

POSITION PAPER

Supporting the full decriminalisation of sex work



Since we first started in 1986, STOPAIDS has advocated for a human rights-based approach to ending AIDS. We have particularly focused on promoting the human rights of key population groups who are disproportionately impacted by HIV – including sex workers, men who have sex with men, transgender people and people who use drugs.

Our vision is: “A world in which people with HIV are at the centre of a fully financed response which protects, respects and fulfils human rights, where all people with HIV are healthy and safe, and where all people without HIV remain HIV-free.”

We are convinced that this vision cannot be achieved if the groups of people most affected by HIV remain criminalised.

In this paper, we explicitly add our support to the sex workers’ movement, which has long been campaigning for full decriminalisation. We join a growing group of institutions that are calling for the decriminalisation of sex work, including United Nations bodies (Joint UN Programme on HIV/AIDS – UNAIDS; World Health Organization – WHO; UN Development Programme – UNDP; and UN Population Fund – UNFPA), civil society (Amnesty International; Human Rights Watch; and the Global Network of Sex Work Projects – NSWP) and governments (New Zealand).

As a network of 70 non-governmental organisations (NGOs) working to ensure an effective global response to HIV and AIDS, STOPAIDS cannot afford to be ambiguous or shy about our position. We are committed to implementing our programmes, policies and advocacy in line with this decriminalisation position, and we encourage the sex workers’ movement to hold us to account on this.

DEFINITION

Decriminalisation: the removal of all criminal and wider punitive laws used against sex workers, clients and third parties. This includes laws that directly criminalise sex work and the use of laws to disproportionately target sex workers such as vagrancy, public nuisance, homosexuality, obscenity, cross dressing etc. The specifics of the legal framework that replaces criminalisation should be developed in consultation with local sex workers, taking into account the specific country context.

Our policy is global in scope, applying to all countries at any stage of the development continuum. Although our members primarily work in low- and middle-income countries, we recognise that many high-income countries, including the UK, have not yet developed legal frameworks that protect the human rights of sex workers.

Our decriminalisation position is the result of workshops, debates and discussions held by the STOPAIDS network over a two-year period. It aims to build support among STOPAIDS members for a sex work legal framework that protects the human rights of sex workers. By presenting evidence about the implications of criminalisation on sex workers’ human rights, we hope to guide and support STOPAIDS members in developing organisational positions in support of sex work decriminalisation, as well as encouraging members to reflect on how a decriminalisation position or approach would affect policies, programmes and advocacy.

OBJECTIVES OF A HUMAN RIGHTS-BASED LEGAL FRAMEWORK FOR SEX WORK

Sex workers are entitled to the same human rights as all people. Rather than a faceless profession, sex workers are individuals with diverse identities and roles, and are integral members of communities. A legal framework for sex work must protect and uphold all the human rights of sex workers.

As a network of organisations working to secure an effective global response to HIV and AIDS, STOPAIDS members are united by a focus on securing the right to health. However, this right is intertwined with human rights more broadly. The right to health, the right to live free from violence and the right to economic security will all have a significant impact on the HIV and AIDS response. Guaranteeing these rights for all people, including sex workers, will play a key role in helping to reach Sustainable Development Goal 3, which pledges to end AIDS by 2030.

In this section, we detail some of the human rights that must be taken into account when evaluating regulatory frameworks for sex work, including sex workers': 1) right to health; 2) right to live free from violence; and 3) right to economic security.

1. Sex workers should have access to the highest attainable standard of health

The right to the highest attainable standard of health is guaranteed by the 1966 International Covenant on Economic, Social and Cultural Rights.¹ WHO defines health as *"a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity"*.² To uphold the right to health, states have an obligation to provide accessible health services and social conditions necessary for all citizens to realise the highest attainable standard of health.³

