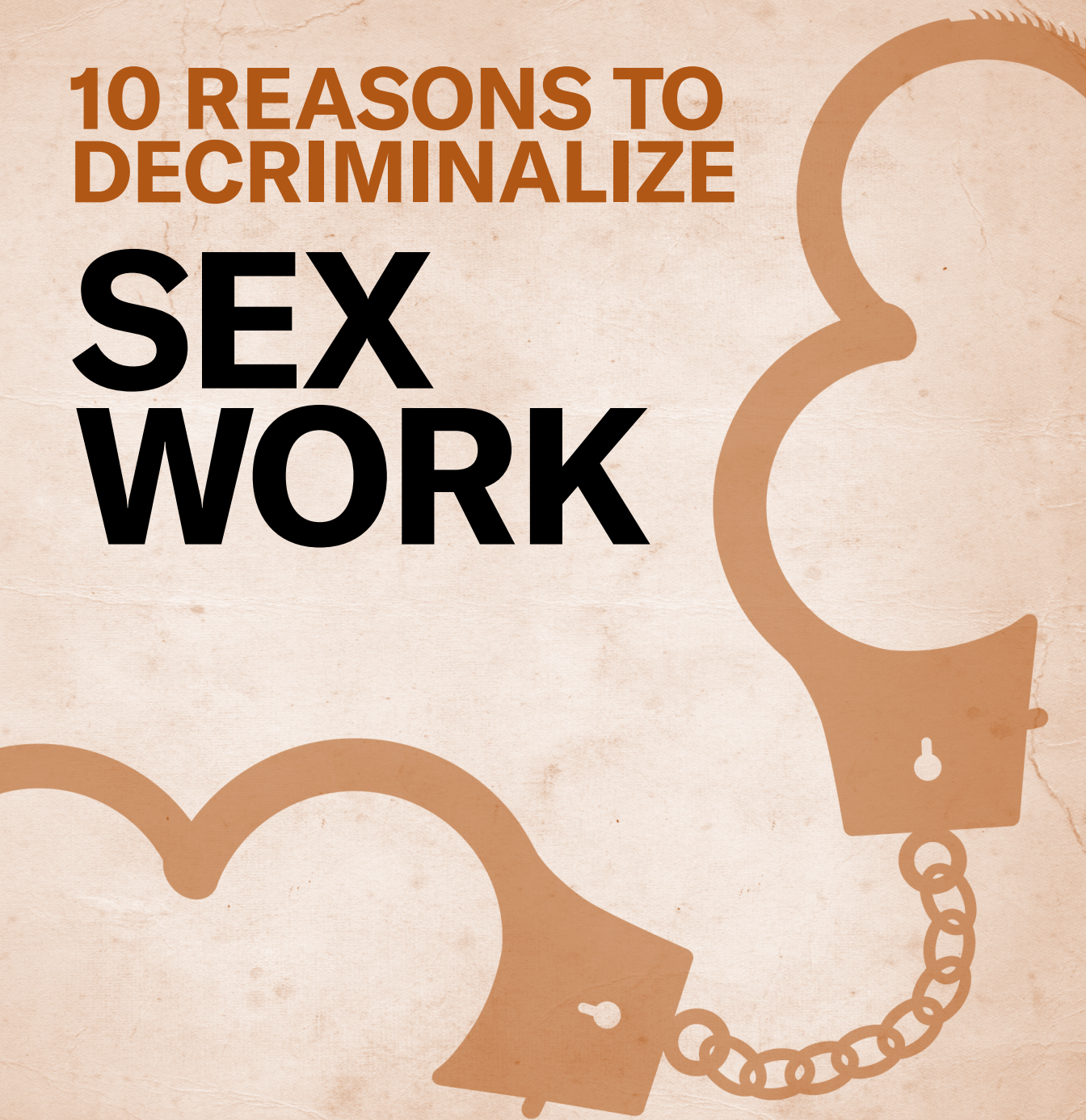


**10 REASONS TO
DECRIMINALIZE**

SEX WORK



**OPEN SOCIETY
FOUNDATIONS**

THIS DOCUMENT PROVIDES TEN REASONS WHY DECRIMINALIZATION OF SEX WORK IS THE BEST POLICY FOR PROMOTING THE HEALTH AND HUMAN RIGHTS OF SEX WORKERS, THEIR FAMILIES, AND COMMUNITIES. REMOVING CRIMINAL PROSECUTION OF SEX WORK GOES HAND-IN-HAND WITH RECOGNIZING SEX WORK AS WORK AND PROTECTING THE RIGHTS OF SEX WORKERS THROUGH WORKPLACE HEALTH AND SAFETY STANDARDS. DECRIMINALIZATION MEANS SEX WORKERS ARE MORE LIKELY TO LIVE WITHOUT STIGMA, SOCIAL EXCLUSION, AND FEAR OF VIOLENCE.

