

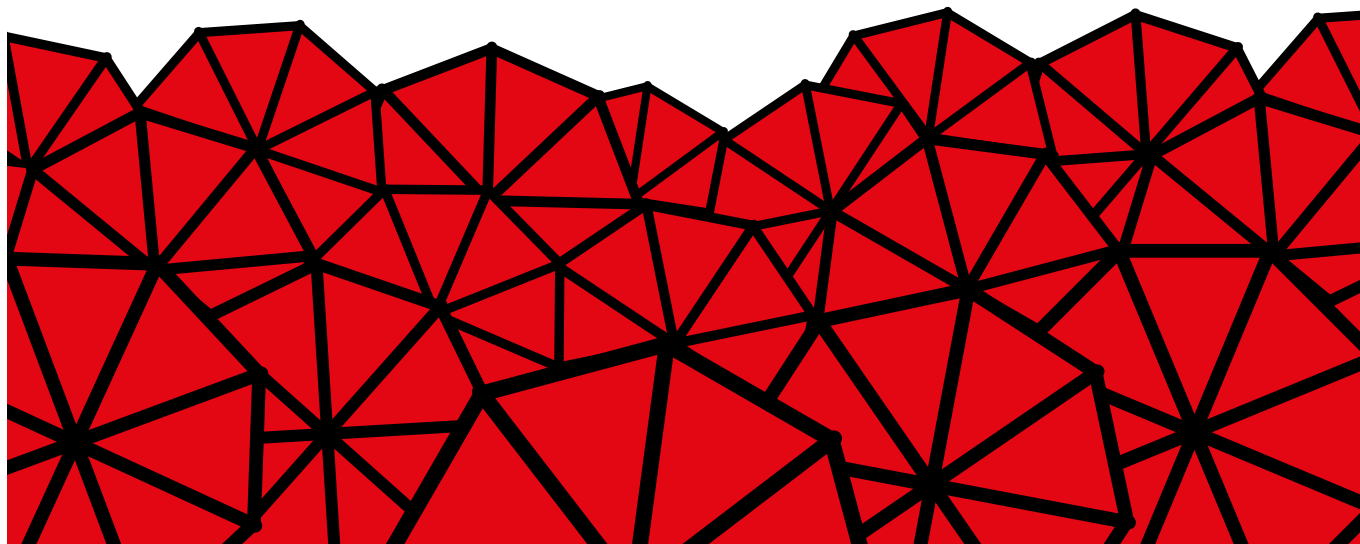


**nswp**

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

**POLICY BRIEF**

# **Sex Work as Work**



# Sex Work as Work

## Introduction

**Sex work is work. This simple yet powerful statement frames sex workers not as criminals, victims, vectors of disease, or sinners but as workers. The adoption of the term ‘sex worker’ in the 1970’s coincided with and signified the beginnings of a global, intersectional sex workers’ movement<sup>1</sup>.**

Sex work is first and foremost an income-generating activity. The International Labour Organization (ILO) estimates that sex workers support between five and eight other people with their earnings. Sex workers also contribute to the economy. In four countries surveyed, ILO found that the sex industry provides between 2 and 14 percent of gross domestic product. In Thailand, for example, the sex industry generated about US\$6.4 billion in 2015, a figure which accounted for 10 percent of Thailand’s GDP. Thai sex workers send an annual average of US\$300 million to family members who reside in more rural areas of

Thailand. Additionally, while 65 percent of sex industry workers are sex workers, the industry also generates employment for auxiliary cleaning, security and driving services<sup>2</sup>.

Sex workers’ workplaces and working arrangements are diverse. Sex workers can be self-employed or employed and engage in sex work part-time or full-time. Sex work can be formal in that some sex workers are engaged in an employer-employee relationship with an

establishment. However, where criminalisation excludes sex work from national labour laws, sex workers have no option but to accept what are often exploitative working conditions. Additionally, criminalisation of third parties makes the establishment of formal workplaces, including establishing any contracts or workplace regulations, illegal. However, much of the sex industry is informal, with sex workers operating independently, individually or collectively with other sex workers. Within the informal sector, there are also a variety of working arrangements and business models<sup>3</sup>. Like many other informal sector workers, these sex workers are often excluded from social protections and work under more precarious conditions.

The struggle for the recognition of sex work as work is closely tied to the struggle for decriminalisation. Central to the demand for decriminalisation is the argument that sex workers should be afforded the civil and labour rights and social protections that are the entitlement of all workers, regardless of occupation.

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1 Elena Jeffreys, “Sex worker politics and the term ‘sex work’”, *Research for Sex Work* 14 (September 2015): 4–5.

2 International Labour Organization, 1998, “The Sex Sector” available at [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_PUBL\\_9221095223\\_EN/lang-en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221095223_EN/lang-en/index.htm) (accessed 31 May, 2017).

