

Rights-Affirming International Policies Relating to Sex Work



The Smart Sex Worker's Guide



Global Network of Sex Work Projects
Promoting Health and Human Rights

SEX WORK IS WORK:

Only Rights Can Stop the Wrongs

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

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 for more information.

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Introduction

In recent years a growing number of international organisations have released policies, guidance and recommendations that promote the rights of sex workers and advocate for the full decriminalisation of sex work. It can be difficult for sex workers and sex workers' rights activists to maintain an awareness of the many policies and recommendations that now exist. The purpose of this Smart Guide is to provide an accessible introduction to these rights-affirming international policies and recommendations on sex work, as well as to explore how international human rights law can be used in sex workers' rights activism.

Globally, sex workers' rights activists are working in very different social, political and cultural contexts. Advocacy strategies that are effective in one country may not necessarily have the same impact in every country. Therefore, this Smart Guide approaches the topic as broadly as possible: rather than making suggestions on how activists *should* use international policies, recommendations and human rights treaties, it aims to present information in a way that enables activists to decide how to use them based on local contexts.

This Smart Guide has three main sections. It begins by looking at important policy recommendations that have been issued by international, human rights-focused, non-governmental organisations (NGOs) that promote a rights-affirming approach to sex work. The second section focuses on the United Nations (UN) and details many of the recommendations that have been issued by UN agencies, treaty bodies, the Human Rights Council and Special Procedures in recent years concerning the rights of sex workers and the decriminalisation of sex work. The final section provides some brief comments on the use of human rights law to advance sex workers' rights.

International NGOs

Amnesty International

Almost all the NSWP members that replied to the e-consultation carried out for this Smart Guide highlighted their awareness and frequent use of Amnesty International's policy on sex work. Amnesty adopted their policy on sex work in 2016 amidst high profile opposition from fundamental feminists and abolitionist groups. Amnesty's policy took over three years to develop and was evidence-based. In addition to reviewing the most relevant and prominent research on sex work, Amnesty undertook their own in-depth research on sex work in four diverse countries – Norway, Argentina, Papua New Guinea and Hong Kong – and conducted several rounds of consultation with its members worldwide before adopting the policy.

Amnesty International recommends the full decriminalisation of sex work because it recognises that criminalisation creates “foreseeable barriers...to the realization of the human rights of sex workers.”¹ Amnesty accepts that in order to protect the rights of sex workers all laws against sex work must be repealed – not only laws against selling sex but also those against buying or organising sex work. They concluded, based on evidence, that such laws force sex workers to operate secretly, and “undermine a range of sex workers’ human rights, including their rights to security of person, housing and health.”² In order to address the harms caused by the criminalisation of sex work, Amnesty advocates States do the following:

“Repeal existing laws and/or refrain from introducing new laws that criminalise or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration;

Ensure that any criminal laws that are applied to sex work are aimed at addressing harm to sex workers, including through clearly defined prohibitions on acts of coercion or exploitation, such as compelling a person to sell sex (including through the abuse of authority). Such laws should not be applied in a way that conflates all sex work with violence and/or exploitation or acts as a de facto prohibition on sex work;

Refrain from the discriminatory enforcement of other laws such as those on vagrancy, loitering, and immigration requirements against sex workers; and

Ensure that sex workers are entitled to equal protection under the law and access to justice, and are not excluded directly or in practice from the application of anti-discrimination, labour, health and safety, and other laws.”³

1 Amnesty International, 2016, Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, p.2

2 Amnesty International, 2016, Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, p.2

3 Amnesty International, 2016, Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, p.11

While calling for the decriminalisation of sex work, Amnesty makes clear that criminalisation is not the only factor that leads to the human rights violations faced by sex workers. They outline stigmatisation, discrimination and experiences of violence as significant factors. Amnesty describes the intersectional discrimination faced by many sex workers and acknowledges that marginalised groups are over-represented among sex workers, such as migrant workers and those discriminated against on the basis of race or caste. They acknowledge the dual discrimination faced by LGBT sex workers who face criminalisation and discrimination as sex workers but also on the basis of their sexual orientation or gender identity.⁴ Women sex workers too, face a range of inequalities based on their gender, which can be compounded when they are seen to be transgressing 'appropriate' gender roles through their involvement in sex work.

Amnesty makes several important recommendations for States to ensure they properly protect the rights of sex workers, beyond just repealing laws that criminalise sex work. The recommendations relate to preventing people entering sex work purely through economic necessity, preventing violence against sex workers, addressing stigma and discrimination, protecting sex workers from exploitation, and helping sex workers to leave sex work if/when they choose to do so. The full list of recommendations can be prioritised by sex workers' rights activists depending on their own advocacy needs and the local social, political and legal context.

Since Amnesty passed their policy, sex worker organisations have been citing it in their work and using it to exert pressure on the authorities in their countries. Some local Amnesty offices have helped sex workers in their advocacy work. For example, in 2016 when the authorities in Bishkek, Kyrgyzstan began "cleansing" the city of sex workers via arbitrary arrest, local sex worker organisation *Tais Plus* worked with Amnesty, sending letters to the Ministry of Internal Affairs and the Ombudsman demanding the authorities stop the cleansing.

