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Global Network of Sex Work Projects
Promoting Health and Human Rights

COMMUNITY
guide

**Sex Workers'
Lack of Access
to Justice**





Introduction

Sex workers face a wide range of barriers to accessing justice, both as victims of crime and when charged with crimes. Criminalisation of sex work, stigma and discrimination, and police corruption and violence limit the reporting of crimes to the police, the successful prosecution and conviction of perpetrators, and access to victim compensation and support services. Where sex work is criminalised, sex workers' rights to protection from the law and freedom from arbitrary detention are systematically violated by police and the judicial system. Sex workers around the world are frequently excluded from protection by employment legislation and labour dispute mechanisms and experience discrimination in civil courts.

This Community Guide summarises the main challenges faced by sex workers and identifies the rights violations they experience when seeking to access justice.

International Guidelines

Access to justice is one of eight fundamental rights outlined in the NSWP Consensus Statement on Sex Work, Human Rights and the Law. It is widely recognised in international law, including in the Universal Declaration of Human Rights (UDHR). The UDHR enshrines the right to equal protection, due process, and freedom from arbitrary arrest and torture. It also asserts that all individuals have a right to remedies when their rights are violated.

These rights are described in the International Covenant on Civil and Political Rights (ICCPR), The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Committee on the Elimination of Discrimination Against Women (CEDAW)'s General Recommendation on Women's Access to Justice.

Methodology

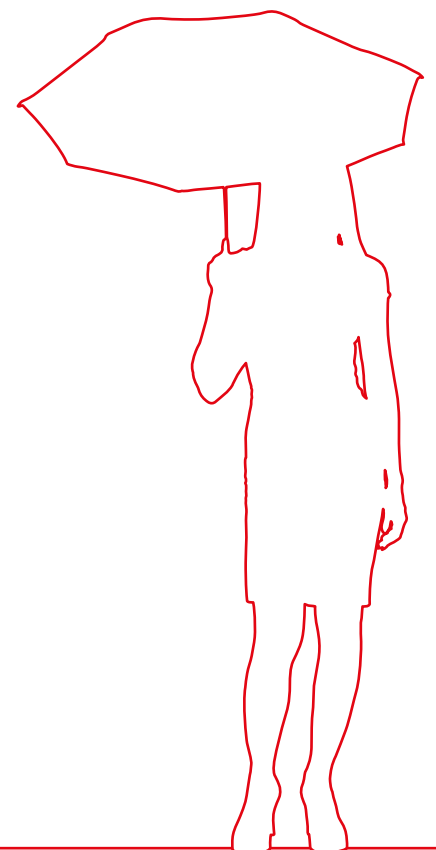
The briefing paper is based on e-consultation responses from 18 NSWP members and focus groups and interviews with 207 sex workers in ten countries.

Criminalisation and Legal Oppression

Sex workers face laws, procedures, regulations and practices that discriminate against them. Fear of being arrested or charged is a major barrier to reporting crimes against them to the police. Anti-trafficking laws and practices that conflate sex work and trafficking are also a barrier to justice, especially for migrant sex workers.

To increase sex workers' access to justice, governments must change laws and practices that prevent sex workers from reporting crimes.

Criminalisation of sex work, stigma and discrimination, and police corruption and violence limit the reporting of crimes to the police, the successful prosecution and conviction of perpetrators, and access to victim compensation and support services.





Abusive law enforcement practices

Sex workers experience frequent physical, sexual and verbal abuse from law enforcement officers. They are also victims of arbitrary arrest, extortion, unlawful detainment and coercion. Police often threaten or misinform sex workers to obtain a confession. Many sex workers pay fines or bribes to avoid detention and court, even when they are unlawfully arrested. Poor and isolated sex workers are especially vulnerable to violations of justice.

Discrimination and bias in the legal system

Sex workers experience discrimination at all stages of the justice system. Police may not take reports from sex workers. Judges and prosecutors may not pursue cases where sex workers are the victim or may express bias towards them. Sex workers may not have access to victims' compensation. They are often not protected under laws that exclude victims' sexual history from evidence at trial. Sex workers also face discrimination in custody cases.

Legal aid and accessibility

Many sex workers are unaware of their legal rights and lack equal access to legal information and legal literacy programmes. Services for victims of crime, such as shelters and free legal aid, are often unavailable to sex workers. In some areas, interpretation services are not available or are of poor quality.

Sex workers often experience discrimination by government-provided services. NGOs (especially sex worker-led NGOs) are the main source of legal aid for many sex workers. Sex workers in areas without these services face higher barriers. Even when services are available, law enforcement officials often do not inform sex workers of their rights or of available services (e.g. legal aid, translation), limiting access.