3 Jane Pitcher “Sex work and modes of self-employment in the informal economy: diverse business practices and constraints to effective working”, *Social policy and society* 14.1 (2015): 113–123.

Exploitation and unsafe and unhealthy working conditions exist in many labour sectors. Work does not become something other than work in the presence of these conditions. Even when performed under exploitative, unsafe or unhealthy conditions, sex work is still work. Indeed, criminalisation, by perpetuating stigma, discrimination and social marginalisation and by alienating sex workers from formal labour protections, creates conditions in which violations of sex workers' rights, including their labour rights, can continue with impunity.

Recognition that sex work is work is the starting point for addressing these conditions, to be able to organise and advocate for improved work environments for sex workers.

## International Policy Framework

The right to work, to choose one's work, and to fair and safe working conditions are fundamental human rights.

The Universal Declaration of Human Rights (UDHR) states that "[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against

**The Universal Declaration of Human Rights (UDHR) states that "[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."**

unemployment<sup>4</sup>." These provisions are expanded and made legally binding in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which most countries have ratified. The ICESCR requires states to "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right<sup>5</sup>." It further obliges countries to ensure "safe and healthy working conditions" and a fair wage. Other labour rights enshrined in the ICESCR include gender equality in working conditions

and remuneration, the right to form associations and trade unions, and access to social security benefits, including paid maternity leave or maternity leave with adequate social security benefits.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), also ratified by the majority of countries, reaffirms the right to work "as an inalienable right" and commits its signatories to working towards the realisation of equal workers' rights for men and women<sup>6</sup>, including choice of employment and access to work-related benefits, occupational health and safety provisions, and the support required to fulfil family obligations, work responsibilities and participate in public life. CEDAW specifically obliges states to counter "exploitation of prostitution of women." Thus, states have committed to addressing exploitation in the sex industry. This statement does not imply that all 'prostitution' is exploitation; rather where exploitation exists, it must be addressed.

In most countries which have ratified the legally binding, international human rights treaties discussed above, sex work is criminalised. This contradiction potentially creates space for sex worker organisations to hold their governments accountable; recognition of sex work as work would oblige governments to acknowledge that international and national labour treaties, laws and policies also apply to sex work.

4 United Nations, "Universal Declaration of Human rights" available at <http://www.un.org/en/universal-declaration-human-rights/> (last accessed 29 June, 2017).

5 United Nations Human Rights Office of the High Commissioner, "International Covenant on Economic, Social and Cultural Rights" available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (last accessed 26 June, 2017).

6 United Nations Human Rights Office of the High Commissioner, "Convention on the Elimination of all Forms of Discrimination against Women" available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (last accessed 26 June, 2017).

## ILO and the Decent Work Agenda

The International Labour Organization (ILO) is the UN agency which promotes workers' rights by setting international labour standards and issuing normative guidelines. The Fundamental Principles and Rights at Work, adopted in 1998, commits member states to uphold four universal rights, regardless of economic development level<sup>7</sup>. These fundamental principles and rights are:

- Freedom of association and the effective recognition of the right to collective bargaining.
- Elimination of all forms of forced or compulsory labour.
- Effective abolition of child labour.
- Elimination of discrimination in respect of employment and occupation.

ILO has advanced the goal of 'decent work', including through their Decent Work Agenda<sup>8</sup>. The concept of decent work involves "opportunities for work that is productive and delivers a fair income,

security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men<sup>9</sup>."

Decent work and the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work, and social dialogue – have become integral elements of the 2030

Agenda for Sustainable Development<sup>10</sup>. Goal 8 of the 2030 Agenda calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment, and decent work. Key aspects of decent work are also embedded in many of the other 16 Sustainable Development Goal targets.

ILO has also identified Unacceptable Forms of Work (UFW)<sup>11</sup>, defined as work arrangements that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty. The concept of UFW relates to precarious, vulnerable and informal employment, and is based on the observation that, in a rapidly changing, globalised work environment, "certain workers are labouring in unacceptable conditions...and that policies to improve these forms of work are ... urgently needed<sup>12</sup>."

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7 International Labour Organization, "ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up" available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm> (last accessed 26 June, 2017).

8 International Labour Organization, "Decent Work" available at [www.ilo.org/decentwork](http://www.ilo.org/decentwork) (last accessed 26 June, 2017).

9 Ibid.

10 International Labour Organization, "Decent Work and the 2030 agenda for sustainable development" available at <http://ilo.org/global/topics/sdg-2030/lang-en/index.htm> (last accessed 31 May, 2017).

11 International Labour Organization, 2015, "Unacceptable forms of work: a global and comparative study" available at [http://www.ilo.org/global/publications/WCMS\\_436165/lang-en/index.htm](http://www.ilo.org/global/publications/WCMS_436165/lang-en/index.htm) (last accessed 31 May, 2017).