A legal framework for sex work must therefore protect sex workers' right to physical and mental wellbeing. STOPAIDS supports the Global Network of Sex Work Projects (NSWP)'s Consensus Statement on Decriminalisation, which states that sex workers must be able to access appropriate, accessible, acceptable and affordable health services. Health services should not be limited to addressing sex workers' sexual and reproductive health needs, but should include a holistic package of support services to promote emotional and mental wellbeing. Health services should account for sex workers' gender identity, HIV status and location and pattern of work. Condoms and lubricant should be freely available. Sex workers should not encounter stigma or discrimination within health services. To ensure health services are as effective as possible, sex workers should be meaningfully involved in the development of tailored health services and should lead implementation and monitoring.⁴

2. Sex workers should be safe and live free from violence

The Universal Declaration of Human Rights guarantees everyone *"the right to life, liberty and security of person"*.⁵ The right to security requires that states protect individuals against intentional bodily or mental injury. It also affirms that *"all are entitled, without any discrimination, to [this] protection"*.⁶

A legal framework for sex work must therefore ensure that sex workers can live free from sexual, physical and psychological violence and harassment. It must also guarantee that, when sex workers encounter violence or harassment, they have recourse to justice and can trust the police. Reports of violence against sex workers must be taken seriously by police authorities, and perpetrators must be prosecuted.

Experiences of violence will directly and indirectly affect a person's right to health, and these experiences are strongly associated with an increased risk of acquiring HIV. For example, women in high-prevalence settings who have experienced gender-based violence are 50% more likely to acquire HIV.⁷

3. Sex workers should be able to earn a secure income

The Universal Declaration on Human Rights gives everyone “*the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment*”. It also states that anyone who works has the right to earn enough income to support themselves and their family to live dignified lives.⁸ The International Labour Organization (ILO) recognised sex work as a form of informal labour in its discussion on ‘Recommendation 200 Concerning HIV and AIDS and the World of Work’. ILO member states agreed that sex workers are covered by this instrument, therefore giving sex workers the same rights and entitlements as other informal workers, within Recommendation 200.⁹

A legal framework for sex work must ensure that sex workers have the right to choose the work they want and a working pattern that fits with education or caring responsibilities. Sex workers must be able to earn an income that provides secure housing, adequate food, safe drinking water and education. Sex workers must have access to safe and fair working conditions and should be protected against unemployment. All sex workers, including migrant sex workers and sex workers living with HIV, must be protected from discrimination. If a sex worker is mistreated in the workplace, they must be entitled to the same protections as other groups of workers. If a sex worker chooses to engage in other forms of work, they must be able to freely choose a new form of employment without facing discrimination in future jobs. These social conditions, along with a safe working environment, will directly influence health outcomes.¹⁰

HUMAN RIGHTS UNDER CRIMINALISATION

This section evaluates the impact of criminalising legal frameworks on sex workers' right to health, as well as their right to live free from violence and right to economic security. We also look at criminalising legal frameworks where sex workers are not criminalised but clients or third parties are.

DEFINITION

Criminalisation of sex work: A legislative framework where laws make sex work or activities associated with sex work (such as brothel keeping or purchasing sex) a crime. These criminal laws are enforced by the police and other law enforcement agencies and result in the arrest, prosecution and punishment of sex workers.¹¹

Criminalisation and health

Criminalisation and violence directly and indirectly affect sex workers' HIV risk, sexual and reproductive health, and broader physical and emotional health. In a review of 800 studies on the links between HIV and human rights violations against sex workers, criminalisation was found to increase HIV susceptibility and undermine effective HIV-prevention and intervention efforts.¹² A literature review of the associations between sex work laws and sex workers' health further supports this conclusion, finding that sex workers who had experienced repressive policing were twice as likely to have acquired HIV or a sexually transmitted infection (STI) compared to those who had not experienced repressive policing.¹³

Specific human rights abuses under criminalisation and their implications for the HIV response within sex worker populations are addressed directly below.

Criminalisation and negotiating safe sex

The threat of physical and sexual violence, and the impunity afforded to perpetrators of violence against sex workers, can limit sex workers' ability to negotiate safe sex. Under criminalisation, sex workers are not entitled to labour protections, which further limits their ability to negotiate safe sex.¹⁴ In some countries, carrying condoms is used as evidence of sex work during arrest, which discourages sex workers from carrying and using condoms.¹⁵ A systematic review of literature on human rights violations and the burden of HIV for sex workers found that, in some countries, up to 80% of sex workers had experienced police confiscating, destroying or using condoms as evidence against them and more than one third of sex workers reported not carrying condoms due to fear of law enforcement.¹⁶ A further literature review of 86 studies across 33 countries found that sex workers who had experienced repressive policing were 1.5 times more likely to have sex with a client without a condom, compared to those who had not experienced repressive policies.¹⁷ As a result, under a criminalising legal framework, sex workers are at greater risk of acquiring HIV.