Lack of Labour Rights

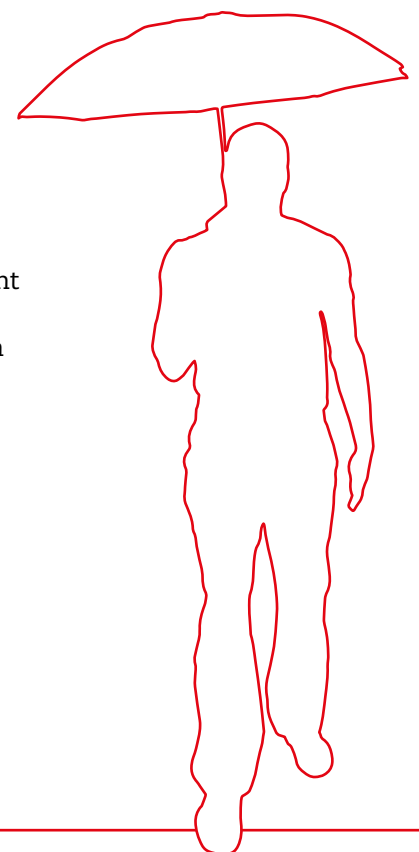
Criminalisation of sex work excludes most sex workers from protection under labour laws. These include the right to safe work conditions, medical leave, minimum wages, pensions and social security.

The right to associate, unionise, and engage in collective bargaining are included in the UDHR. However, sex worker organisations are often denied formal recognition and may be criminalised or targeted, including under anti-trafficking laws. Sex workers are also often excluded from redress when they experience workplace discrimination or injury.

Intersecting Discrimination

Many sex workers face intersecting forms of discrimination that impact their access to justice and their treatment within justice systems. They may face additional prejudice, exclusion from services, and criminalisation because of their gender identity, sexual orientation, race, class, HIV status, country of origin and/or migration status.

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Recommendations

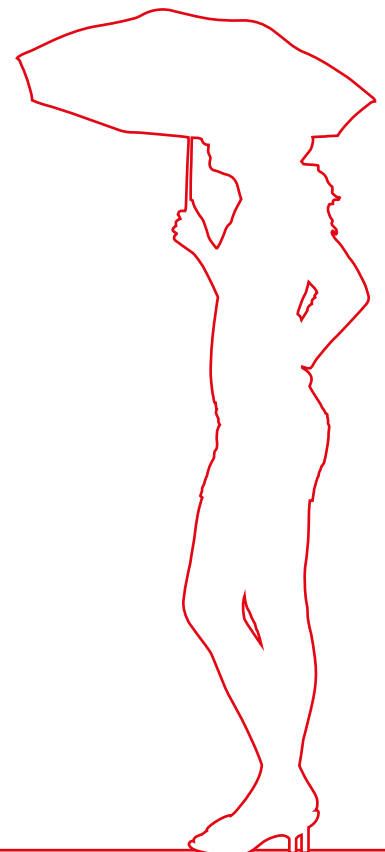
- Decriminalise all aspects of sex work.
- Invest in education and sensitivity training for law enforcement officers, judges and others working in the legal system.
- Hold law enforcement officers accountable for acts of violence and abuse against sex workers and ensure that victims of state violence have an enforceable right to compensation.
- Prioritise community-based provision of legal aid and training in legal literacy, including through training sex workers as paralegals.
- Ensure the accessibility, acceptability and affordability of legal services for sex workers who are victims or accused of crimes.
- Actively seek opportunities for partnership and collaboration between sex workers' rights organisations and organisations working for access to justice for other marginalised groups.

Conclusion

Criminalisation of sex work makes reporting crimes to the police a significant risk for sex workers. Sex workers experience abuse – including violence and arbitrary arrest – from police. Most sex workers lack access to labour rights, including in countries where sex work is legal. Crimes against sex workers are taken less seriously than crimes against others by police and in courts. A lack of knowledge about their rights, the legal system and victim services also limit sex workers' access to justice.

Sex workers who experience intersecting discrimination, including sex workers who are transgender, HIV-positive, people of colour, people who use drugs and migrants, face additional barriers. In order to promote sex workers' safety, health and well-being, governments must acknowledge and address these violations.

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The Global Network of Sex Work Projects uses a methodology that ensures the grassroots voices of sex workers and sex worker-led organisations are heard by using Global and Regional Consultants as well as National Key Informants.

Community Guides aim to provide simple summaries of NSWP's Briefing Papers, further detail and references can be found in the accompanying Briefing Paper.

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.

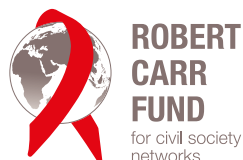


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NSWP is an alliance partner of Bridging the Gaps – health and rights for key populations. This unique programme addresses the common challenges faced by sex workers, people who use drugs and lesbian, gay, bisexual and transgender people in terms of human rights violations and accessing much-needed HIV and health services. Go to: www.hivgaps.org for more information.