12 Ibid.

## ILO's Stance on Sex Work

ILO's Recommendation 200<sup>13</sup>, adopted in 2010, addresses HIV and AIDS and the world of work. Recommendation 200 establishes principles and standards for workers' rights to be free from HIV-related stigma and discrimination; to occupational health and safety; and to access to HIV testing, prevention, treatment, care and support. It also addresses employer and government obligations to develop policies and programmes which protect those rights.

While sex work is not specifically mentioned, Recommendation 200 applies to all workers working under all forms or arrangements, and at all workplaces, including "persons in any employment or occupation" in "all sectors of economic activity, including the private and public sectors, and the formal and informal economies." The Committee minutes concretely affirm that sex work is covered by the instrument<sup>14</sup>.

Subsequent ILO documents reinforce and expand on the acknowledgement of sex work as work:

- ▶ *Reaching out to Sex Workers and their Clients* emphasises HIV prevention interventions with sex workers should also address structural drivers – such as lack of social protections, stigma, discrimination, marginalisation and violence – which make sex workers vulnerable to HIV<sup>15</sup>.
- ▶ *Leaving No One Behind: Reaching Key Populations through workplace action on HIV and AIDS* documents good practices in workplace interventions to address HIV among key populations, including sex workers<sup>16</sup>.

Despite this progress, sex workers argue that ILO should go further in acknowledging sex work as work and send a message to the international community and national governments that sex work is indeed work, which is not inherently harmful and exploitative, and promote the realisation of sex workers' labour rights in the workplace<sup>17</sup>.

## NSWP policy on sex work and labour

NSWP's Consensus Statement<sup>18</sup> affirms that the right to work, with free choice of employment, is one of eight fundamental human rights sex workers are entitled to. Sex workers have the fundamental right to:

- ▶ Work and free choice of employment (including sex workers living with HIV).
- ▶ Regulatory frameworks that govern labour conditions and occupational health and safety. At a minimum, sex work must be consistent with the fundamental principles of the ILO and must receive the same rights and legal protections as other groups of workers.
- ▶ Safe and healthy workplaces in which sex workers are compensated and are treated with respect, and which are free from health hazards and abuse, including sexual violence and physical violence.
- ▶ No discriminatory dismissal from employment based on sex work history.
- ▶ Equal access to labour codes and to other labour rights.

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13 International Labour Organization, 2010, "Recommendation 200: Recommendation concerning HIV and AIDS and the world of work" available at [http://www.ilo.org/ilc/ILCSessions/99thSession/texts/WCMS\\_142613/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/99thSession/texts/WCMS_142613/lang--en/index.htm) (last accessed 26 June, 2016).

14 International Labour Organization, "Fifth item on the agenda: HIV/AIDS and the world of work – Report of the Committee on HIV/AIDS" available at [http://www.ilo.org/ilc/ILCSessions/99thSession/pr/WCMS\\_141773/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/99thSession/pr/WCMS_141773/lang--en/index.htm) (last accessed 26 June, 2017).

15 International Labour Organization, undated, "Getting to Zero through the world of work" available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@ilo\\_aids/documents/genericdocument/wcms\\_185717.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/genericdocument/wcms_185717.pdf) (last accessed 18 July, 2017).

16 International Labour Organization, 2014, "Leaving No One Behind: Reaching Key Populations through workplace action on HIV and AIDS" available at [http://www.ilo.org/aids/Publications/WCMS\\_249782/lang--en/index.htm](http://www.ilo.org/aids/Publications/WCMS_249782/lang--en/index.htm) (last accessed 26 June, 2017).

17 Global Network of Sex Work Projects, 2015, "The real impact of the Swedish Model on sex workers: No. 5: Right to work and other work-related human rights" available at <http://www.nswp.org/resource/the-real-impact-the-swedish-model-sex-workers-advocacy-toolkit> (last accessed 26 June, 2017).

18 Global Network of Sex Work Projects, 2013, "Consensus statement on sex work, human rights and the law" available at <http://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law> (last accessed 31 May, 2017).



NSWP members demand that governments and responsible authorities take the following proactive measures to realise and respect this right:

- Repeal laws that criminalise the selling and purchasing of sexual services and third parties, families, partners and friends.
- Recognise sex work as an occupation and its inclusion in ILO categorisation of occupations.
- Recognise that there is nothing inherently harmful or exploitative in buying or selling sexual services.
- Accept that sex workers of all genders and health status be allowed to work in the sex industry.
- Recognise that sex work must not be subjected to 'special' laws or extra taxes that serve to further restrict or exploit sex workers. Instead, sex work must be regulated by standard labour and business codes, including occupational health and safety standards.
- Support work-related social and financial entitlements including annual, sick, and parental leave, medical and parental benefits, accident compensation, pensions and all other benefits enjoyed by other groups of workers.
- Accurate information about health and safety, including the provision of occupational health and safety standards, must also be provided.