Criminalisation and access to health services

Criminalisation also acts as a barrier to accessing quality health services, including HIV testing and treatment. Criminalisation impedes sex workers' ability to gain citizenship, tax documentation and legal personhood. This lack of legal personhood frequently means that sex workers lack forms of identification required to access social services, including health insurance and health services.¹⁸

Criminalisation can also fuel stigma and discrimination experienced within health and social services, undermining sex workers' access to HIV and wider health services. A lack of appropriate non-judgemental services that meet sex workers' needs can be a deterrent for sex workers seeking healthcare.¹⁹ Male and transgender sex workers often face compounded discrimination due to their sexual orientation and gender identity, and are especially likely to lack tailored services, as many sex worker-specific services target cisgender female workers.^{20,21} Migrant sex workers, who frequently face additional barriers – including lack of documentation, language competency and knowledge of the local healthcare system – are also less likely to access health services.²²

Sex workers have also documented human rights abuses within health services, including breaches of confidentiality, denial of health services including HIV testing and treatment, stigma and discrimination and forced or mandatory rehabilitation.²³

Health services for sex workers will be most effective when they are sex worker-led and developed with a real understanding of sex workers' realities. This kind of dialogue and partnership with sex workers is more difficult where sex workers are criminalised. For example, the US President's Emergency Plan For AIDS Relief (PEPFAR) – the agency that delivers the US Agency for International Development's HIV and AIDS programmes – operates an anti-prostitution pledge, requiring non-US grantees to oppose prostitution and sex trafficking, and prohibits funds from being used in advocacy against the criminalisation of sex work.²⁴ This pledge, and criminalisation more widely, both have a negative impact on the meaningful participation of sex workers in programme design, implementation and monitoring.

Access to health services is also affected when sex workers change their location of work to avoid law enforcement. A Canadian study conducted by the Gender & Sexual Health Initiative (GSHI) showed that attempts to avoid areas of high police enforcement and

violence hindered sex workers' access to harm reduction programmes that provided clean needles and syringes.²⁵ A further study in India, Nepal and the Philippines indicated that police harassment and arrest of peer educators and outreach workers disrupted access to condoms and safe sex information.²⁶ Barriers to sex workers' right to health fuelled by policing are particularly pronounced for sex workers subjected to arrest and arbitrary detention or forced rehabilitation and detention. Arrest and detention have both been linked to unhygienic conditions, gaps in access to health services medication (including antiretrovirals), forced HIV testing and exposure to HIV through sexual violence.²⁷

Criminalisation and emotional and mental health and wellbeing

Criminalisation, stigma and discrimination significantly affect sex workers' emotional and mental wellbeing. For example, in central and eastern Europe, sex workers identified frequent displacement and fear of arrest and police abuse as an all-consuming stress factor.²⁸

“It’s always the same, I move further into darkness and isolation... You suffer psychologically because you are forced to work on streets you don’t know, fear and anxiety is levelling up. You are nervous and scared.”

TRANS WOMAN AND STREET SEX WORKER, SERBIA²⁹

Three studies from India and Canada further support this finding. These studies found that recent incarceration, arrest and increased police presence were associated with poorer mental health.³⁰

Media collusion during raids is common, as is publishing the names and photographs of individuals arrested for sex work. Sex workers also report the fear of being 'outed' by police or media as emotionally stressful.³¹ One Argentinian sex worker, describing police and media collusion during a workplace raid, said: *“What I fear the most is that they use another hidden camera on me. Because I was already caught on one, and it ruined my life (...) That night the men came, they pretended to be clients and I fell for it. And now I can’t talk to a client and be relaxed because all the time I’m thinking they have a camera. It ruined my life...”*.³² The role of the media in criminalisation, stigma and discrimination of sex workers is an under-researched topic that merits further exploration.

