices and maintain their physical and mental health. In decriminalised contexts, such services can be established officially and expanded to include a wide range of support for sex workers. One example of a successful service for sex workers is the Aotearoa New Zealand Sex Workers' Collective (NZPC) sex worker health clinic. The clinic has served NZPC for twenty-six years – eighteen years pre-decriminalisation and eight years post-decriminalisation. Sex workers can choose to remain anonymous when receiving the clinic's services. The clinic focuses on their sexual, mental and physical health, offering counselling and education about work practices. One of the services offered at the clinic is special counselling for sex workers new to the industry.

As a former nurse at the clinic described, one important goal of the clinic was to support new workers entering the industry safely:

***“If they were absolutely brand new, I made a point of making sure they came to see me quite regularly in the first few months because that is the most difficult time for workers to make mistakes because they're not absolutely switched on with dealing with ugly mugs. I made sure that a new girl always had somebody to look after them from the collective, as far as teaching them, talking to them, giving them the information, chatting to them about various aspects that they might come across to start off with.”***

Based on their experiences with advising new sex workers, NZPC has produced a “New Workers' Kit”<sup>13</sup> that contains essential information for sex workers just starting out, from describing pathways of sexually transmitted infections, to the legal conditions surrounding sex work, to avoiding and dealing with burnout, and interaction with clients. The kit is an example of a best practice for making sex work decent because it promotes workers' safety, wellbeing and legal consciousness.

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13 “Information for Sex Workers in New Zealand Aotearoa,” NZPC | Aotearoa New Zealand Sex Workers' Collective.

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Cover art on the  
New Workers' Kit

The kit begins with a section about the Prostitute Reform Act (2003), in which the clauses of the law are summarised and explained, including health and safety obligations, restrictions on brothel operators' requirements of sex workers and sex workers' rights to social security. What is made clear in the kit is sex workers' entitlement to benefits under the Social Security Act, so that sex workers know to expect coverage just like all other workers. There is also a section that addresses 'sex worker burnout syndrome', where typical symptoms of overwork and unhealthy approaches to sex work are listed to help sex workers gauge if they might need a break. The final section offers extensive information on STIs, including infection pathways, symptoms and ways to protect oneself from infections during sex. As the risk of contracting STIs is one of the most common risks that sex workers face in their working lives, educating new workers from the beginning about identifying and dealing with infections is an essential part of ensuring health and safety at work.

Offering new workers guidance and orientation sets a foundation for them to develop sustainable working habits and skills that allow them to work successfully. Providing new workers with knowledge about the legal context of sex work also empowers them to demand and ensure that they have rights at work. While this is common in many other sectors of work, this is often a dimension of professional development that is missing in sex work. As sex work is not recognised as work in most countries, there is a scarcity of officially published advice available for those new to the industry. Learning tends to happen directly on the job or with some help from more experienced sex workers, but for the most part, sex workers are left to themselves when it comes to navigating the business. However, with guidance, such as that provided through the New Workers' Kit, people new to sex work can enter the industry with useful knowledge that can help them to avoid mistakes or agree to practices that may have long-term negative consequences. In this way, services for new worker orientation and professional development are a crucial component of promoting decent work in sex work.

## ***Kylie vs. CCMA and Others***

Along with decriminalisation, a major prerequisite for fighting for decent work standards to be applied to sex work is the shift to addressing problems in sex work through a labour rights lens. In South Africa, the sex worker-led national network Sisonke and sex worker advocacy group Sex Worker Education and Advocacy Taskforce (SWEAT), with the help of the Women's Legal Centre (WLC), has fought for this shift to take place. In a landmark case, *Kylie v. CCMA and Others* (2010), a sex worker appeared in front of the Labour Appeals Court for the first time in the country's history to protest unfair treatment at her workplace. In South Africa, sex work is largely criminalised. As in many other countries, the status of sex work in South Africa is contradictory in many ways, such that being a sex worker is not a crime yet doing sex work is punishable by law. Thus, when Kylie, the sex worker at the centre of the case, first tried to take legal action against a brothel operator, she faced rejection due to the criminalisation of her work. Kylie had been working at a massage parlour until the owner fired her in April 2006 for allegedly failing to undertake enough bookings, not managing her time, choosing specific clients, refusing to perform oral sex and spending unpaid time in her room with her boyfriend.<sup>14</sup>

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14 "Victory for sex worker," IOL.

She first approached the Commission for Conciliation, Mediation and Arbitration (CCMA), but it was ruled that the CCMA “did not have jurisdiction over a case of this nature.”<sup>15</sup> When she then approached the Labour Court, her case was again dismissed on the grounds that sex work was an illegal activity and therefore labour laws did not apply in her case. Much of the case at the labour court level revolved around the issue of whether she was an employee or could be considered an employee. Since she worked at a brothel, the Labour Court ruled that she could be considered an employee and therefore entitled to a number of protections as an employee, but, on the other hand, her work was criminalised, and the court couldn’t be seen as condoning a crime by recognising her as an employee.