While the Amnesty policy is extremely helpful, it is important to be aware when the policy may not be appropriate in local political contexts. For example, one sex worker organisation mentioned that, after Amnesty had released an especially critical report about government practices in their country, they were cautious about using Amnesty's sex work policy to advocate to that government.

⁴ Amnesty International, 2016, Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, p.6

Human Rights Watch

Human Rights Watch (HRW), another highly respected global human rights organisation, affirmed its support for sex work decriminalisation in its 24th Annual Review in 2014. Supporting its position that sex work should be decriminalised, HRW observed that:

“Criminalisation ... can cause or exacerbate a host of ancillary human rights violations, including exposure to violence from private actors, police abuse, discriminatory law enforcement, and vulnerability to blackmail, control, and abuse by criminals. These severe and common consequences, and the strong personal interest that people have in making decisions about their own bodies, mean it is unreasonable and disproportionate for the state to use criminal punishment to discourage either practice.”⁵

Advocates attempting to challenge their local police against the use of condoms as evidence in pursuing sex work prosecutions may also find HRW’s 2012 report, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities*, helpful.

Women’s Rights Organisations

While much of the global opposition to sex workers’ rights is advanced by women’s rights organisations, there are also many women’s rights organisations globally that support the decriminalisation of sex work and the promotion of sex workers’ human rights. Notable examples include:

International Women’s Rights Action Watch Asia Pacific (IWRAP-AP) supports sex worker organisations in preparing Shadow Reports to submit to the CEDAW Committee (see below), which highlight the human rights violations faced by sex workers and call for legal and policy reforms to address these.

Association for Women in Development (AWID) states that:

“research has shown that the criminalisation of sex workers and/or their clients will only increase the vulnerability of sex workers and will not lead to a decline in sex work nor a reduction in levels of violence against sex workers”⁶

Moreover, they make clear that as an organisation, “AWID supports sex worker rights organizations and their allies in calling for the diverse experiences and voices of sex workers to be central to any changes in policy and law and demands the full and equitable rights of all sex workers...”.

5 Human Rights Watch, 2014, *World Report 2014: Events of 2013*, p.47

6 Association for Women in Development, 2014, *AWID Calls for the Voices of Sex Workers to be Heard by the European Parliament*

The **International Community of Women Living with HIV** (ICW) has recommended that sex work be fully decriminalised “in order to protect the health and human rights of sex workers and to more effectively address the HIV epidemic”. Furthermore, they call for “sex workers to be granted labour rights and protections” and for sex workers to be “recognised as the experts in their own lives”.⁷

LGBT Rights Organisations

International LGBT organisations support the decriminalisation of sex work and the adoption of rights-affirming policies for sex work, including:

MPact Global Action for Gay Men’s Health and Rights supports the full decriminalisation of sex work. Their organisation “strongly endorses the decriminalisation of consensual adult sex work” and they state that “criminalisation of sex work intentionally undermines sex workers’ fundamental right to bodily autonomy, to work, to health, and to be free from blackmail, harassment, and violence.”⁸

ILGA-Europe produced a policy on sex work that calls for “the decriminalisation of all aspects of sex work, i.e. the selling, as well as buying of sex services, the operational aspects of sex work and the fact of working collectively with other sex workers.”⁹ ILGA- Europe developed their policy based on the testimonies of LGBT sex workers as well as existing evidence on the harms of criminalising sex work. They recognise that decriminalisation is “a cornerstone for protecting the human rights of sex workers” and that criminalisation “increases stigma against and vulnerability of sex workers” exposing them to a “higher risk of violence”. They note, for example, that 88% of transgender people murdered in Europe are sex workers.

7 International Community of Women Living with HIV, 2015, ICW Sex Workers, Sex Work and HIV Position Statement 2015

8 MPact Global Action for Gay Men’s Health and Rights, 2015, MSMGF on the Rentboy Raids–No Justice in Criminalizing Sex Work

9 ILGA-Europe, 2018, Empowering LGBTI sex workers towards the full respect of their human rights, p.3

Transgender-Europe (TGEU) has a policy supporting the decriminalisation of sex work and promotion of the human rights of sex workers. TGEU highlights the high risk of violence faced by transgender sex workers and notes the similarities between the human rights violations faced by transgender people and sex workers noting that “*trans[gender] people and sex workers share the experience of being over-policed but under-served.*”¹⁰ They make several recommendations including that sex work be fully decriminalised and that sex worker representation – especially of transgender sex workers – is a priority in any policy discussion related to sex work.

Anti-trafficking organisations

The fight against human trafficking is frequently used as justification for anti-sex work laws and policies. However, many global organisations fighting against trafficking recognise that a rights-affirming approach to sex work, including full decriminalisation, is the most effective approach.