SEX WORKERS are adults who receive money or other forms of compensation in exchange for consensual sexual services, either regularly or occasionally.¹ A sex worker can be female, male, or transgender. In most countries, sex work and activities associated with it are criminal acts.²

Sex work is criminalized not only through prohibitions on selling sexual services, but also through laws that prohibit the solicitation of sex, living off of the earnings of sex work, brothel-keeping, or the purchase of sexual services. In addition, many male and transgender sex workers face arrest, prosecution, and harassment because of laws that criminalize same-sex intimate relations. Sex workers are also frequently penalized for non-criminal offenses such as loitering, vagrancy, and impeding the flow of traffic. By limiting sex workers' freedom to negotiate condom use with clients, access public services like health care, and organize and advocate for their rights, criminalization increases sex workers' vulnerability to violence, extortion, and health risks.³

This document provides ten reasons why decriminalization of sex work is the best policy for promoting the health and human rights of sex workers, their families, and communities. Decriminalization refers to the removal of all criminal and administrative prohibitions and penalties on sex work, including laws targeting clients and brothel owners. It differs from legalization, which is a legislative regime characterized by significant regulations—many of which can limit rights and protections, create mechanisms for abuse by authorities, and have other negative impacts on sex workers. New Zealand and New South Wales, Australia are two jurisdictions known for their decriminalized sex industries.

Decriminalization goes hand-in-hand with recognizing sex work as work and protecting the rights of sex workers through labor law, and workplace health and safety regulations. When sex work is decriminalized, sex workers can press for safer working conditions and use the justice system to seek redress for discrimination and abuse.⁴ Sex workers are more likely to live without stigma, social exclusion, or fear of violence. Even where sex work is decriminalized, the prostitution of minors and human trafficking can and should remain criminal acts.

- 1 See e.g. UNAIDS, *Guidance Note on HIV and Sex Work* (2012), http://www.unaids.org/sites/default/files/sub_landing/default/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.
- 2 UNAIDS, Global Network of People Living with HIV, et al., *Making the law work for the HIV response* (2010), http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100728_HR_Poster_en-1.pdf.
- 3 Shannon K and Csete J, "Violence, condom negotiation and HIV/STI risk among sex workers," *Journal of the American Medical Association* 304(5), (2010): 573-74.
- 4 Armstrong L, "Screening clients in a street-based sex industry: Insights into the experiences of New Zealand sex workers," *Australian & New Zealand Journal of Criminology* 47(2), (2014): 207-222. See also Abel G, Fitzgerald L, Brunton C. "The impact of decriminalisation on the number of sex workers in New Zealand," *Journal of Social Policy* 38(3), (2009):515-531.

1 DECRIMINALIZATION RESPECTS HUMAN RIGHTS AND DIGNITY

A cornerstone of contemporary human rights is that all people are born free and equal in dignity and rights.⁵ There are many reasons why adults do sex work, whether it is their main livelihood, a temporary means to survive, or an opportunity to supplement other income.⁶ Some people find that sex work offers better pay and more flexible working conditions. Whatever the reasons, sex work is work, and sex workers should be treated with dignity. Sex workers in many parts of the world have organized to fight for human rights that cannot be fully realized as long as criminal laws threaten sex workers' access to justice, health, and social services; undermine their right to labor and workplace protections; and expose them to violence, discrimination, and arbitrary arrest.⁷

2 DECRIMINALIZATION HELPS GUARD AGAINST VIOLENCE AND ABUSE

Sex work is not inherently violent; it is criminalization that places sex workers at greatest risk. The need to avoid arrest—of both sex workers and their clients—means that street-based sex workers must often move to more isolated areas that are less visible to law enforcement, and where violence is more prevalent.⁸ Fear of arrest and police abuse limits the time and methods that sex workers can use to conduct safety screenings of clients without detection by police.⁹ For sex workers who are not street-based, authorities have even shut down online sex work forums, like Redbook, which have offered sex workers more detailed client screening possibilities and thus greater security.¹⁰ These factors, plus real or perceived impunity for perpetrators of violence against sex workers, place sex workers at heightened risk. For example, after Scotland instituted laws criminalizing solicitation in 2007, groups recorded a doubling in reported rapes and assaults.¹¹ In jurisdictions that have decriminalized sex work such as New Zealand, sex workers have an increased ability to screen clients, work in safe areas with better access to security services, and refer to police in cases of violence.¹²