Four years after the first appeal at the CCMA, Kylie’s case was heard at the Labour Appeal Court in Johannesburg, where the judges overturned the decision made in the CCMA. They ruled that despite the illegality of her work, the CCMA did indeed have the jurisdiction to handle the case. A fairly progressive male judge heard the matter and he agreed with the Labour Court in saying that the definition of employee under the Labour Relations Act was broad enough in order to recognise that Kylie was, in fact, an employee. However, he went one step further and ruled that although her employment was criminalised, this should not impact on her constitutional right to have her labour rights protected.

This included the right to fair labour practice and the protection of the rights at work through legislation that had already been enacted, such as the Labour Relations Act. The focus on fair labour practice introduced more scope when it came to arguing that that human rights cannot be contracted away, and that people are born with their constitutional rights inherently intact. Just because Kylie had entered a contract of labour that, in practice, could not be enforced due to the illegality of sex work, it did not mean that her constitutional rights fell away. Therefore, her constitutional right to dignity held and she still had the right to fair labour practice. This was the argument put forth with the help of Sisonke, SWEAT and WLC before the Labour Appeals Court, which accepted this.

The Kylie case symbolised an important step in sex workers’ rights advocacy by drawing on the idea that constitutional human rights are guaranteed to everyone, no matter whether or not their work is criminalised, and that when these are violated, the basic human rights of the people involved must still be protected. In this way, the idea that sex workers’ rights are human rights was highlighted and could be used for future advocacy. The Kylie case in South Africa provides an example of how the sex workers’ rights movement can make progress by affirming sex workers’ rights as human rights and shifting the discourse to a labour rights lens.

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15 Southern African Legal Information Institute, 2008, “Kylie v Commission for Conciliation Mediation and Arbitration and Others,” (Labour Court of South Africa).



## Work Health and Safety Guidelines for Sex Workers

***“I think there’s still this ingrained idea that sex workers need some kind of special protection in work health and safety, when actually the protections we need are just really supported by existing industrial laws that are aligned with the type of work that we’re doing. Sex Workers are contributing to the drafting of the Northern Territory Work Health and Safety Handbook, Sex Industry Guidelines for Sex Workers and Sex Service Services Premises, we’ve shared our sex working knowledge & skills to document approaches to mitigate risks and hazards in our work”***

SWOP-NT, AUSTRALIA

The statement above from a sex worker and representative of the Sex Workers Outreach Program (SWOP-NT) summarises the approach that is being taken in the Northern Territory towards implementing decent work standards for sex work. In the Northern Territory of Australia, full decriminalisation has recently been implemented for all areas of sex work<sup>16</sup>. Now, SWOP-NT and Scarlet Alliance, Australian Sex Workers Association with the support of Unions NT, NT WorkSafe, the Department of Health and the Department of the Attorney General and Justice are developing Work Health & Safety (WHS) guidelines to support safer working conditions for sex workers.

The WHS guidelines being developed are based on standards and industrial regulations that are already in place for workers in other industries. The WHS Sex Industry Guidelines of New South Wales (NSW) under Safe Work Australia<sup>17</sup> have been adopted and adjusted into the drafting of the *Work Health and Safety Handbook, A Guide for Sex Services Premises in the Northern Territory*.

SWOP-NT is currently working with the Scarlet Alliance Australian Sex Workers Association. (the peak body representing membership of sex worker organisations and projects and individual sex workers throughout Australia). They are being supported by work health and safety advisors from the peak body of the Northern Territories Unions<sup>18</sup>, from NT WorkSafe<sup>19</sup> and from the Public Health and Environmental Health Directorate at the Department of Health. The main task is making sure that work health and safety regulations are drafted in accordance with the standards that other workers have. Automatically, the *Work Health and Safety (National Uniform Legislation) Act 2011 and its Regulations* applies to sex workers because decriminalisation is in place. The legislative framework automatically intersects Acts, Regulations, Codes of Practice and Standards.

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16 “Sex Workers Celebrate the Passing of the Bill to Decriminalise Sex Work in the NT,” Northern Territory AIDS & hepatitis Council.

17 Safe Work Australia, “[Health and safety guidelines for sex services premises in NSW.](#)”

18 Unions NT

19 “[Safety and Prevention](#),” NT WorkSafe.



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Decriminalisation  
campaign

The Workers Rehabilitation and Compensation Act and Regulations, the Return to Work Act 1986 and Regulations applies and that provides rehabilitation and compensation for workers that are injured at work, the legislation assists operators of sex service premises to understand their obligations to workers and manage workplace injuries to assist sex workers to return to work. The Northern Territory Public and Environmental Health 2011 Act and Regulations applies as well, that intersects into the Sex industry Act 2019 and the Work Health Safety Guidelines. This collaborative work with sex workers by Work Health and Safety Advisors and the legislative protections documented in the Work Health and Safety Handbook, A Guide for Sex Services Premises in the Northern Territory support the protection of sex workers and ensure sex service premises workplaces abide by the law.