## Sex worker organising using a labour framework

*Sex work remains a feasible livelihood option for us. It enables a decent living compared to the alternative informal labour market alternatives. Through the incomes generated from sex work, sex workers have been able to support their families. In many cases, sex workers are the prime income generators.*

*They have also been able to create other financial assets for themselves (property, gold, savings in bank) that has given them financial security and the means for a sustainable, decent living.*

VAMP, INDIA

Sex worker organisations consulted for this policy brief see the principle of sex work as work as the foundation on which their organising is based. As EMPOWER, Thailand, said:

*We want an end to discussion of whether or not sex work is work because we see this discussion as akin to debating if 'Black lives matter' – it's the truth and anything else is alternative fact. We see that this ongoing discussion distracts us from finding solutions to the real problems.*

Advocacy for the recognition and protection of sex workers' labour rights is a central issue around which sex workers organise in all regions. This advocacy sees commonalities between sex work and other forms of intimate labour, predominantly undertaken by women, which have gender, class and race dimensions and are often informal, undervalued and underpaid<sup>19</sup>. It views the sex workers' rights movement as part of a broader struggle for economic justice, offering the possibility of alliances and knowledge-sharing with other global movements<sup>20</sup>.

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<sup>19</sup> Kate D'Adamo, "Beyond sex work as work", *Research for Sex Work* 14 (2015): 9–10.

<sup>20</sup> Ibid, 10.

NSWP members are using diverse, creative strategies to advance an understanding of sex work as labour. They educate and raise consciousness among other sex workers. They also provide counselling, social, health and legal services to each other, and engage policy makers, the media and allies.

NSWP members identified ten benefits of a labour approach and shared examples about how they organise to advance the sex work as work agenda. These are summarised below:

## Ten benefits of a labour approach

### 1 Legal protection

There are fundamental legal implications to recognising sex work as work. If sex work is work, then it is not a crime, making criminalisation an inappropriate legal model. If sex work is work, then it is not synonymous with exploitation, and therefore clients and third parties do not need to be indiscriminately criminalised.

If sex work is work, criminal law is not the appropriate tool to regulate the sector. Sex workers are protected by the same labour laws that protect

the rights of all workers in the country, and other laws that protect the rights of all citizens.

Nevertheless, even in the absence of decriminalisation, governments must uphold sex workers' rights as workers:

*Rights of all workers have to be respected, protected and fulfilled irrespective of whether the national governments recognize the work or not.*

VAMP

Emphasising that lack of recognition harms sex workers, CAFAF Ghana argues:

*[R]ecognizing sex work as work is the surest way to position and claim the rights of sex workers. This would as well help protect [us] from exploiters, abusers and [we] could take legal action whenever they are exposed to dangers.*

### New Zealand

Since passage of the Prostitution Reform Act in 2003, sex workers have had access to employment mediation services such as the Disputes Tribunal and the Human Rights Commission, to uphold their workers' rights. The New Zealand Prostitutes Collective is usually the first port of call for sex workers; they advise and support sex workers in dealing with problematic working conditions. In one judgement in 2014 by the Human Rights Review Tribunal, a brothel operator was ordered to undertake sexual harassment training and to pay a sex worker NZ\$25,000 damages "for humiliation, loss of dignity and injury to the feelings of the sex worker."<sup>21</sup>

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<sup>21</sup> New Zealand Prostitutes Collective, "Report on experience: decriminalised sex work and occupational health and safety in New Zealand", *Research for Sex Work* 14 (2015):39–40.

### **The Kylie Case, South Africa**

In 2006, SWEAT and its legal partner, the Women's Legal Centre, represented 'Kylie', a sex worker who was unfairly dismissed from a brothel. The Commission for Conciliation, Mediation and Arbitration ruled that its jurisdiction did not extend to illegal work. Kylie took the case to the Labour Court, which referred the case to the Labour Appeals Court. The Labour Appeals Court ruled in Kylie's favour, asserting that the criminalisation of sex work in South Africa should not deprive any sex worker of their constitutional rights and that, as vulnerable workers, sex workers should enjoy the protection of the Labour Relations Act.<sup>22</sup>

## **2 Reduced stigma**

Stigma and discrimination against sex workers have broad negative implications, including creating an environment conducive to social exclusion, violence, and HIV/STIs. Labelling sex workers as criminals or as victims is equally stigmatising.

On the other hand, framing sex workers as workers is fundamentally non-stigmatising. In this framing, sex work is accepted as a job and can thus be judged by the same standards that are applied to other jobs.

Framing sex work as work can not only reduce stigma from others but also internal stigma.

SWOP Behind Bars distributes newsletters to incarcerated sex workers in the USA, and regularly receives letters expressing that the newsletter's sex workers' rights perspective has changed the way they view their own lived experiences, and that they no longer judge themselves for having engaged in sex work.