- 5 *Universal Declaration of Human Rights*, art. 1.
- 6 See e.g. Devine et al., "Pathways to sex-work in Nagaland, India: Implications for HIV prevention and community Mobilisation," *AIDS Care* 22, (2010): 228-237.
- 7 International Committee on the Rights of Sex Workers in Europe, *Declaration of the Rights of Sex Workers in Europe* (2005), <http://www.sexworkereurope.org/en/resources-mainmenu-189/declaration-mainmenu-199>.
- 8 Shannon K and Csete J. "Violence, condom negotiation and HIV/STI risk among sex workers," 573-74.
- 9 Kinnell, H, "Murder made easy: The final solution to prostitution?" In R. Campbell, & M. O'Neill (Eds.), *Sex Work Now* (2006): 141-168; Cullompton, Willan. Cited in: Armstrong, Lynzi, "Screening clients in a decriminalized street-based sex industry: Insights into the experiences of New Zealand sex workers." *Australian & New Zealand Journal of Criminology* 0(0), (2014): 1- 16.
- 10 Conger, Kate, "MyRedbook shutdown could compromise sex worker safety, law enforcement resource," *San Francisco Examiner*, June 27, 2014, <http://www.sfoxaminer.com/sanfrancisco/myredbook-shutdown-could-compromise-sex-worker-safety-law-enforcement-resource/Content?oid=2834783>
- 11 "Attacks on prostitutes soar after vice 'driven underground' by law," *The Scotsman*, April 16, 2008, <http://www.scotsman.com/news/attacks-on-prostitutes-soar-after-vice-driven-underground-by-law-1-1164904>
- 12 Armstrong, Lynzi, "Screening clients in a decriminalized street-based sex industry: Insights into the experiences of New Zealand sex workers," *Australian & New Zealand Journal of Criminology* 0(0), (2014): 1-16.
- 13 Ibid.
- 14 New Zealand Ministry of Justice, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, (2008)

3 DECRIMINALIZATION CHALLENGES POLICE ABUSE AND VIOLENCE

Where sex work is criminalized, police wield power over sex workers. Police threaten sex workers with arrest, public humiliation, and extortion. In Central and Eastern Europe and Central Asia, a high proportion of sex workers have reported suffering sexual assault by police—as high as 90 percent in Kyrgyzstan.¹⁵ In Cambodia, nearly half of all freelance sex workers have been beaten and nearly half have been raped by police; and nearly three of every four brothel-based sex workers have been beaten, and more than half have been raped by police.¹⁶ From Namibia to Serbia, sex workers report rape by police while in custody, often without condoms and often as a pre-condition for release on bail.^{17, 18} In these instances police abuse sex workers with impunity, in part because sex workers fear arrest or further abuse for reporting these crimes. Decriminalization empowers sex workers to come forward to register complaints against police who act unlawfully, and to bring offenders to justice without fear of negative consequences for their own lives. In New Zealand, 57 percent of sex workers reported that police attitudes improved following decriminalization in 2003.¹⁹

4 DECRIMINALIZATION IMPROVES ACCESS TO JUSTICE

Laws that criminalize sex work cause sex workers to feel unsafe reporting crimes—including violence crimes and other abuses—because they fear prosecution, police surveillance, stigma, and discrimination.²⁰ In both Norway and Sweden, for instance, many sex workers report that the thresholds at which they will report crimes to the police are high as a result of laws that criminalize sex work.²¹ Decriminalization removes these kinds of barriers. After New Zealand reformed its laws in 2003, many sex workers reported that they could turn to the police and courts for help without fear of prosecution for the first time in their lives.²² In 2014, for example, a sex worker in Wellington was awarded NZD 25,000 after a brothel operator repeatedly harassed her, violating her rights under the country's Human Rights Act.²³

- 15 Sex Workers' Rights Advocacy Network (SWAN), *Arrest the Violence: Human Rights Violations Against Sex Workers in Central and Eastern Europe and Central Asia*, (2009), <http://swannet.org/node/1639>
- 16 USAID, "Violence and Exposure to HIV Among Sex Workers in Phnom Penh, Cambodia," (2006).
- 17 Rhodes et al., "Police violence and sexual risk among female and transvestite sex workers in Serbia: qualitative study," *British Medical Journal* 337(7669), (2008): 560 - 566
- 18 Arnett, Jayne and Crago, Anna-Louise, "Rights Not rescue: A Report on Female, Male, and Trans Sex Workers' Human Rights in Botswana, Namibia, and South Africa," (2009)
- 19 Abel G., *Decriminalization: A harm minimization and human rights approach to regulating sex work*, (2010) p. 235.
- 20 Decker M R et al., "Human rights violations against sex workers: burden and effect on HIV," *The Lancet HIV and Sex Workers*, (2014): 60-73.
- 21 See, e.g., Edlund C. and Jakobsson P., *En annan horisont*. Rose Alliance; Rasmussen I. et al. (2014), *Evaluering av forbudet mot kjøp av seksuelle tjenester*. Vista Analyse AS, (2014)
- 22 New Zealand Ministry of Justice, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act (2003)*, <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>; See also Abel G., "A decade of decriminalization: Sex work 'down under' but not underground," *Criminology and Criminal Justice*, February 2014, p. 6.
- 23 "Escort wins landmark case," *The New Zealand Herald*, March 1, 2014, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11212075