The Global Alliance Against Traffic in Women (GAATW) published an influential report in 2011, which explored the negative impacts of anti-trafficking initiatives that utilise an ‘end demand’ approach, including the criminalisation of clients. The report makes clear there is no evidence that such approaches reduce the prevalence of trafficking, stating that they cause serious harm to sex workers by putting their livelihoods at risk, increasing the stigma they face, and intensifying police power over them.¹¹ In a more recent report GAATW conducted on-the-ground research with sex worker organisations in seven countries. They explored the impact of anti-trafficking policies on sex workers and, crucially, documented examples of sex worker organisations as key partners in the fight against trafficking. GAATW made a series of recommendations, including that sex workers be partners in any anti-trafficking work, and that sex workers be consulted on the design and delivery of anti-trafficking efforts.

¹⁰ Transgender Europe, 2016, *Sex Work Policy*, p.6

¹¹ Global Alliance Against Traffic in Women (GAATW), 2011, *Moving Beyond ‘Supply and Demand’ Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking*, p.29 – 34

GAATW states definitively that decriminalisation of sex work is necessary to create safer and healthier workplaces for sex workers, and to reduce opportunities for exploitative practices:

“Complete decriminalisation of sex work is not a panacea, but it is the first step to better protect sex workers’ rights. The decriminalisation argument is based on an understanding that sex work is work, and is a precondition for establishing safer, healthier workplaces in an industry in which sex workers’ rights are protected by labour laws, and in which sex workers are afforded the same labour protections which other workers enjoy. As in other sectors, this would lead to fewer opportunities for exploitative working conditions, including human trafficking.”¹²

La Strada, a European anti-trafficking organisation, recognises that criminalisation of sex work and ‘end demand’ policies that attempt to criminalise clients “[drive] the sex industry even more underground, which results in less access to health, social and legal assistance for sex workers, and significantly lower chances to identify individuals who have been trafficked.”¹³

Medical organisations

The Lancet is one of the world’s oldest and most prestigious medical journals. In July 2014 it published a special issue on HIV and sex workers. It contained several articles exploring sex workers’ vulnerability to HIV and identifying possible solutions. The Lancet stated clearly that decriminalisation of sex work is crucial to protect sex workers worldwide from harm and to reduce vulnerability to HIV. It noted that:

“Decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade.”¹⁴

Medecins du Monde were key partners in research carried out in France into the criminalisation of clients and its effect on sex workers’ living and working conditions. The research identified several negative consequences for sex workers due to the change in law: 63% of sex workers experienced a deterioration in their living conditions; 78% experienced a loss of income; 42% felt they were more exposed to violence; and 38% found it increasingly hard to use condoms.¹⁵

12 Global Alliance Against Traffic in Women (GAATW), 2018, *Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions*, p.40

13 La Strada, 2014, *La Strada International NGO Platform Statement ahead of the vote in the European Parliament on the Report of the Committee on Women’s Rights and Gender Equality on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI))*

14 Kate Shannon et al., 2014, “Global epidemiology of HIV among female sex workers: influence of structural determinants”, *The Lancet*, Volume 385, Issue 9962, p.55

15 H el ene Le Bail and Calogero Giametta, 2018, *What do sex workers think about the French Prostitution Act? A Study on the Impact of the Law from 13 April 2016 Against the ‘Prostitution System’ in France: Synthesis*, p.7

UN Organisations, Treaties and Bodies

Founded in 1945 at the end of the Second World War, the UN is a global organisation with 193 countries as members. Its central mission is to maintain international peace and security. The UN has grown and developed – there are now many different UN agencies that are part of the wider UN system, each with its own specific role. The Joint United Nations Programme on HIV/AIDS (UNAIDS) is a collaboration between eleven UN agencies that aims to lead the world's response to HIV/AIDS. UNAIDS' co-sponsor agencies include: the United Nations Development Programme (UNDP), which focuses on tackling poverty and global inequalities; the World Health Organization (WHO), the UN's global public health organisation; the United Nations Population Fund (UNFPA), which is concerned with reproductive and sexual health worldwide; UN Women, which works for the empowerment of women; and the International Labour Organization (ILO), which deals with labour issues. The UN is a key body in the creation and enforcement of international human rights law and there are several UN treaty bodies that are responsible for analysing States' records on protecting human rights. Several of the UN agencies mentioned above and some UN treaty bodies have produced policies or issued recommendations on sex work that can be useful for sex workers' rights activists to use in their advocacy work.

UN agencies and their support for the decriminalisation of sex work

The Global Commission on HIV and the Law is an independent body, convened by UNDP on behalf of UNAIDS, to explore the links between the law, human rights and HIV. It brought together a range of experienced and highly regarded public figures with a track record in providing leadership on HIV and human rights. The Commission was informed by a Technical Advisory Group comprised of 23 experts in the field who advised them on key technical issues and research methodologies. Their 2012 report's recommendations on sex work include:

“Countries must repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against “immoral” earnings, “living off the earnings” of prostitution and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers.

Countries must take all measures to stop police harassment and violence against sex workers.