Criminalisation and safety

Criminalisation deters sex workers from reporting violence and harassment to the police because they fear arrest or abuse at the hands of the police.³³ Migrant sex workers are particularly deterred from reporting violence to the police because of the risk of deportation.³⁴ Criminalisation of sex work and the resulting lack of trust in police protection leads to impunity for the perpetrators of violence against sex workers and to an increase in violence against sex workers.³⁵

The links between criminalisation, stigma and impunity have been increasingly recognised by governing bodies around the world. For example, in 2009, the South African Law Reform Commission stated that *“the criminalisation of prostitution and the attendant social stigma contribute to a climate in which society treats prostitutes with discrimination and violence, often with impunity”*. They further noted that *“the climate of criminalisation means that prostitutes are abused financially, sexually and physically by gangsters, clients, brothel owners and pimps, often with impunity”*.³⁶

This connection is also supported by research. A systematic review of 28 studies summarising factors correlated with violence against female sex workers found that experiences of policing practices, such as violence, arrest or coercion, were associated with increased client violence. The review explained the relationship between police practices and violence against sex workers as being caused by the lack of monitoring and legal

protections for sex workers within police and judicial systems. The review concluded that female sex workers were more likely to experience violence if they had experienced arrest.³⁷

Rather than protecting sex workers, in a climate of criminalisation, police are often the perpetrators of violence against sex workers. Amnesty International's sex work policy, drawing from research in four countries, documents widespread human rights abuses against sex workers, including police abuse.³⁸ Amnesty found instances of sex workers being made to pay bribes or give free sexual services to police to avoid arrest or raiding of a work place. Sex workers also reported violence during police raids, unlawful detention and ill treatment and rape by police while in custody.³⁹

A comprehensive review of literature published in a 2015 *Lancet* series on sex work and HIV documented widespread police abuse of sex workers globally, including name calling, strip searches, beating, whipping, shocking with electric rods, rape and arrest as a pretext for rape, with sex workers being taken to remote locations rather than the police station. This abuse was significantly associated with STI and HIV acquisition.⁴⁰

Criminalisation of sex work also shapes public perception of sex workers and normalises social stigma and discrimination against sex workers.⁴¹ Discrimination and stigma conspire to create a climate in which violence against sex workers is increasingly acceptable and common.⁴²



SEX WORKER MURDERS IN KENYA

In 2015, at least 10 female sex workers were murdered in Nakuru, Kenya by a serial killer. The killer was believed to have posed as a client and targeted the women because they were sex workers. The Kenyan Sex Workers Alliance (KESWA) argued that the murders may have been prevented if sex workers were not forced to work alone in isolated settings to avoid police detection. They were supported by a group of Kenyan MPs, who made the connection between the murders, criminalisation and the need for sex workers to work in unsafe places to avoid detection. Police were slow to launch an investigation and were criticised by KESWA for their lack of action. KESWA wrote to the Kenyan President reminding him that the sex worker victims were mothers, sisters and daughters with caring responsibilities and families. KESWA called on the President to end the killings and ensure sex workers could live free from violence, be protected by the law and be respected as human beings and citizens of the country. KESWA has since launched a public interest litigation to change the law that criminalises sex workers.⁴³⁻⁴⁵

Criminalisation and economic security

Legal frameworks that criminalise sex work prevent sex workers from realising their right to work and to free choice of employment. Criminalisation of sex work means that sex workers are excluded from the labour protections that other workers are entitled to. This includes protections from employers, leaving sex workers more vulnerable to exploitation by their employers. Where working conditions are unsafe, or fall below the decent work standards set out by the ILO, sex workers have no recourse to justice.