The Australian National Employment Standards (NES)<sup>20</sup>, the Fair Work Act 2009 and Regulations, the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, Amendment (Family and Domestic Violence Leave) Act 2018, Independent Contractors Act 2006 as well as the protections under the Privacy Act 1988 additionally apply. Even without the specific industry-related guidelines in place, there are already automatically several areas of labour and workplace laws in which sex workers have recourse.

SWOP-NT, Scarlet Alliance and the NT Sex Worker Reference Group (SWRG) sex worker representatives advocated to ensure that amendments to the Northern Territory Planning Scheme allowed for sex work businesses to be absorbed fairly equitably into the NT business structure.

Sex workers successfully challenged planning and business laws that previously only allowed for only one person to operate a private business from residentially zoned areas, without support staff. SWOP NT, Scarlet Alliance and the SWRG representatives argued that already sex workers operated in small co-ops and in partnerships together from home residences without impact, and that the new laws should allow for cooperatives, or at the very least, two sex workers to continue to operate for Work Health and Safety protections and be able to employ support staff such as receptionists, security if required and cleaners. The Northern Territory Government approved the latter, amending the Planning Scheme to allow for two sex workers to work together as Home Occupation Business and employ support staff.

After the Sex Industry Bill 2019 was passed as law in November 2019 the implementation of decriminalisation was unable to be ratified until the Planning Scheme was amended to allow for the sex services and premises to operate in compliance with existing laws.

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20 Australian Government, 2009, "Fair Work Act 2009" & "Fair Work Regulations 2009."



The negotiations that SWOP-NT engage in with authorities in their region, as well as the new guidelines that they are drafting for specific work health and safety measures for sex workers and sex service business operators, demonstrates how the decriminalisation of sex work provides a pathway for decent work standards for sex workers as applies to other industries and their workers. Full decriminalisation of sex work has paved the way for sex workers in the Northern Territory to more easily demand treatment equal to other workers.

However, the continuing work of SWOP-NT to integrate sex work into the labour law frameworks and ratify Work Health & Safety Guidelines, also clearly shows that decriminalisation is not the end of NT sex workers' activism.

As a representative from SWOP-NT put it:

***“...it’s just the platform to start from. For us, the hard work is after full-decrim is in place, we still need additional protections and rights. These include the expungement of Sex Work Industry spent convictions under the previous Act. We need to be protected against Discrimination, Stigma and Vilification, we need to urgently amend the Northern Territory Anti-Discrimination Act and advocate for the territory to draft and pass a Bill of Rights to protect all workers and all Territorians<sup>21</sup>.”***



**SWOP-NT  
Decriminalisation  
campaign**

21 Northern Territory AIDS & hepatitis Council, 2020, “[Position Statement Northern Territory 2020 Election](#).”



## ILO – Work in Freedom Programme

One of the main barriers to lobbying for governments to recognise sex work as work and to then apply labour laws and decent work standards to sex work is the conflation of sex work with human trafficking. The Work in Freedom Programme is an ILO project that has been in place since 2013, where the anti-trafficking narrative is challenged and the intersection of sex work with other sectors of informal work are highlighted. The findings<sup>22</sup> on the process of labour migration resulting from this project can support the shift to recognising sex work as work in regions of the world where sex work is still largely criminalised.

Work in Freedom is an integrated development programme that focusses on the prevention of trafficking in the South Asia and Middle Eastern regions. The approach is to look at the vulnerabilities and societal causes that lead to trafficking, unlike mainstream anti-trafficking programmes that focus on rehabilitation and rescue. The project coordinators work with different partners such as trade unions and try to look at the prevention of trafficking from the perspective of promoting mobility with choice. Investigators look at vulnerabilities, see what workers' options are and assess how more choice can be implemented.

The project works at community level at source locations, where workers are recruited and assisted in migrating across borders to work. The project also works at destinations where workers arrive and negotiates the implementation of decent working conditions to fight trafficking for exploitative purposes. The goal is to ensure that workers have a good environment to work in, decent wages, and can access social security, reducing their vulnerability to trafficking and forced labour.

The Work in Freedom Programme first touched on sex work in connection with domestic work through the investigation of migration processes among women from Bangladesh to Saudi Arabia. Often, the line between domestic work and sex work was blurred for women taking on housekeeping jobs across borders. This helped the programme investigators understand that migrating women often took on various jobs in the informal sector, and that it did not make sense to discriminate between different types of informal sector jobs when fighting for decent work standards to be implemented. This highlighted the need to develop different types of protection for workers, regardless of whether sex work was criminalised or not, and to look at protective measures that apply to all workers, including sex workers.

