

A Roadmap For Sex Workers' Rights Reform:

Lessons Learned From Recent Legal Advancements

Chi Adanna Mgbako, Christine ElDabh, Bianca Butler, and Joy Kemunto*

ABSTRACT

The past decade has witnessed unprecedented growth in the legal recognition of sex workers' rights. Recent legislation and court judgments strengthening sex workers' rights protections have occurred in the Australian jurisdictions of the Northern Territory, Queensland, and Victoria, as well as in Belgium, India, and Malawi. These legal advancements conform with the goals of the global sex workers' rights movement. They include newly decriminalized legal frameworks governing sex work, groundbreaking labor and anti-discrimination protections for sex workers, the striking down of vagrancy laws that indirectly target sex workers, and judicial directives on state protection of sex workers' rights. Despite the significance of these global legal wins for a severely stigmatized class of workers, there is nothing in the academic literature examining and comparing these recent legal reforms. This article seeks to address this omission by developing a practical guide for successful legal reform upholding sex workers' rights for advocates, policymakers, and academics based on a comparative analysis of recent legal advancements. Our comprehensive roadmap for sex workers' rights

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• Chi Adanna Mgbako is Clinical Professor of Law and Director of the Walter Leitner International Human Rights Clinic at Fordham Law School. Christine ElDabh is a Legal Empowerment Fellow with the Jailhouse Lawyers' Initiative at the Bernstein Institute for Human Rights at NYU School of Law. Bianca Butler and Joy Kemunto are J.D. Candidates at Fordham Law School. We thank Jamie Taylor for research assistance, the editors of the *Berkeley Journal of Criminal Law* for invaluable comments, and the sex workers' rights advocates highlighted in this article for inspiration.

reform analyzes the substantive strengths and limitations of recent legal wins; argues for the centrality of sex workers' rights advocacy to legal advancements; presents framings of the sex work issue that are more likely to convince legislators, judges, and the public to embrace reform; and examines strategies for managing political threats to positive reform. Ultimately, by highlighting pathways to successful reform based on under-examined and geographically diverse case studies, we hope to develop a useful tool for future efforts at legal reform for a determined movement advocating for the rights of sex workers worldwide.

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INTRODUCTION

Sex workers are a deeply stigmatized and marginalized class of laborers who experience human rights abuses because of legal frameworks that criminalize sex work.¹ In the past decade, however, there has been an unprecedented and welcome expansion of sex workers' rights legal protections on several continents in the form of legislative advancements and positive court judgments. The legislative wins include decriminalization, anti-discrimination, and labor-focused reforms advancing sex workers' rights in Australia (the Northern Territory, Queensland, and Victoria) and Belgium.² The positive court judgments

¹ See CHIADANNAMGBAKO, To LIVE FREELY IN nusWoRLo: SExWoRKERACTIVISM IN AFRICA, 8 (2016) [hereinafter MGBAKO, To LIVE FREELY IN nusWoRLD]. We use the term "sex work" to refer to consensual transactional sexual services between adults for payment or goods, what has commonly been referred to as "prostitution." We do not include broader categories of sex work, including erotic dancing or pornographic performance, in our analysis. See *id.* at 16.

² See *Sex Industry Act 2019* (N. Terr.)(Austl.); *Sex Work Decriminalisation Act of 2022* (Vict.)(Austl.); Queensland Legislation, *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) (Austl.); *Anti-Discrimination Amendment Bill 2022* (N. Terr.) (Austl.); see generally C.PEN. (Belg.), art. 75-83, https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=nl&sum_date=&pd_searc

focus on the invalidation of vagrancy laws that indirectly target and disproportionately impact sex workers in Malawi and judicial directives aimed at realizing sex workers' right to dignity in India.³ These legal advancements largely conform with the righteous, human rights-based goals of the sex workers' rights movement, including the full decriminalization of sex work and the realization of sex workers' right to work and live free from violence and discrimination.⁴ This article creates a roadmap for sex workers' rights reform based on lessons learned from a comparative analysis of these recent legal wins.

In 2019, Australia's Northern Territory became the third jurisdiction in the world, after the Australian state of New South Wales and New Zealand, to decriminalize sex work by passing the Sex Industry Act.⁵ Following decriminalization, sex workers' rights organizations in the Northern Territory successfully lobbied to make "sex work" and "sex worker" protected attributes under the Anti-Discrimination Act, making the Northern Territory the first jurisdiction in the world to provide such

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van 22 maart 2024 houdende bepalingen betreffende sekswerk onder
arbeidsovereenkomst [Provisions regarding sex work under employment contract]
(Belg.), Mar. 22, 2024, <https://www.dekamer.be/FLWB/PDF/55/3926/55K3926001.pdf>.

³ See Budhadev Karmaskar v. State of West Bengal, 2011 AIR SCW 1303 (India)/Criminal Appeal No. 135/2010; Gwanda v. State [2015] No. 5 (High Ct. Malawi) (Malawi).

⁴ For an in-depth discussion of the recognition of sex workers' rights under international human rights frameworks, see generally, Chi Adanna Mgbako, *The Mainstreaming of Sex Workers' Rights as Human Rights*, 43 HARV. J. OF L. & GENDER 92 (2020) [hereinafter Mgbako, *Mainstreaming of Sex Workers' Rights*].

⁵ Lauren Roberts & Jacqueline Breen, *NT decriminalises sex work as Attorney-General Natasha Fyles pushes through change*, ABC NEWS (Nov. 26, 2019, 5:14 AM), <https://www.abc.net.au/news/2019-11-26/northern-territory-sex-industry-bill-passed/11739820>. In 1995, New South Wales, Australia became the first jurisdiction in the world to decriminalize sex work by passing the Disorderly Houses Amendment Act 1995. P.G. Macioti et al., *The Health and Well-being of Sex Workers in Decriminalised Contexts: A Scoping Review*, 20 SEX RSC. & Soc. POL'Y 1013, 1014 (2023); see generally *Disorderly Houses Amendment Act 1995* (N.S.W.) (Austl.). In 2003, New Zealand became the first country in the world, and second jurisdiction after New South Wales, to decriminalize sex work with the passage of the Prostitution Reform Act (PRA). Fraser Crichton, *Decriminalizing Sex Work in New Zealand: Its History and Impact*, OPENDEMOCRACY (Aug. 21, 2015), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/decriminalising-sex-work-in-new-zealand-its-history-and-impact/>.

anti-discrimination protections to sex workers.⁶ Victoria became the third Australian jurisdiction to decriminalize sex work through the passage of the Sex Work Decriminalisation Act in 2022, which drew inspiration from decriminalization legislation in the Northern Territory.⁷ In the same year, Belgium became the first country in Europe to decriminalize sex work and, in 2024, the first country in the world to pass a law protecting sex workers' labor rights.⁸ The Belgian labor law for sex workers permits them to engage in employment contracts that grant them access to economic and social benefits such as pensions, unemployment, and maternity leave.⁹ Finally, in 2024, Queensland became the fourth Australian jurisdiction to decriminalize sex work after the Parliament of Queensland passed the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024.¹⁰

In 2017, the High Court of Malawi declared in *Mayeso Gwanda v. The State* that the rogue and vagabond statute of the Malawian Penal Code was unconstitutional.¹¹ Although the ruling did not pertain directly to sex work, it invalidated a vagrancy law that is routinely used to harass,

⁶ *Northern Territory Becomes the First Place in the World to Explicitly Protect Sex Workers From Discrimination*, SCARLET ALL (Nov. 25, 2022), <https://scarletalliance.org.au/northern-territory-becomes-first-place-in-the-world-to-explicitly-protect-sex-workers-from-discrimination/> [hereinafter *NT Becomes the First Place*].

⁷ *Decriminalising Sex Work in Victoria*, VICTORIA STATE GOV'T (Dec. 4, 2023), <https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>; Benita Kolovos, *How Will Victoria's Sex Work Decriminalisation Bill Work and Will It Make the Industry Safer?*, GUARDIAN (Feb. 6, 2022, 11:30 AM), <https://www.theguardian.com/australia-news/2022/feb/07/how-will-victorias-sex-work-decriminalisation-bill-work-and-will-it-make-the-industry-safer>.

⁸ *Sex Workers in Belgium Celebrate Historic Vote for Decriminalisation in Parliament*, GLOB. NETWORK OF SEX WORK PROJECTS (Mar. 25th, 2022), <https://www.nswp.org/news/sex-workers-belgium-celebrate-historic-vote-decriminalisation-parliament> [hereinafter NSWP, *Sex Workers in Belgium Celebrate Historic Vote*]; Maithe Chini, *'Historic': Belgium First in the World to Approve Labour Law for Sex Workers*, BRUSSELS nMEs (May 6, 2024), <https://www.brusselstimes.com/1035041/historic-belgium-first-in-the-world-to-approve-labour-law-for-sex-workers> [hereinafter Chini, *'Historic'*].