Treating sex work as work also allows for the positive aspects of sex work, including financial benefits, flexibility, independence, job satisfaction and the sense of providing an important service, to be shared without shame. For example, according to Project X, Singapore, "for many single mother sex workers, sex work is the only job that allows them to balance work and family and personal life."

Furthermore, destigmatisation of sex work through a labour framework can create space for sex worker participation in civil society. Legalife Ukraine held workshops with journalists to educate them about sex workers' rights and about the benefits of decriminalisation within a labour framework. Media debates between newly sensitised journalists and police attracted the attention of politicians, who had previously refused to meet with sex worker organisations. As a result of the social media attention, politicians have now renewed their engagement.

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<sup>22</sup> International Labour Organization, 2010, "Kylie v. CCMA and Others" available at [http://www.ilo.org/aids/legislation/WCMS\\_329494/lang-en/index.htm](http://www.ilo.org/aids/legislation/WCMS_329494/lang-en/index.htm) (last accessed 12 June, 2017).



### 3 Setting standards for decent work and reduced exploitation

Central to a labour rights approach to sex work is recognition of the agency of consenting adults in sex work and the distinction between sex work and trafficking. Within a labour framework, standards of 'decent sex work' can be established, and exploitation can be addressed more easily.

Criminalisation, in fuelling stigma, social marginalisation and mistrust of police, social services and other authorities, deters sex workers from reporting exploitation they experience or witness. Treating sex work as labour can reverse the current popular, but mistaken, conflation of sex work and trafficking. NSWP members argue that understanding the difference between the two phenomena would enable police to respond more effectively to exploitation or coercion, for example, by focusing resources on identifying cases of exploitation.

Some sex worker organisations have set up self-regulatory mechanisms to support the concerns of sex workers and mediate disputes with managers. Decriminalisation and the formal recognition of sex work as work would enable the strengthening and formalisation of these self-regulatory mechanisms.

#### **EMPOWER, Thailand**

Thai sex workers, under the banner of EMPOWER Foundation, have created a working model of a just, fair workplace: the Can Do Bar in Chiang Mai. Unlike other entertainment venues in Thailand, the Can Do Bar complies with Thai Occupational Health and Safety Standards. Staff are employed in accordance with the Thai Labour Protection Act and are enrolled in the National Social Security Scheme. The Can Do Bar also provides opportunities for skill advancement and promotion. Although as yet there is no formal union or association, the workers regularly meet and are pivotal in guiding changes in the workplace.<sup>23</sup>

#### **VAMP, India**

Before 2000, many sex workers in communities where VAMP works were underage. Today there is a comprehensive system, monitored by the sex workers themselves, to ensure that no underage or trafficked individuals are working within the community and to uphold sex workers'

labour rights. Every site in which VAMP works has a committee, which addresses disputes amongst sex workers and monitors trafficking and underage entry.

When a new woman wants to work in the VAMP areas, she must provide a birth certificate or other proof of age. Children seeking work are brought before the VAMP committee. The committee members explain why she should not enter sex work and her rights as a child. Counselling is a critical part of this process since some traffickers may exploit her vulnerability. It is not enough to just turn her away. The committee then tries to establish who has sent the girl to the community. If they suspect trafficking, the issue is referred to the police.

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<sup>23</sup> EMPOWER Foundation, 2016, "Moving Toward Decent Sex Work: Sex Worker Community Research: Decent Work and Exploitation in Thailand" available at <http://www.nswp.org/resource/moving-toward-decent-sex-work> (last accessed 31 May, 2017).

The committee also addresses disputes such as low payment by brothel owners, withholding of payments, dealing with local thugs who may try to harass sex workers, clients who are drunk, and fights between brothel owners and clients. The committee also keeps the sex worker community informed through regular meetings. Using this empowerment and rights-based approach, VAMP ensures that standards and norms of behaviour are effectively enforced by the community.

#### **4 Freedom to organise and unionise**

Mainstreaming sex work as work would increase sex workers' ability to organise and form associations, collectives and/or unions. Sex workers would be more able to set industry standards, provide legal representation and support to those who are exploited, enter into negotiations, mediation and collective bargaining with brothel owners and managers, and launch industrial actions such as strikes.

Some sex worker organisations already work with allies in unions, and some have successfully advocated for recognition of sex work by unions.

Unfortunately, some unions oppose the idea of sex work as work. For example, Stella, Canada reports that "the largest trade union, the CSN (Confédération des Syndicats Nationaux), is very public in their support for the abolition of prostitution. They released a public paper in 2012 and have been actively campaigning for more police presence in our lives. This makes our struggle for recognition of sex work as work even harder." NSWP members proposed global efforts to increase labour organisations' solidarity with sex workers and to urge organisations, such as the International Trade Union Federation, to pass resolutions supporting sex workers' rights.