The criminalisation of sex work interferes with sex workers' right to organise. It makes it dangerous and illegal for sex workers to form associations for advocacy or peer support purposes.⁴⁶ Criminalisation also interferes with sex workers' ability to engage in collective bargaining to improve labour conditions.⁴⁷

Criminal records and open cases are a barrier to sex workers finding other forms of work to supplement their income while in sex work or when considering leaving sex work.⁴⁸ Sex workers find themselves unable to secure alternate forms of employment when companies run background checks and uncover details of past arrests and charges for sex work.⁴⁹ Sex work-related convictions may even disqualify individuals from obtaining professional license for many female-dominated, liveable wage professions in healthcare, teaching, social work and law, effectively barring sex workers' pathways to other viable means to meet their economic needs.⁵⁰

Lack of legal status before the law also impedes sex workers' ability to save and plan for their future. In many countries, sex workers cannot legally open a bank account. This forces sex workers to live in a cash economy, ruling out options for saving, buying property and planning for retirement.

Police abuse under criminalisation often increases economic pressure. Police fines, arrest and detention disrupt sex workers' ability to earn an income to support themselves and their families. Sex workers report allocating substantial portions of their income in order to pay off police fines and extortion.

Criminalisation and housing security

Criminalisation also impedes sex workers' right to housing. This creates housing insecurity which, in turn, leads to greater dependence on clients and third parties. In the United States, criminal records and open criminal proceedings often negatively affect sex workers' access to housing as well as other social services.⁵¹ In Argentina, Amnesty International found that sex workers were unable to rent apartments because of a lack of 'documented income'. This limited sex workers to renting from landlords who were prepared to break the law, leaving them vulnerable to harassment by landlords and hotel owners who demand inflated rents.⁵² Amnesty also documented an operation in Norway carried out by the Oslo police between 2007–2011, which involved systematic and rapid eviction of many sex workers from their places of work and/or homes. This practice of targeted evictions, largely with less than one day of notice, disproportionately affected migrant sex workers and continued beyond 2011, leading to the closure of over 400 Oslo apartments used for sex work between 2007 and 2014. In one case, a group of sex workers recounted being forced to leave their home on the spot by the police and carrying all their possessions onto the streets. Once on the street they were offered assistance by a stranger, who then stole some of their possessions.⁵³

*** OTHER MODELS OF CRIMINALISATION**

Criminalisation of clients

Under some legal frameworks, sex workers are not criminalised, but their clients are. The intention of a law that criminalises clients is to end demand for sex work, and ultimately eliminate sex work. However, there is no evidence that criminalising clients has resulted in an overall decline in levels of sex work, although some countries report a drop in visible street sex work. NSW's *Advocacy Toolkit, The Real Impact of the Swedish Model on Sex Workers*, provides further information on this point.⁵⁴

There is extensive evidence, however, that criminalising clients affects sex workers' safety. While sex workers are not directly criminalised under this model, they continue to face police harassment as a party to a crime and are often dispersed and pushed into less visible and more isolated environments.⁵⁵ This displacement to less safe environments is compounded by the power imbalance between sex workers and their clients, which leads

sex workers to absorb client risks and compromise their own safety to protect clients from detection.

The combination of heightened policing of street-based sex work and clients' fear of arrest disrupts sex workers' safety systems and pushes them into less well-lit and more isolated environments.⁵⁶ For street-based sex workers, clients' fear of detection and arrest shortens the time sex workers have to decide whether or not to get into a car. This means less time to screen clients and negotiate services and price.⁵⁷ For indoor sex workers, the criminalisation of sex work can push sex workers to compromise their safety to protect clients. For example, in Norway, sex workers reported accommodating clients' fear of being arrested at hotels or apartments used for sex work by agreeing to go to their clients' houses, where they had less control over how many people would be present, less knowledge of exits and no access to surveillance that their own collective workspaces or hotels had provided.⁵⁸ Criminalisation of clients also makes clients reluctant to give their real names, making it difficult for sex workers to search online to screen them, or report them if they are violent.⁵⁹

Criminalisation of third parties

Laws against third parties – including managers, brothel keepers, receptionists, maids, drivers, landlords, hotels that rent rooms to sex workers and website operators that run sites where sex work is advertised – lead to a wide range of violations of sex workers' health, safety and economic rights.⁶⁰ These harms include barriers to condom access and outreach workers' ability to provide health services to sex workers,^{61,62} evictions and increased discrimination by landlords and social service agencies,⁶³ lack of legal recourse against workplace labour rights violations,⁶⁴ police harassment and violence during brothel raids,⁶⁵ and displacement into less safe workspaces, including street-based sex work.⁶⁶