Anti-human-trafficking laws must be used to prohibit sexual exploitation and they must not be used against adults involved in consensual sex work.”¹⁶

¹⁶ Global Commission on HIV and the Law, 2012, *HIV and the Law: Risks, Rights and Health*, p.43

In a report from the Asia Pacific region produced by UNDP, UNFPA and UNAIDS the same connections are made. The report states the criminalisation of sex work “increases vulnerability to HIV by fuelling stigma and discrimination” and that “removing legal penalties for sex work assists HIV prevention and treatment programmes to reach sex workers and their clients”.¹⁷

The World Health Organization (WHO) has made several recommendations on lowering the risk of HIV transmission among sex workers, advocating for the decriminalisation of sex work and the protection of sex workers’ human rights as a key public health strategy. It is important to highlight that WHO’s policies and recommendations are always evidence-based. They are not arrived at through political negotiations but are subjected to a robust review process. This includes their comprehensive technical and good practice recommendations on sex work. In a publication from 2012, produced by WHO, UNFPA, UNAIDS and NSWP, called *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*, it was recommended that:

“All countries should work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.”¹⁸

These recommendations were included in a wider set of *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*, which make a series of recommendations on State actions necessary to address HIV in key populations, including sex workers. WHO state that the risk of HIV among sex workers is driven by structural factors like criminalisation. They make clear recommendations, including that:

“Countries should work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.

The police practice of using possession of condoms as evidence of sex work and grounds for arrest should be eliminated.

The wide latitude of the police to arrest and detain sex workers without cause, including police extortion, should be eliminated.”¹⁹

17 UNAIDS, UNDP and UNFPA, 2012, *Sex Work and the law in Asia and the Pacific*, p. 1 and 29.

18 WHO, UNFPA, UNAIDS and 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*, p.8

19 WHO, 2014, *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*, p.87 and 91

It is not only UN agencies focused on HIV and health that have endorsed the recommendation for the decriminalisation of sex work. In 2017 twelve UN agencies, including UN Women, the United Nations International Child Emergency Fund (UNICEF), the Office of the High Commissioner on Human Rights (OHCHR) and the International Labour Organization (ILO) endorsed the recommendation that States should be supported in:

“Reviewing and repealing punitive laws that have been proven to have negative health outcomes and that counter established public health evidence. These include laws that criminalise or otherwise prohibit...adult consensual sex work...”²⁰

Other examples of UN agencies collaborating to produce recommendations on sex work include the creation of the Sex Worker Implementation Tool.

SWIT

Several UN agencies together with NSWP collaborated to produce a document called *Implementing Comprehensive HIV/STI Programmes with Sex Workers*, known as the Sex Worker Implementation Tool (SWIT). NSWP have produced a Smart Sex Workers’ Guide on the SWIT, which provides an accessible summary for use by sex workers’ rights activists.²¹ The SWIT contains a range of recommendations for a community-empowerment approach to developing interventions against HIV. It re-affirms the established UN consensus regarding the decriminalisation of sex work as an essential component of community empowerment:

“Community empowerment includes working towards the decriminalisation of sex work and the elimination of the unjust application of non-criminal laws and regulations against sex workers, and recognizing and respecting sex work as a legitimate occupation or livelihood.”²²

20 UNAIDS, UNHCR, UNICEF, WFP, UNDP, UNFPA, UN Women, ILO, UNESCO, WHO, OHCHR, and IOM, 2017, *Joint United Nations Statement on Ending Discrimination in Healthcare Settings*, p.3

21 NSWP, 2015, *Smart Sex Worker’s Guide to the SWIT*

22 WHO, UNFPA, UNAIDS, NSWP, The World Bank, and UNDP, 2013, *Implementing Comprehensive HIV/STI Programmes with Sex Workers*, p.4

The SWIT draws an explicit link between sex workers' experiences of violence and their vulnerability to HIV, and acknowledges the impact of criminalisation on exacerbating violence against sex workers:

“Laws and policies, including ones that criminalise sex work, may increase sex workers’ vulnerability to violence. For example, forced rescue and rehabilitation raids by the police in the context of anti- trafficking laws may result in sex workers being evicted from their residences onto the streets, where they may be more exposed to violence. Fear of arrest or harassment by the police may force street-based sex workers to move to locations that are less visible or secure, or pressure them into hurried negotiations with clients that may compromise their ability to assess risks to their own safety.”²³

This explicit description of the links between criminalisation, violence and vulnerability to HIV may be useful for sex worker organisations in advocating against the criminalisation of sex work and for the protection of sex workers from violence. The SWIT affirms that interventions designed to address violence against sex workers must be performed in collaboration with the sex work community, and with sex workers in “decision-making positions where they are able to develop their own solutions.”²⁴ The SWIT approach is globally relevant; it notes that “the principles that underlie this tool, and the operational approaches it presents, are no less relevant to high-income countries, and should be seen as a minimum global standard.”²⁵

23 WHO, UNFPA, UNAIDS, NSWP, The World Bank, and UNDP, 2013, Implementing Comprehensive HIV/STI Programmes with Sex Workers, p.24