⁹ *Belgian Labor Law for Sex Workers: What and How?*, UTSOPI, <https://www.utsopi.be/our-work/decriminalisation/cadre-du-travail> (last visited June 13, 2024).

¹⁰ Saffire Penn, *Queensland Decriminalises Sex Work to Better Protect Sex Workers and Bring Itself in Line with Other Australian States*, JURIST (May 3, 2024, 8:53 PM), <https://www.jurist.org/news/2024/05/queensland-decriminalises-sex-work-for-better-protection-for-sex-workers/>.

¹¹ *Gwanda v. State* [2015] No. 5 (High Ct. Malawi) (Malawi).

arrest, and prosecute sex workers.¹² In 2022, the Supreme Court of India issued a landmark order reaffirming sex workers' right to live with dignity and creating wide-ranging directives for government officials regarding state protections for sex workers' rights, including the need to curb police violence against sex workers.¹³ The order did not decriminalize the sex industry, but it sets an important precedent for reforms that could improve sex workers' living conditions.¹⁴

While the highlighted cases share similarities and differences in their respective legal processes and resulting reforms, they denote a significant expansion of sex workers' rights in legal regimes governing sex work. Despite these notable legal achievements, there has been no comparative analysis of the strengths and limitations of these recent reforms in the academic literature. There is robust scholarship analyzing early legal advancements in sex workers' rights in the Australian state of New South Wales and New Zealand, the first two jurisdictions in the world to decriminalize sex work in 1995 and 2003, respectively, but little exists about recent legal developments that have built on these early legal wins.¹⁵ This article seeks to fill that gap by conducting a comparative analysis of recent legal advancements in order to draw practical lessons for advocates, policymakers, and academics who seek to create meaningful, real-world impacts on sex workers' lives. To achieve the goal of mining lessons learned from recent legal advancements, the article 1) explores the substantive achievements and limitations of recent legislative

¹² *Malawi High Court Rules Use of Rogue and Vagabond Law Unconstitutional*, GLOB. NETWORK OF SEX WORKER PROJECTS (Jan. 12, 2017), <https://www.nswp.org/news/malawi-high-court-rules-use-rogue-and-vagabond-law-unconstitutional#> [hereinafter NSWP, *Malawi High Court Rules Use of Rogue and Vagabond Law Unconstitutional*]; see also Sitingawawo D. Kachipande, Public Opinion, Press Coverage and the Pempho Banda Case: Contesting Sex Work Criminalization in Malawi's Developing Tourism Sector 62, 156 (May 13, 2019) (Ph.D. dissertation, Virginia Polytechnic Institute and State University), <https://vtechworks.lib.vt.edu/server/api/core/bitstreams/a6448a5a-655c-4fe0-a09a-ad68tbd72a51/content>.

¹³ Nat'l Network of Sex Workers India, *Sex Workers Not to be Abused by Police, Rescued Without their Consent, and Press Council to Regulate Imagery around Sex Work, Directs Honourable Supreme Court of India*, MEDIUM (May 25, 2022), <https://nationalnetworkofsexworkers.medium.com/sex-workers-not-to-be-abused-by-police-rescued-without-their-consent-and-press-council-to-e89c10e3bd97>.

¹⁴ See Emily Schmall & Sameer Yasir, *India's Supreme Court Orders Police to Respect Prostitutes' Rights*, N.Y. TIMES (May 27, 2022), <https://www.nytimes.com/2022/05/27/world/asia/india-prostitution-rights.html>.

¹⁵ See Macioti et al., *supra* note 5.

and court advancements in sex workers' rights in Australia, Belgium, India, and Malawi in the past decade; 2) argues that the advocacy of sex workers' rights organizations is central to legal advancements; 3) advocates for specific framings of the sex work issue that are more likely to successfully contribute to legislative change and positive court judgments; and 4) promotes strategies for how advocates can manage political threats to positive legal reform.

Part I highlights the goals of the global movement for sex workers' rights in order to present a clear vision of the world advocates are trying to create when they champion legal protections for sex workers' rights on the local and national level. After briefly analyzing the different legal frameworks that govern sex work and their impacts on sex workers, we present some of the main demands of the global sex workers' rights movement: the full decriminalization of sex work; labor rights; freedom from violence, stigma, and discrimination; the centering of sex workers' voices; and the rejection of the conflation of sex work and trafficking. We note how the movement's demands serve as animating principles for the recent legal advancements that we will examine in our case studies.

Part II unearths and analyzes lessons learned from recent legal advancements that align with the goals of the global movement for sex workers' rights. We begin by exploring the strengths and weaknesses of the substantive reforms, first highlighting the repeal of sex work prohibitions in our decriminalization case studies and identifying their divergences on the status of street-based sex work, sex work-specific regulations, and advertising controls. We then argue that decriminalization reforms must go beyond the removal of criminal laws from the sex industry and create robust labor and anti-discrimination protections for sex workers. We urge advocates to interpret decriminalization reform as also including efforts to repeal criminal and administrative laws that indirectly target and disproportionately impact sex workers. Finally, we note that court judgments can play an important role in laying foundational precedents for future reform efforts.

Part II then asserts that sex workers' rights advocates must play a central role in reform efforts for meaningful reform to take place. This includes coalition-building between sex workers and important allies like influential government partners, sex workers' direct participation in the legal reform process, research to support evidence-based legal reform advocacy that centers sex workers' lived experiences, and sex worker-led public education and media campaigns that shift public narratives about sex work. Next, we argue that it is important for advocates to frame

arguments in favor of sex workers' rights in a manner that is likely to positively influence legislators, the judiciary, and the public. Sex workers' rights advocates and allies in our case studies successfully use the following arguments to foster legislative and judicial change: they frame sex work as a labor rights issue, illustrate the harmful effects of criminalizing sex work and targeting sex workers with stigmatizing health mandates, reference influential international institutions that champion sex workers' rights, and present rights-based arguments. Finally, to manage threats to positive legal reform, we stress that advocates should prioritize cultivating political buy-in and support from sympathetic allies to help blunt anti-prostitution opposition forces.

I. GOALS OF THE GLOBAL MOVEMENT FOR SEX WORKERS' RIGHTS

Part I presents the principal demands of the global sex workers' rights movement in order to illuminate the aims of recent legal advancements. To provide background context, we first present the different legal frameworks that govern sex work and their impacts on sex workers' rights. We then elucidate the movement's goals and fundamental demands, including advocacy for the full decriminalization of sex work; labor rights; freedom from violence, stigma, and discrimination; the centering of sex workers' voices; and the rejection of the conflation of sex work and trafficking. We end by briefly explaining how these central organizing principles will animate the discussion of our case studies in the article's subsequent sections.

A. Legal Frameworks Governing Sex Work

There are four general legal frameworks that govern sex work: criminalization, partial criminalization, legalization, and decriminalization.¹⁶ Sex work is criminalized in most of the world's jurisdictions, meaning it is a criminal offense to buy and sell sexual services or to engage in any "sex work-related activities such as solicitation, living off the earnings of sex work, and brothel-keeping."¹⁷ Using law and policy, these jurisdictions violate sex workers' rights either directly, by banning advertising, preventing sex workers from working together, or targeting clients or third parties who work with sex workers;

¹⁶ See Henrick Karlsson, *Sex Work Policy Worldwide: A Scoping Review*, 26 *Sexuality & Culture* 2288, 2289 (June 14, 2022), <https://link.springer.com/article/10.1007/s12119-022-09983-5>; Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 121.

¹⁷ Karlsson, *supra* note 16, at 2289; Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 120.

or indirectly, by limiting "sex workers' freedom of movement... via laws and local restrictions on trespassing, vagrancy, loitering, public nuisance, public indecency, and the congregating of people who have been previously arrested or are assumed to be sex workers by the police."¹⁸ Many international bodies including the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Health Organization (WHO), Human Rights Watch (HRW), and Amnesty International (Amnesty), have stated that sex work criminalization contributes to violations of sex workers' human rights.¹⁹ Where sex work is criminalized, sex work tends to be treated as "immoral" conduct, reinforcing stigmas against sex workers and increasing the likelihood that they will endure violence, extortion, and discrimination.²⁰ This treatment has extensive negative impacts on sex workers' lives: healthcare providers may deny them health care services because of bias or fear of legal consequences for conducting outreach and sex workers may not be willing or able to report abuse by police or perpetrators posing as clients due to impunity and fear of retaliation.²¹

Under partial criminalization, commonly referred to as the "Swedish" or "Nordic" model, it is an offense to purchase sex, but selling sex is not criminalized.²² Though selling sex under this model is ostensibly decriminalized, sex workers still endure "surveillance by the police... [and have] difficulty securing safe locations to engage in sex work, and fear of working with others lest they be prosecuted for promoting prostitution."²³ These rights violations contribute to a lack of labor protections, compromised bargaining power with clients who fear detection by the police, and eviction or housing denial because landlords fear prosecution.²⁴ The purported objective for both criminalization and the Nordic model is to eventually abolish sex work, either by outlawing the practice entirely or, in the case of partial criminalization, by "ending

¹⁸ *Policy Paper: IPPF Policy on Sex Work*, INT'L PLANNED PARENTHOOD FED'N 11 (Oct. 2022), <https://www.ippf.org/resource/ippf-policy-sex-work> [hereinafter *IPPF Policy Paper*].