Further research documents that, while these laws may be intended to target individuals who are not engaged in but who profit from sex work, they ultimately leave sex workers vulnerable to unlawful arrest and police abuse during raids. They also criminalise and deter sex workers from working together for safety. In Cambodia, where third parties are criminalised, sex workers frequently face unlawful arrest and police abuse during brothel raids.⁶⁷ This pattern is identified across contexts where third parties are criminalised.^{68,69} A recent review of research on sex work in the UK and the Netherlands documents that laws against brothel keeping acted as a deterrent to sex workers working collectively.⁷⁰ The study also found significant concerns among research participants working independently on shared premises that measures taken to ensure safety could be interpreted as illegal.

“... the ideal situation is where you... have a separate premises where you can work from, and share those premises... Because then you've got companionship, added security, there's someone to interact with. Because of the legal situation, you have to be very, very careful.”

CHRISTOPHER, INDEPENDENT SEX WORKER, QUOTED IN PITCHER, 2014⁷¹

*** OVERALL ASSESSMENT OF CRIMINALISATION**

The objective of a criminalising framework is normally to reduce the prevalence of sex work and the demand for sex work, not to protect the human rights of sex workers. From the implementation of the Nordic model, it's unclear whether even that objective is achieved. For example, there is some data to suggest that street-based sex work has declined in Sweden since buyers were criminalised but the period evaluated also coincided with a rise in the use of the internet to arrange meetings.⁷² There is also some data that suggests the percentage of men who report having paid for sex has decreased following the introduction

of the law.⁷³ However, it is likely that this data was compromised because the introduction of the law made men less likely to report behaviour after it had been made illegal. The Swedish National Board of Health and Welfare concludes: *“It is ... difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question”*.⁷⁴

What these assessments of criminalisation don’t account for is the impact of criminalisation on sex workers’ lives. It is clear from the evidence listed above that criminalisation threatens sex workers’ health, safety and economic security. Criminalisation does not meet the objectives of a human rights-based sex work policy

THE ALTERNATIVE – FULL DECRIMINALISATION

There is evidence that the decriminalisation of sex work benefits sex workers’ safety, health and economic security. In this section we present evidence from New Zealand (the only country to fully implement decriminalisation so far); modelling based on data from India, Kenya and Canada; and the analysis from an epidemiological study of the HIV epidemic in 27 European countries.

Decriminalisation and safety

Decriminalisation has been shown to improve relationships between sex workers and police, increasing sex worker comfort in reaching out for police protection.⁷⁵ A 2007 New Zealand report on the consequences of decriminalisation noted a range of positive outcomes for sex workers, including awareness of their increased legal, health and safety and employment rights. Sex workers reported that these increased rights protected them from violent attacks and were mentally empowering, allowing them to feel supported and safe.⁷⁶

Under decriminalisation, sex workers were able to report crimes to the police without fearing arrest. If sex workers report crimes to the police on a more regular basis, this can in turn help deter perpetrators of violence and crime against sex workers.



IMPACT OF DECRIMINALISATION IN NEW ZEALAND ON RELATIONSHIP BETWEEN POLICE AND STREET SEX WORKERS

Following decriminalisation in New Zealand in 2003, a study was conducted through interviews with the New Zealand police, social service providers and sex workers. Respondents across all groups reported that the relationship between street-based sex workers and police had improved, expressing that street-based sex workers feel more respected by the police and encountered less stigma and discrimination. The study also found that police power over street-based sex workers had decreased under decriminalisation, as police could no longer threaten them with arrest, and that street-based sex workers were more likely to report violence to the police.⁷⁷

Decriminalisation and health

A decrease in violence against sex workers under decriminalisation would directly improve health outcomes.⁷⁸ A 2014 study of structural determinants of HIV prevalence in sex worker populations predicted that decriminalisation could prevent between 33% and 46% of new HIV infections in the next 10 years. This research was based on modelling of data from India, Kenya and Canada. The study also predicted that decriminalisation would decrease violence and police harassment against sex workers, lead to safer work environments and, as a result, reduce the number of new HIV cases. Decriminalisation and safer working

environments were found to be more effective in preventing new infections amongst sex workers than any other intervention.⁷⁹