##### ***Organización de Trabajadoras del Sexo (OTS), El Salvador***

OTS regularly meets with representatives from the Ministry of Labour and municipal authorities, in a form of collaborative governance, based on the mutual acknowledgement that sex work is labour, to discuss solutions to the issues affecting sex workers.

##### ***Sisonke, South Africa***

In 2012, Sisonke successfully lobbied South Africa's largest trade union federation, COSATU (Congress of South African Trade Unions) to recognise sex work as work, and to support the call for decriminalisation. In her presentation to COSATU, Sisonke organiser Dudu Dlamini highlighted her family's anti-apartheid activist background and detailed the harassment and brutality she and her colleagues experienced at the hands of the police in the course of earning a livelihood. Next, she identified herself as a worker and highlighted the similarities between her job and those of the other workers in the federation.

***Sex workers would be more able to set industry standards, provide legal representation and support to those who are exploited...***

She told them how she had built a house for her and her children from her sex work earnings:

*I told them this story...because I wanted to show them, to make it clear to them, and open their eyes... The money that we get from sex work, we do (the same things) that they do with their money – taking our children to better schools, to get a better education, the same like them. I wanted them to see that there is no difference. If you're a nurse, you're a nurse. If I'm a sex worker, I'm a sex worker. But at the end of the day, we are doing the very same thing – we are earning money.<sup>24</sup>*

## 5 Reduced violence and police harassment

Where sex work is not recognised as work, lack of access to justice creates impunity for perpetrators of violence against sex workers, as reported by the Ohotu Diamond Women Initiative, Nigeria:

*Not being recognized puts us in jeopardy. The street men and boys and our clients generally treat us as nobody and believe we can be killed without the law going after them.*

Viewing sex work as work transforms sex workers' relationship with the police. For example, sex workers in New Zealand, instead of fearing the police, can expect protection. They are able to report crimes committed against them without fear of arrest or having complaints dismissed, decreasing their vulnerability to violence.

### **New Zealand**

An article from the New Zealand Herald:

**...sex workers in New Zealand, instead of fearing the police, can expect protection. They are able to report crimes committed against them without fear of arrest or having complaints dismissed...**

Police resolved a dispute between a sex worker and a client who refused to pay – by escorting the man to a cash machine to settle his \$100 bill.

The client had refused to pay the woman...Police settled the matter by driving the man home to get his wallet, taking him to an ATM and then delivering the cash to the worker.

Prostitutes Collective Auckland co-ordinator Annah Pickering ... praised police for defusing the situation and protecting the sex worker's rights to be paid "like any other worker."

A Counties Manukau police spokesperson said the incident was common. "It sounds remarkable but it is a routine thing. Police would help any citizen having a disagreement whether they were a sex worker or working in a pizza shop."<sup>25</sup>

<sup>24</sup> Chi Adanna Mgbako, *To live freely in this world: sex worker activism in Africa* (New York: New York University Press, 2016), 40–43.

<sup>25</sup> Kirsty Wynn, "Police help short-changed sex worker", *New Zealand Herald*, 13 July 2014, accessed 13 September 2016 at [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11292537](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11292537).

## 6 Improved occupational health and safety

A labour framework creates working conditions which reduce sex workers' vulnerability to HIV and STIs. Decriminalisation of sex work “would have the greatest effect on the course of HIV epidemics across all

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settings, averting 33–46% of HIV infections in the next decade”, making it the single, most impactful intervention to avert new HIV infections amongst sex workers<sup>26</sup>. Decriminalisation fosters an enabling environment that increases sex workers' power to insist on condom use and reduces vulnerability to sexual violence and barriers to accessing health services, which NSWSP members like Red Umbrella Athens emphasise must be comprehensive, and include primary care, mental health, and sexual and reproductive health.

Decriminalisation fosters the creation of occupational health and safety guidelines, such as the excellent *A Guide to Occupational Health and Safety in the New Zealand Sex Industry*<sup>27</sup>, a collaborative effort involving NZPC, local government, and the New Zealand Departments of Labour, Health and Police. However, even within highly criminalised environments, sex workers have developed occupational health programmes.

### St. James Infirmary, USA

The St. James Infirmary is an Occupational Safety and Health Clinic for sex workers founded by sex work activists. The clinic's mission is to provide non-judgmental, integrated healthcare and social services for sex workers while preventing occupational illnesses and injuries. Their approach is rooted in the understanding that sex workers' vulnerability is not inherent, but the result of “labour rights violations; lack of legitimacy as an occupation; and criminalization of...[sex workers, sex work, and sex workers' efforts] to work collectively and organize<sup>28</sup>.” The St. James Occupational Health and Safety Handbook is an excellent example of occupational health guidelines developed by and for sex workers.

## 7 Improved access to social protection

Social protections provide economic safeguards during periods when people are unable to work, due to unemployment, sickness, disability or old age. When sex workers are recognised as workers, they can access the range of state- or privately-provided social protections to which all workers should be entitled. These can include sick pay, pensions, unemployment benefits, maternity or paternity benefits, disability benefits and workers' compensation for injury at work.