¹⁹ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 120-21.

²⁰ *Id.*

²¹ *Id.*

²² MGBAKO, *To Live FREELY IN THIS WORLD*, *supra* note 1, at 148.

²³ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 127.

²⁴ "If the seller of a service is ostensibly decriminalized, but no one can legally purchase the service or facilitate the exchange, then the transaction and the seller's livelihood remain criminalized." *Id.* at 127-28.

demand" for sexual services.²⁵ The International Planned Parenthood Federation (IPPF) has stated that legal regimes criminalizing any elements of sex work—including the sale, purchase, or third party benefit from sex work—do not stop sex work and instead negatively impact sex workers' health, wellness, and welfare, increasing their vulnerability to violence and compelling them to work underground.²⁶

Legalization frameworks allow sex work to take place within designated parameters, which vary among jurisdictions, but generally these regimes only "permit sex work under highly regulated and often very restrictive conditions, which treat it differently from other forms of labour... In practice, these frameworks reinforce the idea that sex work is inherently different than other forms of work."²⁷ Regulatory laws may include mandatory registration for sex workers, banning brothels or requiring them to adhere to a licensing regime, or banning third parties such as brothel-keepers or landlords from profiting from another person's sexual services.²⁸ Where sex work is legalized, the goal is generally to restrict, control, and contain sex work to particular areas, and failures to adhere to regulations remain criminalized.²⁹ Legalization "is not driven by the primary goal of protecting sex workers' rights. Instead, legalization has often resulted in stringent regulation of the sex industry that creates a large underground class of sex workers who don't abide by these stigmatizing hyper-regulations, such as mandatory health checks, and therefore effectively remain criminalized."³⁰

Decriminalization entails removing all criminal offenses for buying, selling, and organizing sex work.³¹ Decriminalization can also involve removing laws that are used to indirectly target sex workers ("such as laws against vagrancy, public nuisance, obscenity, drug use, homosexuality, and crossdressing"), increasing protections for sex workers under labor laws, and reducing discrimination and stigma against sex workers.³² Influential international institutions and human rights

²⁵ See *id.* at 126.

²⁶ IPPF Policy Paper, *supra* note 18, at 11.

²⁷ *Id.* at 12.

²⁸ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 121; Karlsson, *supra* note 16, at 2289.

²⁹ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 121.

³⁰ MGBAKO, *To Live FREELY IN THIS WORLD*, *supra* note 1, at 148.

³¹ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 121. Under decriminalization frameworks, trafficking and purchasing sex from minors remain criminalized. *Id.* at 122.

³² *Decriminalisation*, GLOB. NETWORK OF SEX WORK PROJECTS 8 (2020),

organizations have adopted policy positions calling for decriminalization of sex work, including UNAIDS, WHO, HRW, and Amnesty.³³ International and regional sex workers' rights groups are aligned in their support for decriminalization.³⁴

B. Demands of the Sex Workers' Rights Movement

The global sex workers' rights movement began in the 1960s and 1970s, as national sex workers' rights direct actions and organizations emerged from the queer liberation, civil rights, and feminist movements.³⁵ The launch of the Global Network of Sex Work Projects (NSWP) in 1992 signified the increasing internationalization of the sex workers' movement and collaboration between emerging sex workers' rights groups in the Global North and South.³⁶ Today, NSWP and regional sex worker groups, including the African Sex Workers Alliance (ASWA), Alianza por los Derechos Humanos y la Inclusión de las Personas Trabajadoras Sexuales (Alianza), Asia Pacific Network of Sex Workers (APNSW), European Sex Workers Alliance (ESWA), and RedTraSex (Latin America and the Caribbean regional sex worker rights group), collectively represent hundreds of local and national sex worker-led rights groups, and advance the movement for sex workers' rights on multiple fronts.³⁷ These international and regional groups push the global

https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prfil5.pdf [hereinafter NSWP, *Decriminalisation*].

³³ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 122-23.

³⁴ *IPPF Policy Paper*, *supra* note 18, at 10.

³⁵ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 95-96, 121. For example, sex workers participated in queer uprisings at Compton's Cafeteria in 1966 and the Stonewall Inn in 1969. *Id.* at 95-96. These uprisings protested the severe police violence and arbitrary raids against people of color, street-based youth, transgender people, and sex workers in San Francisco's Tenderloin District and the West Village in New York City. *Id.*

³⁶ *Id.* at 101.

³⁷ As of 2021, NSWP had 318 member organizations in 101 countries. *Annual Report 2021*, 5, GLOB. NETWORK OF SEX WORK PROJECTS (2021), https://www.nswp.org/sites/default/files/en_nswp_annual_report_2021_final.pdf.

ASWA represents over 150 groups from 35 African countries. *Get to Know Us, Introduction of ASWA!*, AFR. SEX WORKERS ALL., <https://www.aswaalliance.org/#> (last visited July 26, 2024). Alianza represents eight sex workers' rights and human rights organizations from Latin America. *Presentación de la Alianza por los Derechos de las Trabajadoras del Sexo*, INTL PLANNED PARENHOOD FEDN (June 7, 2023, 4:54 PM), <https://acr.ippf.org/es/media-center/presentacion-de-la-alianza-por-los-derechos-de-las-trabajadoras-del-sexo>; APNSW has 40 member organizations representing 20 countries. *Members*, ASIA PAC. NETWORK OF SEX WORKERS,

movement for sex workers' rights forward, centered around themes and demands regarding decriminalization, labor rights, violence and discrimination, the centering of sex workers' voices, and the conflation of sex work and trafficking.

1. Decriminalization

The global movement for sex workers' rights opposes the criminalization of sex work because criminalization increases violence, stigma, and discrimination against sex workers while decreasing their access to justice, access to healthcare, and ability to work with dignity and without fear of legal repercussions.³⁸ Alianza points out that: "There is no evidence that [criminalization] ... has a positive impact on the life or human rights of sex workers. To the contrary, decades of evidence ... clearly indicate[s] that policing, repressions, and criminalization directly harm [sex workers'] health, well-being, and social inclusion."³⁹ ESWA has committed to documenting and analyzing the harms of the Nordic partial criminalization model in an effort to "effectively communicate the injustice and harms experienced by sex workers ... [and] challenge the misinformation and misleading narratives used to support the 'Swedish Model' of criminalization."⁴⁰ Because of these harms, decriminalization is a central goal of the global sex workers' rights movement.⁴¹ Groups like ESWA note that "[d]ecriminalisation of

<https://apnswnew.wordpress.com/membership/members/> (last visited July 26, 2024). ESWA represents over 100 organizations from 30 European and Central Asian countries. *About ESWA*, EURO. SEX WORKERS RTS. ALL., https://www.eswalliance.org/about_eswa (last visited July 25, 2024). RedTraSex has members in 15 countries. *Sobre Nosotras*, REOTRASEX, <https://redtralsex.org/sobre-nosotras/> (last visited July 26, 2024).

³⁸ See *Our Vision, Goals, and Values*, ASIA PAC. NETWORK OF SEX WORKERS, <https://apnswnew.wordpress.com/about-apnsw/our-vision-goals-and-values/> (last visited July 13, 2024) [hereinafter APNSW, *Our Vision, Goals, and Values*]; *Launch Statement*, ALIANZA POR LOS DERECHOS HUMANOS Y LA INCLUSIÓN DE LAS PERSONAS TRABAJADORAS SEXUALES (ALIANZA) (June 7, 2023), <https://acr.ippf.org/media-center/launch-alliance-sex-workers-rights> [hereinafter Alianza, *Launch Statement*]; *Strategic Plan 2021-2025*, EUR. SEX WORKERS RTS. ALL. 5 (2021), https://d3n8a8pro7vhmx.cloudfront.net/eswa/pages/90/attachments/original/1631532137/ESWA_strategic_plan.pdf?1631532137 [hereinafter ESWA, *Strategic Plan*].

³⁹ Alianza, *Launch Statement*, *supra* note 38.

⁴⁰ ESWA, *Strategic Plan*, *supra* note 38, at 22.