Further evidence based on analysis of epidemiological data from 27 European countries indicated that HIV prevalence among sex workers was higher in countries where all aspects of sex work is criminalised than in countries that legalised some aspects of sex work.⁸⁰

Globally, decriminalisation would directly address many barriers to sex workers' right to health. Improved relationships with police and decreased barriers to accessing legal recourse, as well as decreased violence and threat of violence, would also enable sex workers to more easily negotiate safe sex with clients.⁸¹ Decriminalisation would also prevent police from using condom possession as evidence for sex work-related charges and sex workers would be more likely to carry and use them as a result.

Under decriminalisation, sex workers would also have the legal recognition and documentation required to access healthcare and wider social services, which would help to reduce the stigma and discrimination sex workers face within health services and more widely. In addition, sex workers would no longer experience detention and the resulting interruption to STI and/or HIV treatment.

Decriminalisation and economic security

In giving sex workers the legal right to pursue their chosen form of employment, decriminalisation would eliminate many abuses against sex workers' economic and labour rights. It would allow sex workers to earn a secure income for themselves and their families without the threat of arrest, bribes or extortion from law enforcement or the frequent disruption of work environments and displacement experienced by sex workers under criminalisation. Decriminalisation would also afford sex workers standard labour protections, and sex workers would gain access to justice when their rights are violated by managers or clients, including recourse against wage theft, workplace safety violations and sexual harassment.⁸²

Decriminalisation would also reduce the barriers sex workers currently face if they choose to exit sex work or take on additional forms of employment in addition to sex work.⁸³

For example, some sex workers struggle to find new forms of employment if they have a criminal record. Decriminalisation could also make exit services more effective by allowing sex workers to be more closely involved in designing, implementing and monitoring of programmes and by changing the common practice of requiring sex workers to stop sex work before they are permitted to take part in the service.⁸⁴



IMPACT OF DECRIMINALISATION ON WORK ENVIRONMENTS IN NEW ZEALAND

In 2007, a comparative, multi-site study in New Zealand examined differences in data on work environments before and after decriminalisation of sex work. Sex workers reported that no criminalisation and increased labour rights gave them increased power to negotiate safe sex and refuse clients. Managed sex workers under decriminalisation were more likely to have refused a client in the last 12 months, and two thirds of survey respondents reported it was easier to refuse a client since the law had changed. The majority of participants also stated that they had more support from management to refuse clients when necessary. Participants in the 1999 pre-decriminalisation study, in comparison, reported management practices that did not allow them to refuse clients.⁸⁵

WHAT DOES DECRIMINALISATION MEAN FOR INTERNATIONAL DEVELOPMENT POLICIES AND PROGRAMMES WITH SEX WORKERS?

The STOPAIDS position on decriminalisation is intended to influence members' policies, programmes and advocacy. In this section we offer guidance on how members can work with sex workers to implement these recommendations.

In 2012, WHO – in partnership with UNFPA, UNAIDS and NSWP – developed guidelines to better protect sex workers from HIV and other STIs.⁸⁶ The guidelines are closely aligned with the objectives of a human rights-based legal framework on sex work set out earlier in this paper.

Four recommendations were made:

1. Countries should work towards decriminalisation;
2. Governments should establish anti-discrimination laws to protect sex workers;
3. Health services should be made available;
4. Violence against sex workers must be prevented.