### STRASS, France

STRASS is working with private companies to establish a mutual health insurance scheme for sex workers. This would enable sex workers to be insured in cases of work-related accidents and to receive 'sick leave' compensation when they are ill.

26 Kate Shannon et al., “Global epidemiology of HIV among female sex workers: Influence of structural determinants” *Lancet*, 385 (2015):55–71.

27 Occupational Safety and Health Service, 2004, “A Guide to Occupational Health and Safety in the New Zealand Sex Industry” available at <http://www.worksafe.govt.nz/worksafe/information-guidance/all-guidance-items/sex-industry-a-guide-to-occupational-health-and-safety-in-the-new-zealand> (last accessed 27 June, 2017).

28 St. James Infirmary, 2010, “Occupational Health and Safety Manual: 3rd edition” available at <http://stjamesinfirmary.org/wordpress/wp-content/uploads/2008/05/Occupational-Health-and-Safety-Manual-Third-Edition-2010.pdf> (last accessed 31 May, 2017).

## 8 Improved access to social services and resources

Currently, in many countries, sex workers are channelled towards conceptually unsound and often forced ‘rescue/rehabilitation/exiting’ programmes, many of which require people to stop sex work, rarely offer realistic economic alternatives to sex work, are based on moral

judgements of sex work and flawed assumptions such as ‘all sex workers want to leave the industry’ and ‘any work is better than sex work’.

These programmes abuse sex workers’ human rights and do not represent good practice.

Recognition of sex work as work would allow sex workers to more freely access education and development opportunities, whether they wish

to stay in the industry and improve their skills, to develop additional skills which could provide alternative or complementary income, or to transition out of the industry entirely.

### SWOP-USA, USA

SWOP reports that the vast majority of funded sex worker services in the United States are court-ordered exit programmes. Viewing sex work as violence and a crime rather than work, these programmes often centre shaming and trauma-therapy and ignore sex workers’ skills and economic needs.

SWOP argues that a labour framework would enable “reconfiguration of social services from exit-based services to services that offer individuals in the sex trade client-centred services, based on their own needs and desires” and even improved exit services that “sufficiently address... economic motivations...to engage in sex work.”

### Respect Queensland, Australia

Respect Queensland implements a person-centred ‘career development program’. Funded as an exit programme, it serves sex workers with different needs and wishes, including sex workers who wish to build their sex work and non-sex work skills and those who wish to transition away from sex work. This programme focuses on recognising the transferable skills in sex work and building sex workers’ confidence in the workforce across the board.

When sex work is recognised as work, sex workers are also treated as full citizens in terms of access to housing, social, legal and justice services, psychological counselling, financial institutions, and other state and privately provided services. In child care and custody cases, sex workers would not be deemed ‘unfit’ parents simply by virtue of their occupation.

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## 9 Free Choice of Employment

Stigma, discrimination and criminalisation present barriers to sex workers who want to exercise their right to occupational choice and find alternative employment. These barriers include criminal records and

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lack of 'employment history'. Hydra reports that in Germany, employees have a duty to disclose to their employers if they have other part-time jobs. Hydra regularly deals with cases where part-time sex workers are fired from their main occupations, even though sex work is legal in Germany. Drawing on Germany's anti-discrimination laws, Hydra is lobbying to exempt sex workers from the duty to disclose, as long as sex work is socially stigmatised.

Recognising sex work as work would support sex workers in a person-centred way which respects individual choices. In the words of Scarlett Alliance, Australia, if sex work were recognised as work, "if we no longer want to do sex work, we [could] choose to leave our jobs, and the skills we develop and use in sex work [would be] more likely to be recognised and valued by other industries."

## 10 Alliances with other workers and broader social movements

A labour analysis allows for recognition of commonalities between sex work and other types of work, including in other sectors with a high degree of informal labour and worker vulnerability, such as domestic and agricultural labour. Viewed through a labour framework lens, many of the unacceptable and exploitative conditions in the sex work cease to be peculiar to the industry. This enables sex worker-led organisations to position their challenges in the context of the macro-political and economic forces, such as globalisation, austerity and anti-immigration measures, and a decline in traditional forms of formal employment. It also provides an opportunity to form alliances with other groups of workers and to link the struggle for sex workers' rights to broader social movements.

In Burundi, although sex worker organisations emerged only five years ago, their participation in alliances with feminist and sexual and reproductive health rights movements has shifted public discourse around sex work, with 'mainstream' organisations increasingly addressing issues made visible by marginalised grassroots organisations.

Some participants in this consultation have proposed that the sex workers' rights movement strengthen its links with global movements of other informal workers, such as domestic workers, who often share many experiences and difficulties.