- 24** Best Practices Policy Project., *Report on the United States of America submitted to the UN Human Rights Council for the 9th Universal Periodic Review*, (2010), http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/JS5_%20HSRI_Joint%20submission5_JS.pdf
- 25** International Women's Human Rights Clinic, CUNY School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*. (2012), <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf>
- 26** Ibid.
- 27** *State of Arizona v. Monica Renee Jones*, Docket No. 513, Superior Court of Arizona, Maricopa County, LC2013-9021636 [case citation pending].
- 28** Mogulescu, Kate & Mullen, Katherine, testimony before the City of New York Comm. on Women's Issues and the Comm. on Public Safety 8, *Oversight: Combatting Sex Trafficking in NYC: Examining Law Enforcement Efforts – Prevention and Prosecution*, (2011)
- 29** Harcourt C et al., The decriminalization of sex work is associated with better coverage of health promotion programs for sex workers. *Australian and New Zealand Journal of Public Health* 34(5), (2010): 482-486.

5 DECRIMINALIZATION CHALLENGES THE CONSEQUENCES OF HAVING A CRIMINAL RECORD

In many countries, harsh and biased application of criminal law ensures that a large proportion of sex workers will have criminal records. Criminal records are often a source of stigma, and can drastically limit one's future. In some parts of the United States, for example, people convicted of sex work-related offenses are registered as sex offenders and must carry documents identifying themselves as such.²⁴ Sex offenders are often ineligible to receive loans, educational scholarships, or public housing.²⁵ Individuals with sex work-related criminal records face great difficulty finding non-sex work employment. Employer background check policies and restrictions on licenses required for certain fields of work make it next to impossible to change careers.²⁶ In addition, criminal convictions for sex work-related offenses have been used as the basis for arbitrary re-arrest and to remove parental custody.^{27, 28} Countries that decriminalize sex work should consider retroactively removing sex work-related criminal records.

6 DECRIMINALIZATION IMPROVES ACCESS TO HEALTH SERVICES

Decriminalization is associated with the best access by outreach workers to brothels, and the greatest financial support for sex worker health programs. Better financial support means greater capacity to conduct health outreach in the evening, an important feature because the evenings are often the busiest times for sex workers.²⁹ Decriminalization has also been shown to increase condom access and rates of use by sex workers. For example, in the state of New South Wales, Australia where sex work is decriminalized, sex workers' access to and use of condoms is higher than in other Australian jurisdictions that have varying levels of criminalization.

In addition, decriminalization enables sex workers to work in collectives in which they can organize appropriate, accessible,

and respectful health services for themselves. This offers a powerful alternative to the stigma and discrimination sex workers face in their interactions with many health care providers. The Bar Hostess Empowerment and Support Program in Nairobi, Kenya is a stand out example among groups that have developed health services that are delivered in close collaboration with sex worker communities.

7 DECRIMINALIZATION REDUCES RISK OF HIV AND SEXUALLY TRANSMITTED INFECTIONS

Decriminalization of sex work could avert up to 46 percent of new HIV infections among female sex workers over the next decade.³⁰ A recent study published in *The Lancet* concluded that decriminalization of sex work had the single greatest potential to reduce HIV infections in female sex worker communities—even more than increasing access to antiretroviral treatment.³¹ When sex work is decriminalized, sex workers are empowered to insist on condom use by clients, and are better able to access testing and treatment for HIV and sexually transmitted infections.

In contrast, criminalization harms sex workers' ability to negotiate condom use with clients.³² Visible condoms and openly negotiating condom use put sex workers at greater risk of arrest. This deters sex workers and clients from condom use, particularly among street-based sex workers who are often at highest risk of HIV infection. In response to this, various police departments around the world have decided to stop using condoms as evidence of prostitution against sex workers.³³

30 Shannon et al., Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet* 385(9962), (2014): 55-71.

31 Ibid.

32 Blankenship K and Koester S., "Criminal law, policing policy and HIV risk in female sex workers and injection drug users," *Journal of Law, Medicine and Ethics*, 30 (2013): 548-559.