⁴¹ NSWP, *Decriminalisation*, *supra* note 32, at 3; APNSW, *Our Vision, Goals, and Values*, *supra* note 38; Alianza, *Launch Statement*, *supra* note 38; *Strategic Framework 2021-2024*, AFR. SEX WORKERS ALL. 3, 5 (2021), <https://www.aswaalliance.org/publications-for-aswa/> [hereinafter ASWA, *Strategic Framework*]; ESWA, *Strategic Plan*, *supra* note 38, at 22.

sex work is recognized by policy and lawmakers as the most evidence-based, human rights-respecting, legislative framework to regulate sex work."⁴² Sex worker groups also recognize the power of decriminalization to "enable sex workers to work safely and to participate fully as citizens" by decreasing work-related violence and harassment, by eliminating arrest, imprisonment, and deportation, and by increasing sex workers' access to justice, health services, economic opportunities, and empowerment.⁴³

2 Labor Rights

Decriminalization is not a stand-alone solution: rather, it is a foundational step toward securing additional protections for sex workers, including labor rights. A major recurring theme in nearly every international and regional sex worker group's expressed goals or mission statements is for sex work to be recognized as work.⁴⁴ ASWA argues that sex workers should be granted the same rights, benefits, and protections as workers in other industries.⁴⁵ The NSWSP Consensus Statement cites the "acceptance of sex work as work" as one of their core values, and the "right to work and free choice of employment" is one of eight fundamental rights that the organization seeks for sex workers around the world.⁴⁶ NSWSP and ASWA specifically demand inclusion for sex workers under the International Labor Organization (ILO)'s fundamental principles for laborers including "elimination of discrimination in respect

⁴² ESWA, *Strategic Plan*, *supra* note 38, at 22.

⁴³ APNSW, *Our Vision, Goals, and Values*, *supra* note 38; NSWSP, *Decriminalisation*, *supra* note 38, at 3, 8.

⁴⁴ APNSW, *Our Vision, Goals, and Values*, *supra* note 38 (appearing in the organization's vision statement); GLOB. NETWORK OF SEX WORK PROJECTS, *Consensus Statement on Sex Work, Human Rights, and the Law*, 24-25 (Dec. 16, 2013), <https://www.nswsp.org/sites/default/files/ConStat%20PDF%20EngFull.pdf> [hereinafter NSWSP, *Consensus Statement*]; 8 *Motivos por los que marchamos las mujeres trabajadoras sexuales*, REDTRASEX (Mar. 8, 2023), <https://redtrasex.org/8motivos-por-los-que-marchamos-las-mujeres-trabajadoras-sexuales/> [hereinafter REDTRASEX]; ASWA, *Strategic Framework*, *supra* note 41, at 5. "ESWA emphasizes the importance of a labor-supportive legal framework by advocat[ing] for a labour rights-based approach to sex work that ensures that the labour...rights of all sex workers are recognised, protected and fulfilled by national, regional and international policy and law." ESWA, *Strategic Plan*, *supra* note 38, at 5.

⁴⁵ ASWA, *Policy Brief on Sex Work & Labour Rts*, AFR. SEX WORKERS ALL. 7-8 (2022), <https://www.aswaalliance.org/publications-for-aswa/> [hereinafter ASWA, *Sex Work & Labour Rts.*]; ASWA, *Strategic Framework*, *supra* note 41, at 5 (advocating for economic empowerment and social inclusion and protection).

⁴⁶ NSWSP, *Consensus Statement*, *supra* note 44, at 23.

of employment and occupation."⁴⁷ ESWA highlights the need for sex workers to engage with trade unions and labor organizations to help build sex workers' capacity for labor organizing.⁴⁸

3. *Freedom from Violence, Stigma, and Discrimination*

NSWP notes that "globally, sex workers of all genders face...physical, psychological, and sexual violence, often with impunity."⁴⁹ Such violence may be perpetrated by a range of individuals or institutions, including law enforcement and perpetrators who pose as clients.⁵⁰ APNSW recognizes "stigma and discrimination created by legislation and policies [as] a form of institutional violence against sex workers," and they, like other groups, hope to eliminate such violence through decriminalization and the recognition of sex workers' human rights.⁵¹ Stigma and discrimination against sex workers in access to healthcare is another major issue that the global sex workers' rights movement seeks to address.⁵² Improving access to comprehensive health services, including sexual and reproductive healthcare and HIV and sexually transmitted infection (STI) testing and treatment, is a recurring theme in global sex worker groups' goals and demands.⁵³ Sex workers' rights groups seek to destigmatize sex work to diffuse pervasive negative treatment against sex workers.⁵⁴ They also seek to dismantle stigma and discrimination to increase sex workers' access to justice, including the ability for sex workers to access law enforcement, court systems, and

⁴⁷ ASWA, *Sex Work & Labour Rts.*, *supra* note 45, at 7-8; NWSP, *Consensus Statement*, *supra* note 44, at 24.

⁴⁸ ESWA, *Strategic Plan*, *supra* note 38, at 23.

⁴⁹ NWSP, *Consensus Statement*, *supra* note 44, at 7.

⁵⁰ *Id.* at 7-8.

⁵¹ *Strategy and plans*, ASIA PAC. NETWORK OF SEX WORKERS, <https://apnswnew.wordpress.com/about-apnsw/strategy-and-plans/> (last visited July 13, 2024) [hereinafter APNSW, *Strategy and plans*]; REDIRASEX, *supra* note 37; ASWA, *Strategic Framework*, *supra* note 41, at 5.

⁵² NWSP, *Consensus Statement*, *supra* note 44, at 16.

⁵³ See APNSW, *Our Vision, Goals, and Values*, *supra* note 38; ASWA, *Strategic Framework*, *supra* note 41, at 5; ESWA, *Strategic Plan*, *supra* note 38, at 24; NWSP, *Consensus Statement*, *supra* note 44, at 18.

⁵⁴ ASWA, *Strategic Framework*, *supra* note 41, at 5; *Policy Brief: Challenging Criminalisation of Sex Work in Africa*, AFR. SEX WORKERS ALL. 7 (2022), <https://www.aswaalliance.org/publications-for-aswa/> [hereinafter ASWA, *Challenging Criminalisation*]; Alianza, *Launch Statement*, *supra* note 38; *Id.* at 6, 13; APNSW, *Strategy and plans*, *supra* note 51.

other legal recourse when their rights have been violated.⁵⁵

4. Center Sex Workers' Voices

The centering of sex workers' voices and experiences in policy debates that affect them is a central value that drives the global movement; sex worker groups promote this through their own leadership as well as in their demands from governments and policymakers. NSWSP demands that "responsible authorities...invite and meaningfully consult sex workers to ensure that sex workers' expert opinions are included when sex workers' lives and work are discussed by government and other bodies."⁵⁶ Other groups echo this demand: APNSW calls for sex workers' inclusion in "forums and decisions" that affect them; Alianza seeks "[meaningful and genuine inclusion of] sex workers and human rights defenders in decision making;" ESWA demands "all sex worker voices are heard;" and ASWA notes that it exists to "strengthen [sex workers'] voices."⁵⁷ Connected to demands for the centering of sex workers' voices, is the movement's commitment to inclusivity, intersectionality, and embracing diverse populations of sex workers. The NSWSP Consensus Statement is explicit and thorough in identifying the intersecting identities and experiences that may impact how sex workers are affected by laws and policies.⁵⁸

5. Reject the Conflation of Sex Work and Trafficking

Anti-prostitution advocates who seek to abolish sex work have a

⁵⁵ ASWA, *Challenging Criminalisation*, *supra* note 54, at 7; Alianza, *Launch Statement*, *supra* note 38; NSWSP, *Consensus Statement*, *supra* note 44, at 4-5 (supporting access to justice under "right to be protected by the law").

⁵⁶ NSWSP, *Consensus Statement*, *supra* note 44, at 3.

⁵⁷ APNSW, *Our Vision, Goals, and Values*, *supra* note 38; Alianza, *Launch Statement*, *supra* note 38 at 2; ESWA, *Strategic Plan*, *supra* note 38, at 5; ASWA, *Strategic Framework*, *supra* note 41, at 5.