24 WHO, UNFPA, UNAIDS, NSWP, The World Bank, and UNDP, 2013, Implementing Comprehensive HIV/STI Programmes with Sex Workers, p.25

25 WHO, UNFPA, UNAIDS, NSWP, The World Bank, and UNDP, 2013, Implementing Comprehensive HIV/STI Programmes with Sex Workers

International Labour Organization

The International Labour Organization pre-dates the founding of the United Nations – it was created in 1919, formally becoming a UN agency in 1946. ILO brings together representatives of three key groups: governments, workers and employers. Its role is to set global labour standards and develop policies and programmes that promote decent work for all. ILO instruments and standards can be useful in sex workers' rights activism, for example, the ILO standard *Recommendation concerning HIV and AIDS and the World of Work (No. 200)*. The official report of the Committee on HIV/AIDS²⁶, which accompanied the publication of Recommendation 200, records the clear understanding that sex work is covered by this instrument, which recognises workers in both formal and informal economies. Importantly, this provides recognition from the world's most important labour organisation that sex workers are workers.

Recommendation 200²⁷ states that “*HIV and AIDS should be recognized and treated as a workplace issue*” and paragraphs 30–34 set out the occupational health and safety measures that should be taken to prevent HIV transmission in the workplace. These include that workers should be given access to “*personal protective equipment...and other safety measures to minimize the risk of contracting HIV... especially in occupations most at risk*”. This could, for example, be used by sex workers to advocate for access to safe sex supplies and to support campaigns against police using condoms as evidence of sex work. It also states that “*testing must be genuinely voluntary and free of any coercion*”, which can be used to fight against attempts by authorities to introduce mandatory testing for HIV and other STIs. Recommendation 200 could also be used in campaigns for decriminalisation. Sex workers can demonstrate how the criminalisation of sex work prevents sex workers and sex work businesses from adopting the recommendations outlined by ILO.

26 International Labour Organisation, 2010, PR No. 13 Fifth item on the agenda: HIV/AIDS and the World of Work – Report of the Committee on HIV/AIDS

27 International Labour Organisation, 2010, Recommendation 200: Recommendation concerning HIV and AIDS and the world of work

Part of ILO's mission is to create policies and programmes that promote decent work for people across the world. Decent work is defined as “productive work in conditions of freedom, equity, security and human dignity.”²⁸ There are key indicators for what constitutes decent work, including that the work is productive and secure, that it provides an adequate income, that it offers social protection, that workers' legal rights are protected, and that opportunities are given for collective action, including union activity. The ILO policy on decent work is a key labour rights framework applicable to sex work that can help activists identify labour exploitation in the industry and argue for better working conditions.

Thai sex workers use the ‘decent work’ framework: a case study

Empower, a sex worker organisation in Thailand, produced a report in 2016 called *Moving Toward Decent Sex Work: Sex Worker Community Research, Decent Work and Exploitation in Thailand*. In this report they apply ILO's criteria regarding decent work to the working conditions in the Thai sex industry. They conclude that there are no sex workers in Thailand whose working conditions comply with ILO's definition of decent work.²⁹ Empower detail a range of employment abuse and exploitation experienced by sex workers in Thailand and argue that the criminalisation of sex work presents the biggest barrier to improving working conditions. Applying the ILO policy on decent work to the working conditions for sex workers around the world highlights the role that criminalisation and stigma play in perpetuating exploitation rather than addressing it. Furthermore, opportunities for collective action and union activity are a key element of decent work, which supports sex workers' efforts to mobilise and form workers' associations and unions.

28 International Labour Organization, 2008, *Toolkit for Mainstreaming Employment and Decent Work: Country Level Application*, p.vi

29 Empower, 2016, *Moving Toward Decent Sex Work: Sex Worker Community Research, Decent Work and Exploitation in Thailand*, p.87

UN Human Rights Bodies

Treaty Bodies

Within the UN system, many of the world's major international human rights treaties have been adopted. These treaties have formal UN Committees (known as 'treaty bodies'), which are created to monitor States' compliance with them. The treaty bodies are comprised of individuals nominated by member states who are elected to serve as independent experts, not as representatives of national governments. The treaty body system requires States to submit regular reports (normally every four years), which outline the work they are doing to implement the treaties in their countries. As part of this reporting procedure, NGOs (including sex worker organisations) can submit their own reports to the treaty bodies, which engage critically with the States' reports and highlight areas in which the State is failing to implement the treaties. This procedure can be used by sex workers' rights activists to bring attention to the human rights violations faced by sex workers in their countries and to present solutions. The reports submitted by NGOs are taken into consideration by the treaty bodies and can influence their concluding observations with respect to a country's human rights record.

In addition to the reporting procedure, individuals can pursue complaints with the treaty bodies about any personal human rights violations they have experienced. They will consider the complaint and issue a decision. However, before taking a case to a treaty body, the individual must have taken their case through the domestic court system – so the process can take many years before it reaches a treaty body. Not every country has ratified (meaning they have agreed to be bound by) every international human rights treaty. If activists plan to use an international human rights treaty in their national advocacy work, they should first check that their country has ratified the treaty. This information can be found on the UN website.³⁰

Two UN treaty bodies that have previously considered the issue of sex work are the CEDAW Committee and the Committee on Economic, Social and Cultural Rights.