A year later, WHO, UNFPA, UNAIDS, NSWP, the World Bank and UNDP released practical guidance on **how** to implement the 2012 recommendations: the Sex Workers Implementation Tool (SWIT).⁸⁷ The SWIT is a roadmap for how to achieve the vision set out in the 2012 recommendations. It explains what a human rights-based approach to working with sex workers means in practice. Several major donors within the HIV and AIDS response adopted the SWIT guidelines in 2016, including the Global Fund to Fight AIDS, Tuberculosis and Malaria and the U.S. Agency for International Development (USAID) funded project, *Linkages across the Continuum of HIV Services for Key Populations Affected by HIV*.⁸⁸

The SWIT covers six broad themes with recommendations under each. The following summary is adapted from NSWP's *The Smart Sex Worker's Guide to SWIT*.⁸⁹

1. Community empowerment

Community empowerment is a process in which sex workers take individual and collective ownership of programmes, where sex workers are empowered and supported to address for themselves the structural constraints to health, human rights and wellbeing that they face, and improve their access to services to reduce HIV infections.⁹⁰ Key elements of community empowerment programming include: working with communities of sex workers; fostering sex worker-led outreach; developing, strengthening and sustaining sex worker collectives; and shaping policy and creating enabling environments.

Sex workers must be meaningfully included in designing, implementing and monitoring interventions. Meaningful participation means that sex workers have an equal voice in the partnership and can choose how they are represented, how they engage and whether they engage at all.

2. Address violence against sex workers

Interventions should not only address physical and sexual forms of violence but also emotional and psychological abuse, and should promote the full protection of sex workers' human rights. They should respect the right of sex workers to make informed choices about their lives, reject notions of rescue and rehabilitation, and promote gender equality.

Examples of programmes might include: building the capacity of sex workers; advocating for policy and legal reforms; fostering police accountability; promoting the safety and security of sex workers; and providing health services to sex workers who experience violence. The SWIT also cautions programme managers to consider and mitigate against the unintended consequences of programmes. For example, an advocacy campaign to decriminalise sex work could provoke community violence or police violence against sex workers publicly involved in the campaign.

3. Community-led services

The three elements of community-led services highlighted in the SWIT are community outreach, safe spaces and community committee and advisory groups.

Sex workers should take the lead in delivering and overseeing HIV prevention programmes, and community-led services have significant benefits in HIV prevention and enabling sex workers to realise their human rights. While many services may be started by NGOs and staffed by non-sex workers, sex workers must be actively involved in programme design, and organisations should be structured in a way that sex workers can be quickly recruited to take on increasing responsibility. Sex workers can take on the role of outreach workers and can build trusting relationships with other sex workers, understand their needs and provide or link them with services.

4. Condom and lubricant programming

The effective supply, distribution and promotion of condoms and lubricant are essential to HIV prevention among sex workers. Programmes should ensure accessible supplies, condom and lubricant promotion at multiple levels and an enabling environment. Condom promotion and distribution should be free of coercion. Programming should consider the challenges of condom negotiation and condom programming with clients of sex workers, as well as the nuances of condom programming for male, female and transgender sex workers.

5. Clinical and support services

Services should be appropriate, accessible, acceptable and affordable. Services should be based on the principles of voluntary and informed consent and confidentiality. Clinical services can be a platform for community empowerment if sex workers are involved in their design, implementation and monitoring. Health services should address sex workers' wider health needs, including reproductive health, mental and emotional wellbeing, and the harm reduction needs of sex workers who use drugs.

6. Programme management

Management approaches should address the specific needs of sex worker programmes. For example, programmes must consider sex workers' mobility and migration and act flexibly to meet changing demands for outreach and resources, as well as to serve sex workers who do not speak the local language. Programmes should also address structural constraints. For example, HIV interventions should consider how to change the broader factors that contribute to sex workers' vulnerability to HIV, including discrimination, poverty and criminalisation.

CONCLUSION

The starting point of this paper was to set out a legal framework that protects and upholds sex workers' human rights, to ensure sex workers are safe, healthy and able to earn a secure income. An overwhelming tide of evidence demonstrates that criminalisation cannot achieve this. Criminalisation gives the perpetrators of violence against sex workers impunity, acts as a barrier to sex workers accessing health services and obstructs livelihood strategies.

Sex workers around the world are calling for full decriminalisation, and STOPAIDS is proud to support them. Decriminalisation will make a critical contribution towards putting sex workers on an equal footing with other citizens, entitling them to police protection, the highest attainable standards of healthcare and a secure livelihood.

The laws and policies that replace criminalisation will be context-specific and must be developed in partnership with local sex workers, but they should be based on the principle of protecting sex workers' human rights, wherever they are.

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