⁵⁸ "Law reform must be accompanied by actions that recognise that some laws contribute to and reinforce historical and structural inequality and disadvantage, based on discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, class, ethnicity, gender and gender identity, sexual orientation, health status (including HIV), marital or other legal relationship status, citizenship or immigration status, physical mobility, mental health, or other status. This Consensus Statement outlines fundamental rights for sex workers of all genders, class, race, ethnicity, health status, age, nationality, citizenship, language, education levels, disabilities and other status." NSWSP, *Consensus Statement*, *supra* note 44, at 1.

history of portraying all people in the sex work industry as victims of human trafficking.⁵⁹ Sex workers' rights groups' mission and values statements, including that of ESWA, ASWA, and NSWSP, explicitly reject the conflation of sex work and trafficking.⁶⁰ NSWSP notes that this conflation "remains one of the most prevalent forms of misinformation surrounding sex work, underpinned by fundamental feminist and abolitionist ideology which equates all sex work with violence and exploitation."⁶¹ This misinformation—the idea that sex work and trafficking into forced labor are inherently the same thing—leads to violence against sex workers who are often the targets and victims of brothel raids to "rescue" them and forced detention to "rehabilitate" them.⁶² It also leads to regressive legal frameworks to "end demand" for sex work like the Nordic model and policies to severely restrict migration flows to "prevent" trafficking.⁶³ Thus, the NSWSP Consensus Statement notes that the conflation of sex work and trafficking inhibits sex workers' rights to be protected by the law, to be free from violence and discrimination, and to move and migrate.⁶⁴ ESWA rejects the idea that all sex workers are victims of sexual exploitation who have been coerced into sex work "as a narrative that undermines the human, health and labour rights of sex workers and creates new risks and vulnerabilities for those that work within the industry."⁶⁵

C. Application of the Movement's Central Organizing Principles to Recent Legal Advancements

The central organizing principles embraced by the global movement for sex workers' rights and highlighted in Part I animate the legal advancements we will analyze in Part II. The significant legislative

⁵⁹ Ruth Morgan Thomas, *Written Statement-High Level Meeting on Trafficking in Persons: Conflation of Sex Work and Trafficking*, GLOB. NETWORK OF SEX WORK PROJECTS 1 (Nov. 2021), https://www.nswp.org/sites/default/files/nswp_written_statement_hlm_on_trafficking_in_persons_november_2021.pdf.

⁶⁰ ASWA, *Strategic Framework*, *supra* note 41, at 5; ESWA, *Strategic Plan*, *supra* note 38, at 5; NSWSP, *Consensus Statement*, *supra* note 44, at 21.

⁶¹ *Briefing Note: Misinformation on Sex Work*, GLOB. NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/nswp_briefing_note_on_misinformation.pdf (last visited November 23, 2024).

⁶² *See Thomas*, *supra* note 59.

⁶³ *Id.*

⁶⁴ *See NSWSP, Consensus Statement*, *supra* note 44, at 5, 7-8, 10, 21.

⁶⁵ ESWA, *Strategic Plan*, *supra* note 39, at 5.

reforms in Belgium and a trio of Australian jurisdictions, for example, are in line with the global sex workers' rights movement's goals: they reject criminalization, embrace decriminalization, create labor rights protections for sex workers, and build models for anti-discrimination legal frameworks to fight stigma and discrimination against sex workers. The positive court judgments in Malawi and India also mirror the movement's demands: they create foundations and precedents for decriminalization advocacy by, respectively, striking down laws that indirectly penalize sex workers and explicitly affirming the need for state protection of sex workers against police abuse and other violations. The strategies advocates use to achieve these legal wins have been successful because the reform processes centered sex workers' voices and lived experiences, a central tenet of the global movement. The strategies advocates use to manage political threats against these legal wins include methods to fight the conflation of sex work and trafficking.

II. LESSONS LEARNED FROM RECENT LEGAL ADVANCEMENTS IN SEX WORKERS' RIGHTS

Part II unearths and analyzes the lessons learned from a comparative analysis of recent legal advancements in sex workers' rights to help inform future advocacy. This Part is divided into four sections. First, we review the substantive strengths and limitations of the legislative advancements and positive court judgments in our case studies. Second, we identify and discuss the essential and direct contributions of sex workers' rights advocates to legal advancements, highlighting their successful reform strategies. Third, we explore advocates' successful framing of the sex work issue to make reform acceptable to lawmakers, judges, and the general public. Finally, we identify strategies for managing political threats that can weaken legal protections for sex workers.

A. Substantive Legal Achievements

The review of the substantive strengths and limitations of the legislative and court-made advancements in our case studies spotlights several key takeaways: the decriminalization case studies all include the significant repeal of laws that harm sex workers but notably diverge over the full or partial decriminalization of street-based sex work, sex work-specific regulations, and advertising restrictions; legislative reform efforts have boldly gone beyond just the removal of criminal laws from the sex industry and have resulted in groundbreaking labor and anti-

discrimination protections designed to uphold sex workers' rights; decriminalization reform must also include efforts to repeal laws that indirectly target sex workers; and positive court judgments can create strong foundational precedents for future reform efforts.

1. Decriminalization of Sex Work in Belgium and the Australian Jurisdictions of the Northern Territory, Queensland, and Victoria

a. Repeal of Criminal, Regulatory, and Administrative Prohibitions

Between 2019 and 2024, decriminalization legislation across three Australian states and territories and Belgium ushered in the welcome repeal of criminal, regulatory, and administrative laws that prohibited the safe practice of sex work in those jurisdictions. Following the Northern Territory's 2019 decriminalization reforms, brothels, soliciting, and home-based sex work were no longer illegal, sex workers could work together with other sex workers and hire support staff, and the names and registration information for sex workers and sex work service providers collected under the old regulatory regime were expunged.⁶⁶ The decriminalization process in Victoria, which took place between 2022 and 2023, abolished the sex work service provider licensing system, decriminalized street-based sex work in most although not all locations, removed sex work industry-specific regulations, and changed advertising and planning controls governing sex work.⁶⁷ It also repealed mandatory STI testing for sex workers and offenses for sex workers who do not use

⁶⁶ *Sex Industry Act 2019* (N. Terr.) ss 3(a), (b)(ii), 28 (Austl.); Roberts & Breen, *supra* note 5; Press Release, UNAIDS, *UNAIDS Welcomes the Decision by the Northern Territory of Australia to Decriminalize Sex Work* (Dec. 2, 2019), <https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2019/december/decision-northern-territory-australia-decriminalize-sex-work> [hereinafter UNAIDS Welcomes the NT Decision]; Paul Gregoire, *NT Sex Workers Finally Have Decriminalisation: An Interview with SWOP NT's Coordinator Leanne Melling*, SYDNEY CRIM. LAWS. (Dec. 5, 2019), https://www.sydneycriminallawyers.com.au/blog/nt-sex-workers-finally-have-decriminalisation-an-interview-with-swop-nts-coordinator-leanne-melling/?utm_source=mondaq&utm_medium=syndication&utm_content=articleoriginal&utm_campaign=article. For more on the harms of criminalization in the Northern Territory prior to decriminalization, see *infra* Part 11.C.2.

⁶⁷ John Buckley, *Sex Work Has Been Decriminalised in Victoria. Here's What That Means*, VICE (Feb. 10, 2022, 11:42 PM), <https://www.vice.com/en/article/z3nqaa/sex-work-has-been-decriminalised-in-victoria-heres-what-that-means>; *Decriminalising Sex Work in Victoria*, *supra* note 7.

safe sex practices.⁶⁸ In 2022, Belgium decriminalized sex work by lifting the criminalization of third parties so that self-employed independent sex workers could conduct their business legally, like self-employed workers in other sectors.⁶⁹ As the first country in Europe to decriminalize sex work, Belgium rejected the Nordic model that some European countries have adopted.⁷⁰ In 2024, Queensland repealed and amended a wide range of statutes that negatively impacted sex workers and the sex work industry.⁷¹ Its comprehensive decriminalization act removed sections of legislation criminalizing sex work and requiring brothels to be licensed, amended the local government law to bar municipalities from prohibiting or regulating sex work, and repealed legislation that treated sex work as a threat to public health.⁷² Under decriminalization in our case studies, human trafficking, coercive acts, and the participation and solicitation of minors in the sex industry remain illegal.⁷³

b Status of Street-Based Sex Work

One area where the decriminalization models in our case studies

⁶⁸ *Decriminalising Sex Work in Victoria*, *supra* note 7. For more on the harms of criminalization in Victoria prior to decriminalization, *see infra* Part 11.C.2.

⁶⁹ NSW, *Sex Workers in Belgium Celebrate Historic Vote*, *supra* note 8. For more on the harms of criminalization in the Northern Territory prior to decriminalization, *see infra* Part 11.C.2.

⁷⁰ *See Sex Workers in Belgium Celebrate Historic Vote*, *supra* note 8.

⁷¹ *See generally*, *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) (Austl.).