30 United Nations Human Rights: Office of the High Commissioner, [Status of Ratification Interactive Dashboard](#)

The CEDAW Committee is responsible for monitoring implementation of the Convention on the Elimination of Discrimination Against Women (CEDAW), a human rights treaty that aims to achieve gender equality. It sets out the rights women should enjoy without discrimination based on their gender, including: free choice of profession and employment (Article 11); equality of access to health care services, including family planning (Article 12); and participation in public and political life (Article 7). Article 6 of CEDAW is often cited in debates about sex work as it outlines an obligation for States to suppress all forms of traffic in women and “*exploitation of prostitution of women*”. This term is ambiguous and has never been defined by the CEDAW Committee. However, it is clear from discussions at the time it was drafted that the Convention was never intended to create an obligation on States to stop all ‘prostitution’.³¹

While the rights of women sex workers may not have been envisaged by the original authors of CEDAW, the Convention has been used to advocate for the rights of many groups of women, including women living with HIV, migrant women, lesbian women and transgender women. This means that the CEDAW Committee is always expanding the interpretation of the Convention, and so it can be used by sex workers’ rights activists to advocate for women sex workers. NSWP has produced a separate Smart Guide, which looks exclusively at CEDAW and how it can be used.³² This explains, for example, that the CEDAW Committee has interpreted gender-based violence as a form of gender discrimination contrary to CEDAW, which makes violence against sex workers also a clear violation of CEDAW.³³ Article 11 of CEDAW guarantees women a range of work-related rights, including the protection of health and safety. It can be used to highlight the barriers to work health and safety that criminalisation of sex work creates for women sex workers. Several sex worker organisations have produced Shadow Reports when their countries were reviewed by the CEDAW Committee. Samples can be found on the NSWP website.³⁴ The women’s rights organisation IRAW-AP in collaboration with NSWP has produced guidance for sex workers on preparing Shadow Reports for the CEDAW Committee, as well as a detailed framework on how sex workers’ rights fit within CEDAW.³⁵

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

32 NSWP, 2018, Smart Guide to CEDAW

33 CEDAW Committee, 1992, General Recommendation No. 19: Violence against women, para 15; CEDAW Committee, 2017, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, para 12.

34 For example, Silver Rose, 2015, Shadow report; Empower, 2017, Shadow report.

35 IRAW-AP and NSWP, 2018, Framework on the Rights of Sex Workers under CEDAW; IRAW-AP and NSWP, 2018, Shadow Report Guidelines on CEDAW and Rights of Sex Workers.

The Committee on Economic, Social and Cultural Rights is responsible for monitoring State compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR was adopted by the UN General Assembly in 1966 and entered into force in 1976. It contains a number of rights in the realm of economic, social and cultural life, many of which can be useful to sex workers' rights activists. The most useful element of ICESCR for sex workers' rights activism is its focus on work-related rights. There is an explicit 'right to work' contained in Article 6, and Article 7 provides for rights that people should enjoy at work, including "safe and healthy working conditions". Article 8 contains an explicit right to form or join trade unions, including the right to strike. Sex workers' rights activists can structure arguments against the criminalisation of sex work in terms of how it prevents sex workers from enjoying work-based rights outlined by ICESCR.

The ICESCR can also be used to argue for fundamental structural changes that improve the lives of sex workers, including access to social security (Article 9), the right to adequate food, clothing and housing, and the right to be free from hunger (Article 11). Article 12 outlines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment 22 the Committee on Economic, Social and Cultural Rights (CESCR) has affirmed that:

“States parties should take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination. They should ensure that such persons have access to the full range of sexual and reproductive healthcare services.”³⁶

³⁶ Committee on Economic, Social and Cultural Rights, 2016, General Comment 22 on the right to sexual and reproductive health, para 32

This demonstrates that the Committee see sex workers as rights-holders under the Covenant. They have also expressed support for the decriminalisation of sex work. Russian sex worker organisations, Silver Rose and New Life, presented a report to the CESCR during Russia's reporting period in 2017 and the Committee was receptive to the arguments made about the harm done to sex workers as a result of criminalisation:

“The Committee is concerned that sex workers face obstacles in accessing health-care services owing to the criminalization of sex work, and are vulnerable to police violence, increased occupational risks, and HIV infection, among other diseases...The Committee recommends that the State party consider decriminalizing sex workers, and ensure that they can fully access health-care services and information, including treatment and prevention of HIV/AIDS, without discrimination. The Committee also recommends that the State party take all necessary measures to punish and prevent police violence against, and exploitation of, sex workers and fight trafficking and traffickers who exploit sex workers.”³⁷

The Committee made recommendations about the wider societal and structural change required to address human rights violations faced by sex workers, including that Russia “take all the necessary steps to prevent and combat societal discrimination against...people working in the sex industry...and ensure the equal enjoyment of Covenant rights.”³⁸ Social security was addressed in the Committee's concluding observations on Russia. They noted their concern “that the State party's social security system does not completely cover various population groups, in particular...sex workers...” and recommended that “the State party develop a universal social security system, with a view to providing full cover to all segments of its population.”³⁹ The concluding observations on Russia from the CESCR demonstrate receptiveness to the arguments advanced by sex workers' rights activists. Organisations may want to consider submitting reports when their country comes up for consideration by this Committee.