33 The police departments of both New York City and San Francisco, two of the largest cities in the United States, have taken this approach. In both cases, these actions were undertaken by the district attorney or police commissioner.

- 34** New Zealand Ministry of Justice, Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act, (2003) <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.
- 35** Harcourt C et al. The decriminalization of sex work is associated with better coverage of health promotion programs for sex workers. *Australian and New Zealand Journal of Public Health* 34(5), (2010): 482-486.
- 36** UNAIDS, Guidance Note on HIV and Sex Work, (2009), http://data.unaids.org/pub/BaseDocument/2009/jc1696_guidance_note_hiv_and_sexwork_en.pdf.
- 37** Jana S et al., "Combating human trafficking in the sex trade: can sex workers do it better?" *Journal of Public Health*, 36(4), (2014): 622-628, <http://www.ncbi.nlm.nih.gov/pubmed/24179187>
- 38** Rikspolisstyrelsen, "Människohandel för sexuella och andra ändamål," RPS Rapport, (2014): 8

8 DECRIMINALIZATION PROMOTES SAFE WORKING CONDITIONS

Decriminalization makes possible the creation of workplace health and safety regulations that are relevant to the sex industry. In New Zealand, for instance, decriminalization enabled the inclusion of sex work in the Health and Safety Employment Act, resulting in the creation of occupational health guidelines that sex workers have used to assert their rights with employers and clients.³⁴ In New South Wales, Australia, decriminalization has been associated with sex workers' decreased risk of occupational injury and insecurity as compared to other Australian jurisdictions.³⁵

Decriminalization also promotes safer working conditions for sex workers by enabling them to organize. Collectively, sex workers can address risk factors in their workplaces and insist upon improved conditions. For example, the mobilizing efforts of the New Zealand Prostitutes Collective have been key to asserting workplace safety rights.

9 DECRIMINALIZATION ALLOWS FOR EFFECTIVE RESPONSES TO TRAFFICKING

Trafficking is an egregious human rights violation involving coercion of individuals for sexual exploitation or forced labor. Sex workers can be natural allies in the fight against trafficking, and may be well placed to refer trafficking victims to appropriate services.³⁶ For example, through a sex worker run self-regulatory board, the Durbar Mahila Samanwaya Committee in Sonagachi (Kolkata) India was able to identify and support women who had been trafficked for the purpose of sexual exploitation.³⁷ When freed from the threat of criminal penalties, sex workers can organize and collaborate with law enforcement.

Despite this, laws prohibiting the purchase of sexual services are often promoted as a successful means to combat trafficking. However, there is no evidence that this is so. A 2014 report by the Swedish police found no reduction in trafficking in the country after 15 years of criminalization.³⁸ Conversely, the decriminalization of sex work does not cause

an increase in trafficking. For example, New Zealand, which decriminalized sex work in 2003, is judged by even the United States State Department to be among those countries doing the most effective work on human trafficking.³⁹

10

DECRIMINALIZATION CHALLENGES STATE CONTROL OVER BODIES AND SEXUALITY

Decriminalization of sex work recognizes the right of all people to privacy and freedom from undue state control over sex and sexual expression. The different treatment of sex work from other types of work is an example of governments' long history of exerting control over bodily autonomy, self-determination, and sexuality. Decriminalization respects gender equality and sexual rights. Laws against sex work intrude into private sexual behaviors and constitute a form of state control over the bodies of women and LGBTI persons who make up a large majority of sex workers worldwide.⁴⁰ Like state controls over reproductive rights and sexual acts between consenting adults, criminal laws prohibiting sex work attempt to legislate morality with scant regard for bodily autonomy.

39 United States Department of State, *Trafficking in Persons Report* (2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

40 Transgender people are rarely protected by law from discrimination based on gender identity, and discrimination in employment may be one factor that leads them to engage in sex work. See, e.g., K Slamah, S Winter and K Ordek. Stigma and violence against transgender sex workers. *RH Reality Check*, December 16, 2010, <http://www.rhrealitycheck.org/blog/2010/12/16/stigma-exclusion-violence-against-trans-workers>.

OPEN SOCIETY FOUNDATIONS

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

PUBLIC HEALTH PROGRAM

The Open Society Public Health Program aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices are evidence-based and reflect these values. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

Open Society Foundations
224 West 57th Street
New York, NY 10019 USA

212-548-0100

contact@opensocietyfoundations.org

www.osf.to/health

OPEN SOCIETY
FOUNDATIONS