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22 ILO, 2019 “Lessons learned by the Work in Freedom Programme.”

As a representative from the programme described:

***“It’s really a question of trying to talk about choices and in doing so trying to recognise that women can exercise agency in the type of work they do and sectors which pay them better. Until they have better opportunities, you can’t really say you should ban a particular sector.”***

Work in Freedom looks at the agency of women as workers and the way women exercise agency in migration pathways varies at different points in time. Therefore, it is crucial to look at the intermediaries that facilitate migration when there is a lack of employment opportunities in women’s home countries. Instead of criminalising the intermediary in this process, the project looks at the wider picture to understand the underlying issues in labour migration and advises on how choice can be promoted, especially among women migrant workers. The broader goal is to keep challenging the mainstream discourse on prevention of trafficking that victimises women rather than seeing them as workers who need rights. This can create spaces where sex workers can talk about their experiences of working in informal sector work and transferring across different sectors, for example, from in-house domestic work to garment sewing to sex work. The blurring of sex work and other work commonly performed by women, such as domestic work, is brought forward and addressed.

This opens ways of establishing how women could negotiate better working conditions when they migrate for jobs, including sex work. Work in Freedom has already begun to provide space for associating, collective bargaining and building local collectives, with the aim of developing policies that provide entitlements to all informal workers.

When sex work is recognised as work, this impacts on the way governments address problems in sex work and challenges faced by sex workers. Projects such as ILO’s Work in Freedom Programme raise awareness of the intersection between sex work and other forms of informal work commonly done by women and highlight how, in many regions of the world, raising standards of decent work in other sectors of the informal economy would also benefit people who do sex work. Furthermore, ILO could support initiatives of sex worker-led organisations, such as the best practice examples presented in this guide, that promote decent work standards for sex workers.

# Recommendations for Sex Workers' Rights Organisations and Allies

***“Decent Sex Work is achievable. The first step is the recognition that sex work is no more inherently abusive or automatically criminally exploitative than other work or human relationship. Sex workers are workers in diverse situations, sectors and labour conditions, similar to other workers.”***

EMPOWER FOUNDATION, THAILAND

- Sex work must be recognised as legitimate work, equal to other forms of work
- Governments, policymakers, and advocates must actively pursue the full decriminalisation of sex work, including sex workers, clients and third parties. Criminalisation is a major barrier that excludes sex workers from attaining labour rights
- Sex work must be included when governments are determining employment relationships that could mean sex workers become eligible for labour protections and rights already granted to other informal and formal workers
- Sex workers should familiarise themselves with the general labour laws and regulations in their respective countries so that they are able to refer to these when demanding their labour rights
- Challenge self-stigma in sex work so that sex workers recognise themselves as dignified workers and are empowered to advocate for decent working conditions
- Engage with owners or managers of commercial sex businesses where possible, as they are responsible for determining working conditions in their venues
- Strengthen alliances with other movements to negotiate more effectively with local and national authorities and construct decent work guidelines
- Reach out to labour unions to create an understanding of the commonalities of sex workers' needs with other workers
- ILO should engage proactively with global and local sex workers' rights movements to advance the understanding of sex work as work
- ILO should endorse the efforts of sex worker-led organisations to promote and provide decent work standards in line with their four pillars.

# Conclusion

Sex work is work and can be decent work, however, if it is criminalised and not recognised as work, it cannot be integrated into existing labour policy frameworks. The failure in many countries to acknowledge sex workers as workers has led to their exclusion from various institutions and services that support social and economic security and empowerment, which are normally accessible to other workers. By officially recognising sex work as work in its publications and including sex workers in the drafting process for decent work guidelines, ILO can support sex workers' rights as part of the fight for fundamental human and labour rights.

Continuing to fight social stigma and discrimination and challenging the conflation of human trafficking and sex work are key processes for helping to frame sex work as work in mainstream society. The role of sex worker-led organisations in addressing both stigma and trafficking, as well as in campaigning for decriminalisation, has been, and continues to be, crucial. The best practices highlighted in this Smart Guide provide some inspiring examples of how, despite legal and social barriers, sex workers have managed to create services, workplaces, and guidelines for their industry to ensure their work meets the ILO decent work standards. Sex workers are best placed to lay the foundations for decent sex work, but without support from society and government, these foundations remain fragile.

March at the Sex Worker  
Freedom Festival,  
Kolkata, 2012







**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.



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

The Matrix 62 Newhaven Road Edinburgh Scotland UK EH6 5QB  
+44 131 553 2555 [secretariat@nswp.org](mailto:secretariat@nswp.org) [www.nswp.org](http://www.nswp.org)  
NSWP is a private not-for-profit limited company. Company No. SC349355