There are several other UN treaty bodies beyond the CESCR and the CEDAW Committee that sex worker's rights activists might consider.

³⁷ Committee on Economic, Social and Cultural Rights, 2017, Concluding observations on the sixth periodic report of the Russian Federation, para 52 and 53

³⁸ Committee on Economic, Social and Cultural Rights, 2017, Concluding observations on the sixth periodic report of the Russian Federation, para 23c

³⁹ Committee on Economic, Social and Cultural Rights, 2017, Concluding observations on the sixth periodic report of the Russian Federation, para 36 and 37

The UN Human Rights Committee, monitors State compliance with the International Covenant on Civil and Political Rights (ICCPR). The ICCPR outlines a range of rights that can be invoked by sex workers to challenge the violations and abuses they experience. For example, Article 9 states that “*everyone has the right to liberty and security of person*”. This statement can be used to challenge criminalisation of sex work on the grounds that it prevents sex workers being able to live and work in safety, free from violence and abuse. Article 17 of the ICCPR protects the right to privacy, which can be used by sex workers to challenge invasions of their privacy – for example, via mandatory registration schemes or forcible outing by the press. Articles 9 and 17 of the ICCPR were cited by advocates in Greece who, with the help of Human Rights Watch, successfully challenged the mandatory arrest and forced testing of sex workers.⁴⁰ There are other articles in the ICCPR that can be used by sex workers’ rights activists. For example, Article 22 states that “*everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*”. This can be used to support sex workers wanting to form trade unions or workers’ associations, and seeking official recognition from the state.

The Committee on Migrant Workers is responsible for monitoring State compliance with the International Convention on the Rights of Migrant Workers. This Convention sets out a range of rights that migrant workers and their families are entitled to, which may be useful in advocating for, and with migrant sex workers. For example, Article 16(2) states that “*migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions*”. This article can be used to challenge laws and policies that increase the risk of violence faced by migrant sex workers. While this Committee considers State reports, it is not yet able to accept individual complaints, nor has it previously considered the issue of sex work in any of its concluding observations.

⁴⁰ Human Rights Watch et al., 2012, [Joint Letter to UN Special Rapporteur on Health: Human Rights of Immigrants and Sex Workers in Greece](#)

General comments on using treaty bodies

Before deciding to invest time and energy in engaging with any treaty body, sex workers' rights activists are encouraged to study that treaty body's past statements either about sex work (if this has been previously addressed) or about related issues, like the criminalisation of sexual behaviours or the rights of informal workers. This may indicate how receptive the committee may be to future arguments, and guide activists in framing their submissions.

Before deciding to engage with a treaty body, sex worker organisations need to carefully consider what they hope to achieve by doing so. If they are assisting a sex worker to pursue an individual complaint (for example against police brutality) then the treaty body may be able to provide personal redress to the individual concerned but may not necessarily recommend more expansive measures to address widespread police abuse of sex workers. Furthermore, it must be remembered that decisions issued by treaty bodies in individual complaints are not legally binding for States.

By submitting shadow or alternative reports to these treaty bodies, sex worker organisations may be able to persuade committees to insert comments about sex work in their concluding observations that condemn a State's approach to sex work and recommend measures to protect sex workers' human rights. These are, however, only recommendations and there is no mechanism for the committees to compel or force States to implement their recommendations. Nevertheless, comments issued by a prestigious global UN treaty body could potentially be used to exert pressure on the authorities at a national level, and also at local or regional levels. For example, Empower have used comments made by the CEDAW Committee (recommending the decriminalisation of sex workers in their concluding observations on Thailand in 2017) as part of their national advocacy efforts and it has produced some positive impact. *Tais Plus* and *Shah-Aiym* have used comments from the CESCR on sex work in Russia in advocacy in their own country of Kyrgyzstan. Crucially, even if activists decide not to engage directly with UN treaty bodies, they can still use the human rights treaties discussed above as part of their local and national advocacy if their country has ratified them.