### **People's Parliament, Kenya**

In Kenya, sex workers have joined *Bunge la Mwanachi*, or People's Parliament, a class-based anti-poverty movement of street vendors, street people, minibas drivers, LGBT people and sex workers united to protest against harassment and abuse from police and security forces, and tax increases on basic commodities that hit the poor the hardest.<sup>29</sup>

29 Chi Adanna Mgbako, *To Live Freely in this World: Sex Worker Activism in Africa*, 135.

## Towards a Decent Sex Work Agenda

The Decent Work Agenda and its four pillars (promotion of the basic rights of workers, creation of employment opportunities, improving social protection and strengthening social dialogue) offer a useful framework to develop standards for 'decent' sex work. NSWP asked its members to describe the elements of decent sex work. They identified the following characteristics of decent work:

- The decriminalisation of all aspects of sex work. This includes the decriminalisation of the sale and purchase of sex, and of third parties, families, partners and friends.
- Fair labour practices, in line with existing labour laws, including reasonable working hours and working conditions, the right to refuse clients or certain services and freedom from exploitative labour practices, including paying fines.
- A clean and safe working environment.
- Access to condoms and personal protective equipment, without these being mandatory.
- Access to voluntary, non-stigmatising and comprehensive health services.
- Freedom from violence and sexual harassment.
- The right to choose work arrangements, including the choice to work for an employer, or to work independently.
- The right of sex workers to control establishment of health and safety standards in their industry.
- The right to form workplace associations, or to unionise and be covered under industrial relations legislation, including protections to prevent reprisal for joining or being a member of a union.
- Rights for migrant sex workers.
- The right to social protections and benefits which are the right of all employees, including unemployment, parental, retirement and disability benefits, leave and workers compensation in the event of a work-related injury or illness.
- Access to statutory complaint mechanisms to address contraventions of employment standards legislation.
- The right to refuse services.
- The right to access health and social services free from stigma and discrimination.
- Freedom from discrimination by other employers, landlords, or judges in family court due to current or prior involvement in sex work.

**Sex work as work is a powerful conceptual tool which provides a framework for the sex workers' rights movement in its campaigning for and beyond decriminalisation.**

Sex work as work is a powerful conceptual tool which provides a framework for the sex workers' rights movement in its campaigning for and beyond decriminalisation. The concept of a Decent Sex Work Agenda allows us to develop standards for fair and acceptable working conditions and to advocate for the actualisation of those conditions. For example, EMPOWER Thailand uses a Decent Sex Work framework to measure whether workplaces meet conditions of decent work. They argue that criminalisation precludes decent work in Thailand, such that 87.2% of Thai sex workers work in sub-standard conditions, and 13% under conditions that can be deemed Unacceptable forms of Sex Work, including debt bondage, forced labour and human trafficking<sup>30</sup>. A nuanced analysis of sex workers' working conditions allows for a

more effective, appropriate, person-centred response to the complex challenges sex workers experience. According to EMPOWER, the decent sex work continuum can be used in the development of policies and practices for addressing sex worker concerns. It allows for the creation of measurable indicators to decide "which working conditions require intervention using labour or civil law; which require criminal law response and which require some combination of the two."

In conclusion, that sex work is work has been a foundational principle of the sex workers' rights movement for some time, and many are frustrated at having to constantly combat morality-driven policies that ignore sex workers' own experiences. In the words of Stella, Canada:

*It will be an exciting moment when we can actively work to improve labour conditions in an open way and make labour improvements needed in the sex industry, rather than focus on harm frameworks of the current laws.*

## Recommendations

- ▮ States should recognise sex work as work and extend to sex workers all the legal protections and rights to which all workers are entitled.
- ▮ Recognising that decriminalisation protects the right of sex workers to freely choose and practice their occupation, all states should decriminalise all aspects of sex work and remove all punitive and discriminatory laws and policies.
- ▮ Governments (including departments of labour, police and justice) should collaborate with sex worker organisations and other key stakeholders to work towards the elimination of all forms of exploitation in the sex industry.
- ▮ Governments should implement measures which will improve safe working conditions for sex workers, including an end to police harassment and abuse of sex workers and access to justice when crimes are committed against them.
- ▮ ILO should take the lead in supporting sex workers in advancing a decent sex work agenda and emphasising that sex work is work.

<sup>30</sup> EMPOWER Foundation, 2016, "Moving toward decent sex work: sex work community research: decent work and exploitation in Thailand".

- Sex workers should have access to occupational health services that address the full range of sex workers' occupational health needs, in a respectful and confidential manner, and are not limited to a focus on HIV.
- State and private institutions should not discriminate against sex workers with regard to access to social protections, benefits and financial entitlements; labour mediation services; housing; financial institutions; or any other services.
- Sex workers should have access to learning and development opportunities which are person-centred, and which support their occupational needs and choices, and are not solely focused on exiting the industry.
- Trade unions and federations should extend their membership to sex workers and support sex workers in their struggle for the realisation of labour rights.

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



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