⁷² *Id.*

⁷³ In the Northern Territory and Victoria, involvement of minors in the sex industry, coercion, and human trafficking remain criminalized. *Sex Industry Act 2019* (N. Terr.) (Austl.); *Decriminalising Sex Work in Victoria*, *supra* note 7. In Belgium, it remains illegal for minors to sell sex. *Press Release: Decriminalisation of Sex Work has Finally Happened in Europe*, SEX WORKERS ALL OF IR. (Mar. 19, 2022), <https://sexworkersallianceireland.org/2022/03/press-release-decriminalisation-of-sex-work-has-finally-happened-in-europe/>. Laws pertaining to coercing others into sex work are contained in a separate trafficking code. *See Decriminalisation*, UTSOPi, <https://www.utsopi.be/our-work/decriminalisation> (last visited July 25, 2024) [hereinafter *Decriminalisation*]. "Pimping" is still criminalized, but the definition of such conduct was narrowed so that it only applies to people or entities who profit from exploitative sex work; simply organizing another person's sex work does not qualify as an offense. CPEN. (Belg.), art. 76; *see also* NSW, *Sex Workers in Belgium Celebrate Historic Vote*, *supra* note 8. The Queensland Criminal Code was amended to include sections criminalizing the receipt of commercial sexual services from minors, the participation of minors in commercial sexual services, and the procurement of sexual acts through coercion. *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) ss 10, 13-15 (Austl.).

diverge is regarding the full or partial decriminalization of street-based sex work. Although street-based sex work is decriminalized in most locations in Victoria—a significant victory—it is still a criminal offense for sex work to occur "near schools, care services, and places of worship between 6 am and 7 pm and on holy days."⁷⁴ As a result, concerns around the vulnerability, stigmatization, and continued criminalization of street-based sex workers in Victoria remain.⁷⁵ The partial decriminalization of street-based sex work in Victoria is distinguished from our case studies in Belgium, Queensland, and the Northern Territory where there are no criminal restrictions attached to street-based sex work.⁷⁶ Sex workers' rights advocates in Victoria have argued that because these restrictions still criminalize street-based sex workers during certain days and times, or near certain locations, Victoria's decriminalization legislation, while undoubtedly an achievement to be celebrated, falls short of fully decriminalizing sex work.⁷⁷

The partial criminal restrictions of street-based sex work in Victoria may initially seem reasonable as a way of balancing community needs with sex workers' rights, but the question is whether *criminal law* is the right method to balance these priorities. Previous experiences in sex work decriminalization reveal that there are significant drawbacks to attaching *any* criminal penalties to sex work. In New South Wales, the

⁷⁴ Australian Associated Press, *Street-based Sex Work is Now Legal Across Victoria*, THE GUARDIAN (May 9, 2022, 11:07 PM), <https://www.theguardian.com/australia-news/2022/may/10/street-based-sex-work-is-now-legal-across-victoria>.

⁷⁵ Buckley, *supra* note 67. *Media Release, Vixen and Scarlet Alliance Welcome the Passage of the Sex Work Decriminalisation Bill 2021 But Commit to Continue to Advocate for Further Reforms*, SCARLET ALL., AUSTRALIAN SEX WORKERS ASSN (Feb. 10, 2022), https://scarletalliance.org.au/news_item-2022-02-11-1754/ [hereinafter *Vixen and Scarlet Alliance Welcome the Passage of the Sex Work Decriminalisation Bill 2021*].

⁷⁶ There are no restrictions on street-based sex work in the Belgian decriminalization act. See CPBN. (Belg.). The QLRC recommended that street-based sex work be decriminalized in Queensland. See Eden Gillespie, *Queensland to decriminalise sex work as review recommends new advertising rules*, THE GUARDIAN (Apr. 24, 2023, 2:35 AM), <https://www.theguardian.com/australia-news/2023/apr/24/queensland-to-decriminalise-sex-work-as-review-recommends-new-advertising-rules>. There are no restrictions on street-based sex work in the Queensland decriminalization act. See *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) (Austl.). Northern Territory Sex Laws (noting that "outdoor sex work is decriminalized (lawful) in the Northern Territory" and that if sex workers "have any issues with police about doing sex work in any space" they choose they should contact peer support organization SWOP NT), <https://scarletalliance.org.au/resources/laws/nt>.

⁷⁷ Buckley, *supra* note 67; *Vixen and Scarlet Alliance Welcome the Passage of the Sex Work Decriminalisation Bill 2021*, *supra* note 75.

first jurisdiction in the world to decriminalize sex work, street-based sex work is still criminalized near specific locations, such as churches, schools, and hospitals resulting in the persecution, marginalization, and increased vulnerability of street-based sex workers ("the most traumatized component of the NSW sex industry"), who as a result of being targeted by the police, work in hidden areas with less access to outreach services and experience higher levels of traumatization and less positive health outcomes than sex workers in other sectors.⁷⁸

The criminalization of sex work in any form and to any degree gives law enforcement an excuse to harass and abuse sex workers.⁷⁹ Reforms that seek to protect sex workers' rights and reduce their marginalization must find non-criminal means to achieve their objectives, including support for sex worker-led peer-based assistance.⁸⁰

c. Sex Work-Specific Regulations

The extent to which regulations under the new decriminalization regimes are sex work-specific varies among the case studies. Victoria's decriminalization legislation removed specific licensing requirements for sex work service providers, permitting these businesses to operate anywhere a normal business would operate and sex workers to work from their own homes.⁸¹ In this regard, Victoria's model for sex work service providers is more permissive than the Northern Territory model, which requires providers who employ three or more sex workers to apply for a "suitability certificate."⁸² While police do not oversee these licenses, this represents an additional hurdle that sex work service providers must clear beyond what is required of other employers to operate legally, which runs the risk of reducing sex work service providers' compliance with the law and thus sex worker employees' access to oversight for their working conditions if the providers operate outside of the labor framework.⁸³

⁷⁸ Macioti et al., *supra* note 5, at 1021 (internal citations omitted).

⁷⁹ See NWSP, *Consensus Statement*, *supra* note 44, at 7-9.

⁸⁰ *Id.* at 9.

⁸¹ CONSUMER AFFAIRS VICTORIA, OVERVIEW OF THE DECRIMINALISATION OF SEX WORK IN VICTORIA 3-4, (2023) <https://www.consumer.vic.gov.au/library/publications/resources-and-education/other-languages/english/sex-work-decriminalisation/factsheet-1---overview-of-decriminalisation---december-2023.docx>.

⁸² *Sex Industry Act 2019* (N. Terr.) s 18 (Austl.).

⁸³ See Econ. Pol'y Scrutiny Comm., *Inquiry into the Sex Industry Bill 2019* ¶ 3.28-29, 3.33, 3.35 (Nov. 2019), LEGIS. ASSEMBLY OF THE N. TERRITORY, https://parliament.nt.gov.au/_data/assets/pdf_file/0005/758975/105-19-Report-for-the-

Belgium's decriminalization model is also potentially inhibited by a provision that allows municipalities to continue enforcing local regulations on sex work.⁸⁴ Queensland's decriminalization reform offers the most progressive policy concerning municipalities by placing restrictions on municipalities' power to make local laws that prohibit or regulate sex work or sex work service providers.⁸⁵

d Advertising Controls

Advertising controls under decriminalization also differ among the case studies. Victoria has the most liberal posture towards sex work advertising: its decriminalization legislation permits individuals and entities to freely post ads that describe specific services, seek employees, and include pictures that may depict nudity.⁸⁶ In contrast, advertising is more restrictive under decriminalization in the Northern Territory and Belgium. The Northern Territory penalizes improperly placed advertisements for sex work: newspaper, TV, and radio advertisements must comply with regulations limiting their size, placement, and content, and ads may not encourage a person to engage in sex work.⁸⁷ Belgium's decriminalization act prohibits all sex work advertising with the following exception: the law permits ads by sex workers advertising their own sexual services in locations where these sexual services are offered or in mediums with designated sex-work advertising spaces, like certain internet platforms.⁸⁸ It is possible that the more restrictive sex work

Inquiry-into-the-Sex-Industry-Bill-2019.pdf [hereinafter EPSC, *Inquiry into the SIB 2019*].

⁸⁴ See *Legislation*, VIOLETT, <https://www.violett.be/en/sexworkers/prostitution-in-belgium/legislation/> (last visited July 25, 2024). ("As there was no national [sex work] legislation for a long time, a number of cities and municipalities in Belgium have developed local regulations for prostitution on their territory... Cities and municipalities take measures on prostitution to maintain public order, tranquility and safety... This can translate into an increased police presence... Some local authorities ban prostitution from their municipality and close premises where prostitution take place... These powers for municipalities will remain.")

⁸⁵ *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) s 28 (Austl.).

⁸⁶ CONSUMER AFFAIRS VICTORIA, *supra* note 81, at 2.

⁸⁷ See *Sex Industry Act 2019* (N. Terr.) s 15 (Austl.); see also *Sex Industry Regulations 2020* (N. Terr.) s 3 (Austl.); *Penalty Units*, NTERRITORY Gov'T: DEPT OF THE ATT'Y-GEN. AND JUST., <https://justice.nt.gov.au/attorney-general-and-justice/units-and-amounts/penalty-units> (last visited July 24, 2024).

⁸⁸ NSW, *Sex Workers in Belgium Celebrate Historic Vote*, *supra* note 8; C.PEN. (Belg.), art. 77.

advertising regulations may reinforce stigma and discrimination by excluding sex workers from engaging in typical business practices.