UN Human Rights Council

While treaty bodies are responsible for monitoring specific human rights treaties, the UN Human Rights Council (HRC) has a much wider mandate to consider all human rights issues. The HRC is comprised of government representatives of 47 member states, elected by the UN General Assembly for three-year terms. One of the HRC procedures is the Universal Periodic Review (UPR). The UPR is a process that considers a country's overall human rights record via the submission of a State report, independent reports from other UN experts including the treaty bodies, and reports produced by NGOs. Sex worker organisations can submit reports covering any aspect of their country's abuse of sex workers' human rights to be considered during the review if a country sitting on the Council decides to raise it. For example, in the 2010 UPR process of the USA, Uruguay called on it to “...ensure access to public services paying attention to the special vulnerability of sexual workers to violence and human rights abuses.”⁴¹ The continuing failure of the USA to implement this recommendation has been used as part of national advocacy efforts and local sex worker organisations participated in the 2015 UPR process to bring attention to this failure.⁴²

41 Human Rights Council, 2011, Report of the Working Group on the Universal Periodic Review (First Cycle): United States of America, para 92.86

42 NSWP, 2015, U.S. Sex Worker Rights Activists Call for U.N. to Hold U.S. Government Accountable

Special Procedures

While engaging with treaty bodies and HCR can require a significant amount of time and effort, the HRC also has **Special Rapporteurs** who are independent human rights experts with a mandate to examine and analyse specific human rights issues and prepare annual reports for the HRC and UN General Assembly. These are often considered by the treaty bodies. For example, there is a Special Rapporteur on the human rights of migrants and a Special Rapporteur on violence against women – its causes and consequences. Several Special Rapporteurs have made findings related to the human rights violations experienced by sex workers, including the Special Rapporteur on the right to health who highlighted the many harms caused to sex workers through criminalisation, and explicitly called for decriminalisation as “*a necessary part of a right-to-health approach to sex work*”.⁴³ NGOs can submit direct complaints of human rights violations to Special Rapporteurs, who may directly investigate.⁴⁴ As part of their wider investigations, Special Rapporteurs conduct country visits and meet with NGOs and human rights experts during these visits. This can provide an opportunity for activists to present the issues faced by sex workers to representatives of the UN in their own country and on their own terms.

43 Human Rights Council, 2010, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, p. 12–15

44 For example, see Information on individual complaints to the Special Rapporteur on violence against women, its causes and consequences, Office of the High Commissioner for Human Rights

Human Rights Law

Human rights law is vast, with many different national, regional and international treaties focusing on different aspects of human rights. Human rights law is a 'living instrument' – it is constantly evolving in response to changes in society and to new rights claims advanced by different groups. While sex work may not be explicitly mentioned in many of the world's human rights treaties, the rights within them still apply to sex workers and can be used to advance sex workers' rights campaigns. This is evidenced in the above discussion of human rights treaties and the UN treaty bodies responsible for monitoring them. Sex workers are entitled to have their fundamental rights and freedoms respected as are all people.

In addition to the international human rights treaties discussed in the section above, the founding document of contemporary human rights law is the Universal Declaration on Human Rights⁴⁵ (UDHR). While the UDHR has no enforcement or compliance mechanism like other international human rights treaties, it remains symbolically significant as the founding document on which all subsequent treaties are based. It may be useful for sex workers' rights activists to reference the UDHR in their advocacy efforts, although the impact of this may be limited.

45 United Nations General Assembly, 1948, Universal Declaration of Human Rights

Regional human rights treaties

The three oldest regional human rights treaties are the European Convention on Human Rights (ECHR), the Inter-American Convention on Human Rights (IACHR) and the African Charter on Human and People's Rights (ACHPR). More recently, the Arab Charter of Human Rights was adopted in 1994 and the Association of Southeast Asian Nations (ASEAN) adopted a Human Rights Declaration in 2012. Sex worker organisations should first check that their country has ratified the relevant regional treaty before building an advocacy strategy around it. For example, the USA has not ratified the IACHR and so it cannot be relied upon in advocacy by sex workers' rights activists there. Additionally, some treaties have enforcement mechanisms attached to them, while others are largely symbolic. The ASEAN Declaration and the Arab Charter are more symbolic, without the possibility to pursue individual cases. The European, American and African systems, however, all have courts and/or commissions that are the ultimate interpreters of the treaties and can consider individual (or collective) complaints related to human rights violations.

Sex work has previously been considered by the IACHR in a hearing in March 2017 pursued by the Latin American sex worker organisation, RedTraSex. The Commission, responding to evidence of widespread human rights abuses and violence faced by sex workers in the region, urged States in the Americas to create laws and policies on sex work *“that guarantee sex workers’ human rights, including measures to protect their lives, their integrity, and their honor and dignity, as well as to put an end to the stigma and discrimination against them.”*⁴⁶

46 Organization of American States, 2017, IACHR Holds First Hearing on the Rights of Sex Workers in the Americas

Conclusion

From policies issued by international NGOs to recommendations from UN agencies and treaty bodies, there is a wealth of material that can be useful to sex workers' rights activists regardless of their advocacy priorities. The aim of this Smart Guide has been to bring these different policies and recommendations together so that activists can more easily identify which will be the most useful in any given context. Hopefully, this introduction on international human rights treaties, and their UN enforcement mechanisms, may inspire more sex workers' rights activists to actively engage with these bodies. While the impact that international policies and human rights treaties may have in local, national or regional contexts is variable, they remain tools useful in holding governments accountable. As more activists use these policies, recommendations and treaties in their advocacy work, it sends a strong message to the world that sex workers are human beings who demand their rights are respected.





nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

SOLIDARITY IN ACTION

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

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



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