2 *Groundbreaking Labor and Anti-Discrimination Protections for Sex Workers in Australia and Belgium*

The repeal of laws that criminalize sex workers, buyers, third parties, and/or activities related to sex work is a crucial first step in decriminalization reform. But for sex workers to fully realize power over their labor and exercise their human rights, advocates should pursue a holistic vision of decriminalization that includes affirmative protections for sex workers.⁸⁹ Our case studies in Australia and Belgium include pathbreaking labor and anti-discrimination legislation protecting sex workers that should serve as models for future reforms.

a Labor Protections

Several of the case studies of legislative advancements have taken important steps above and beyond the removal of criminal laws targeting sex work to advance the recognition of sex work as labor. The Northern Territory's decriminalization act incorporated provisions that extend existing employment, occupational health and safety, and labor laws to cover sex workers and sex work service providers.⁹⁰ It also protects the legality of contracts for the provision of sex work and provides for sex workers' right to refuse sex work at any time without violating a contract they have entered into.⁹¹ Victoria's decriminalization act followed suit by bringing sex work, sex workers, and sex work service providers under the umbrella of WorkSafe Victoria, the state's occupational health and safety regulatory body.⁹² Belgium took this effort an important step further and passed a separate, pathbreaking, one-of-a-kind labor law to protect sex workers' labor rights.⁹³

⁸⁹ Mgbako, *Mainstreaming of Sex Workers' Rights*, *supra* note 4, at 129.

⁹⁰ UNAIDS Welcomes the NT Decision, *supra* note 66; *See Northern Territory Sex Work Laws*, SCARLET ALL (last updated Nov. 7, 2022), <https://scarletalliance.org.au/resources/laws/nt/> [hereinafter NT Sex Work Laws].

⁹¹ *Sex Industry Act 2019* (N. Terr.) ss 3(a), 9 (Austl.).

⁹² CONSUMER AFFAIRS VICTORIA, *supra* note 81, at 4.

⁹³ *See generally* Wetsontwerp van 22 maart 2024 houdende bepalingen betreffende sekswerk onder arbeidsovereenkomst [Provisions regarding sex work under employment contract] (Belg.), Mar. 22, 2024, <https://www.dekamer.be/FLWB/PDF/55/3926/55K3926001.pdf>; *see also Belgian Labor Law for Sex Workers: What and How?*, *supra* note 9.

In 2024, Belgium became the first country in the world to create a stand-alone labor law for sex workers.⁹⁴ The law expands sex workers' labor protections by securing their right to engage in employment contracts that grant them benefits such as social security, unemployment, health insurance, annual vacation, and maternity leave.⁹⁵ Under the law, employed sex workers are entitled to five freedoms: "the right to refuse a client," "to refuse a sexual act," "to interrupt a sexual act at any time," "to perform a sexual act in the manner they wish," and to "refuse to sit behind a window or advertise" if their safety is endangered.⁹⁶ Employers may not dismiss employees for invoking these rights, though either the employee or the employer may seek government mediation if these rights are invoked ten or more times in a six-month period.⁹⁷ Sex workers may end a contract at any time without owing compensation or losing their unemployment benefits.⁹⁸ The law also protects sex workers' anonymity by permitting them to work under hotel-restaurant-cafe contracts that do not mention sex work.⁹⁹

Employers who wish to contract with sex workers need the government's recognition, meaning they must have a registered office in Belgium, and must not have previously been convicted of a violent crime.¹⁰⁰ Recognized employers must guarantee safe working conditions for their employees, which specifically includes having a reference person available during all sexual services in case a sex worker employee is in

⁹⁴ *Belgian Labor Law for Sex Workers: What and How?*, *supra* note 9.

⁹⁵ These benefits only apply to sex workers who enter into an employment contract, and not to self-employed independent sex workers. *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* Anti-prostitution advocates like Andrea Heinz criticized the provision that lets employers and employees seek government mediation in cases where a sex worker invokes their right to refuse more than ten times in a six-month period. *See, e.g.*, Amy Hamm, *Belgian Government Will Intervene in Cases Where Prostitutes Refuse Sexual Acts Too Often*, PUBLICA (May 12, 2024), <https://www.thepublica.com/belgian-government-will-intervene-in-cases-where-prostitutes-refuse-sexual-acts-too-often/>.

Opponents framed this as the government backing "pimps" to coerce workers into sex, but sex worker rights advocates opposed this characterization and supported the provision, noting that it allows employees to invoke mediation which could help an employee draw the government's attention to poor working conditions or other issues. *See id.*; *see also* Elizabeth Nolan Brown, *Belgium Protects Sex Work Employees' Right to Refuse Customers, Sex Acts*, REASON (May 20, 2024), <https://www.yahoo.com/news/belgium-protects-sex-employees-refuse-153037896.html>.

⁹⁸ *Belgian Labor Law for Sex Workers: What and How?*, *supra* note 9; Chini, 'Historic', *supra* note 8.

⁹⁹ *Belgian Labor Law for Sex Workers: What and How?*, *supra* note 9.

¹⁰⁰ *Id.*

need of assistance, and an emergency button in each room where sex services are provided that connects to the reference person.¹⁰¹ Unions and sex worker support organizations must have access to sex work service provider workplaces.¹⁰² The labor law does not specify penalties for unrecognized or noncompliant employers, but Belgian sex workers' rights organizations note that they are already engaged in dialogues on future labor policy to prevent the weaponization of regulations against sex workers.¹⁰³

One weakness of the law is that it does not provide specific protections for migrant sex workers without legal residence papers, which leads roughly 10% of sex workers to be left out of the labor law reform since they cannot get work permits.¹⁰⁴ Although Belgian employers are required to comply with labor laws regardless of workers' status, Belgian sex workers' rights advocates have acknowledged the law's limitations regarding undocumented workers and continue to pursue legal protections for migrant sex workers.¹⁰⁵

b Anti-Discrimination Protections

In addition to labor protections, several of our decriminalization case studies include novel legal approaches to reducing stigma and discrimination against sex workers through the pursuit of anti-discrimination protections for sex workers. These protections are essential because even after decriminalization is achieved, sex workers still face entrenched stigma; research indicates a need for more than decriminalization to address stigma.¹⁰⁶ The Northern Territory was the first jurisdiction to set this example when, in a groundbreaking move, they added "sex work" and "sex worker" as protected attributes under the

¹⁰¹ Alternatively, sex worker employees must be equipped with a mobile emergency button.*Id.*

¹⁰² *Id.*

¹⁰³ See *Belgian Labor Law for Sex Workers: What and How?*, *supra* note 9.

¹⁰⁴ Helen Lyons, *Sex Workers in Belgium Considered Legal Employees under Reform*, BULLETIN (June 26, 2023, 8:53 AM), <https://www.thebulletin.be/sex-workers-belgium-considered-legal-employees-under-reform>.

¹⁰⁵ See *id.*; Marianne Chargois et al., *Decriminalizing Sex Work is a First Step Towards Assuring Rights and Recognition for Sex Workers in Belgium-But It Is Not a Silver Bullet*, ISS BLOG (Oct. 26, 2023), <https://issblog.nl/2023/10/26/decriminalizing-sex-work-is-a-first-step-towards-assuring-rights-and-recognition-for-sex-workers-in-belgium-but-it-is-not-a-silver-bullet/>.

¹⁰⁶ Despite the decades-old status of decriminalization in New Zealand and New South Wales, Australia, documented stigmatization of sex workers in those jurisdictions continues. See Macioti et al., *supra* note 5, at 1028.

Northern Territory Anti-Discrimination Act.¹⁰⁷ Victoria and Queensland followed suit and also amended existing anti-discrimination laws to include “profession, trade, occupation” or “sex work” and “sex worker,” respectively, as protected classes.¹⁰⁸

After decriminalization was achieved in the Northern Territory, sex worker advocates and their allies raised the pressing issue of the lack of anti-discrimination protections for sex workers.¹⁰⁹ Without anti-discrimination protections, stigma and discrimination against sex workers could be perpetuated regardless of the criminal or regulatory status of sex work.¹¹⁰ In 2022, the legislature reformed anti-discrimination laws in the Northern Territory and made it the first jurisdiction in the world to explicitly define “sex work” and “sex worker” as protected attributes under anti-discrimination law.¹¹¹ The law includes protections for current and past sex workers, as well as their families and associates.¹¹² By prohibiting discrimination on the basis of sex work, the law seeks to reduce stigma and systemic discrimination against sex workers, encourage community recognition and acceptance of sex work, and create a positive duty for “a person...to take reasonable and proportionate measures to eliminate...discrimination, sexual harassment or victimisation [of sex workers] to the greatest extent possible.”¹¹³

In Victoria, the legislature amended the Equal Opportunity Act 2010 to create a new protected class based on “profession, trade, or occupation.”¹¹⁴ As a result, sex workers can no longer be refused accommodation at hotels or similar facilities on the basis that they will use the accommodation to engage in lawful sex work.¹¹⁵ Sex workers who believe they have experienced discrimination can file a complaint, or have someone file a complaint on their behalf, with the Victorian Equal

¹⁰⁷ *NT Becomes the First Place*, *supra* note 6.

¹⁰⁸ CONSUMER AFFAIRS VICTORIA, *supra* note 81, at 3; *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) s 4 (Austl.).

¹⁰⁹ See SCARLET ALL., SWOP NT & SWRG, *Submission to the Northern Territory Exposure Draft Anti-Discrimination Amendment Bill 2022* (Aug. 22, 2022), <https://scarletalliance.org.au/library/submission-to-the-northern-territory-exposure-draft-anti-discrimination-amendment-bill-2022/> [hereinafter NT Sex Work Laws].

¹¹⁰ See *NT Becomes the First Place*, *supra* note 6.

¹¹¹ *NT Becomes the First Place*, *supra* note 6.

¹¹² *Id.*

¹¹³ See *Anti-Discrimination Act 1992* (N. Terr.) ss 3, 18B(2) (Austl.).

¹¹⁴ CONSUMER AFFAIRS VICTORIA, *supra* note 81, at 3.

¹¹⁵ *Id.*

Opportunity and Human Rights Commission.¹¹⁶ In Queensland, the legislature amended the Anti-Discrimination Act 1991 to include sex work as a protected attribute for which discrimination is prohibited.¹¹⁷ The act was also amended to remove a section that allowed accommodation providers to discriminate against sex workers by refusing them accommodation, evicting them, or treating them unfavorably.¹¹⁸

3. *High Court Invalidates Vagrancy Laws that Indirectly Target and Disproportionately Impact Sex Workers in Malawi*

Sex workers are not only targeted by laws that directly criminalize sex work. Administrative and criminal laws that indirectly target sex work through, for example, vagrancy, loitering, and public nuisance restrictions, are also often used to abuse and arrest sex workers.¹¹⁹ The effort to repeal vagrancy laws in Malawi offers a model for a more expansive approach to sex work decriminalization in which advocates also pursue the invalidation of facially neutral laws that disproportionately impact sex workers.

In 2017, the High Court of Malawi ruled in *Mayeso Gwanda v. The State* that the Malawian Penal Code's rogue and vagabond statute is unconstitutional.¹²⁰ Under the Penal Code, every person is deemed "rogue and vagabond" who is "found in or upon or near any premises of any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose."¹²¹ This provision is one of a number of vagrancy statutes derived from the English Vagrancy Act of 1824 and instituted during Malawi's colonization by the British.¹²²

¹¹⁶ *Decriminalising Sex Work in Victoria*, CONSUMER AFFAIRS VICTORIA (June 21, 2024), <https://www.consumer.vic.gov.au/licensing-and-registration/sex-work-service-providers/deciminalising-sex-work-in-victoria>.

¹¹⁷ *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (Queensl.) s 4 (Austl.).

¹¹⁸ *Id.* ss 5-6.

¹¹⁹ For discussion on the criminalization of sex work see *supra* Part I.A.

¹²⁰ *Gwanda v. State* [2015] No. 5 (High Ct. Malawi) (Malawi).

¹²¹ NSWP, *Malawi High Court Rules Use of Rogue and Vagabond Law Unconstitutional*, *supra* note 12.

¹²² Malawi's law echoes codes that are in place in other formerly colonized African countries including Mauritius, Nigeria, Gambia, Zambia, Uganda, Botswana, Seychelles and Tanzania. *News Release: Malawi High Court Declares Rogue and Vagabond Offence Unconstitutional*, SOUTHERN AFRI. LITIGATION CTR. (Jan. 11, 2017), <https://www.southernafricalitigationcentre.org/press-statement-malawi-high-court->

Historically, colonial powers would criminalize nonviolent conduct by using “petty offense” laws to exercise control over local populations; today, police continue to use these offenses to abuse poor and marginalized people, including sex workers, street vendors, and people experiencing addiction and homelessness, who are more likely to inhabit public spaces.¹²³ There are laws that directly target sex work in Malawi: it is illegal for third parties to live off the earnings of sex work, procure sex workers, or transport a person in order to conduct sex work or run a brothel.¹²⁴ However, the rogue and vagabond statute, which indirectly targets sex work, has often been the most frequently cited code under which sex workers are arrested, and research has found that many of the sex workers arrested under this provision have not committed any other

declares-rogue-and-vagabond-offence-unconstitutional/#:~:text=News%20Release%3A%20Malawi%20High%20Court%20declares%20rogue%20and%20vagabond%20offence%20unconstitutional,-By%20Staff%20Writer&text=Blantyre%20%E2%80%94%20On%20Tuesday%2010%20January,Penal%20Code%20unconstitutional%20and%20invalid.

¹²³ Louise Ehlers, “Rogues” and “Vagabonds” No More: Ending Africa’s Imperial Legacy of Absurd Petty Offenses, OPEN SOC’Y FOUNDS. (Feb. 3, 2017), <https://www.opensocietyfoundations.org/voices/rogues-and-vagabonds-no-more-ending-africa-s-imperial-legacy-absurd-petty-offenses>; NSWP, *Malawi High Court Rules Use of Rogue and Vagabond Law Unconstitutional*, *supra* note 12; *See Campaign Profile: Decriminalization of Vagrancy Campaign*, CTR. FOR HUM. RTS. EDUC. ADVICE AND ASSISTANCE (Jan. 11, 2017), <https://chreaablog.wordpress.com/2017/01/11/campaign-profile-decriminalization-of-vagrancy-campaign/> [hereinafter CHREAA Blog, *Decriminalization of Vagrancy Campaign*].

¹²⁴ Malawi Penal Code, ch. 7:01, §§ 145(3), 146, 147A(1)(d). In 2016, the High Court ruled in *Republic v. Pempho Banda* that while certain activities around sex work are criminalized, sex work itself is not, and § 146 of the Penal Code, which criminalizes living off the earnings of prostitution, should not be used to subject sex workers, who live on the earnings of their own work, to arrest. *See A Victory for the Right to Fair and Substantial Justice: Recent Cases from the Malawi High Court*, S. AFR. LITIG. CTR. (SALC) & CTR. FOR HUM. RTS. EDUC. ADVICE AND ASSISTANCE (CHREAA) 7 (Aug. 2017), <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/SALC-Sex-work-case-study-booklet-revised-Re-print-29-June-2017-2.pdf>. The Court did *not* overturn § 146; rather, it said it should be interpreted narrowly to criminalize third parties, such as brothel owners, who live on the earnings of sex workers. *Id.* This decision was positive in that it gives sex workers a legal argument against a form of arrest, but it remains problematic because it upholds third party criminalization, which the sex workers’ rights movement rightly opposes. *See* Kachipande, *supra* note 12, at 75, 123. Sex work is also directly targeted by a section of the Penal Code which states that “a common prostitute who behaves in a disorderly or indecent manner in a public place is considered an idle and disorderly person.” Malawi Penal Code at § 180(a).

offense.¹²⁵

Advocates who litigated the *Gwanda* case argued that the rogue and vagabond statute infringes upon the human rights of lower social classes and is too broad to be equally applied or to provide adequate notice of prohibited behavior.¹²⁶ The High Court ruled that the application of the rogue and vagabond statute is unconstitutional and violates the right to dignity and right to be free from inhumane and degrading treatment and punishment; they also highlighted the disproportionate negative impact that the law has on individuals from marginalized groups.¹²⁷ Police are now constitutionally prohibited from using the rogue and vagabond statute to arrest sex workers for loitering, being present in a public place, or having no visible income.¹²⁸

In 2022, building on the *Gwanda* judgment, the High Court ruled in *State v. Henry Banda* that vagrancy-related mass arrests by the police violate constitutional rights.¹²⁹ Mass arrests, also known as “sweeping exercises,” are a common practice in formerly colonized African countries where police use vagrancy laws to conduct arbitrary mass arrests of individuals under the pretense of crime prevention.¹³⁰ Advocates who litigated the case argued that police sweeping exercises most often target sex workers and other marginalized communities.¹³¹ In September 2024, in order to comply with the *Gwanda* and *Banda* rulings, the Malawian Parliament adopted a report by the Parliamentary

¹²⁵ See *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi*, S. AFR. LITIG. CTR. (SALC) & CTR. FOR HUM. RTS. EDUC. ADVICE AND ASSISTANCE (CHREAA) 86-87 (June 2013), <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/No-Justice-for-the-Poor-A-Preliminary-Study-of-the-Law-and-Practice-Relating-to-Arrests-for-Nuisance-Related-Offences-in-Blantyre-Malawi.pdf> [hereinafter SALC & CHREAA, *No Justice for the Poor*].

¹²⁶ See Chikosa Banda & Anneke Meerkotter, *Examining the Constitutionality of Rogue and Vagabond Offences in Malawi*, UNIV. OF MALAWI 57, 67 (2016), <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/7Banda.pdf>.

¹²⁷ See *News Release: Malawi High Court Declares Rogue and Vagabond Offence Unconstitutional*, *supra* note 122.

¹²⁸ S. AFR. LITIG. CTR., *Sex Workers' Rights Pamphlet* (2017), <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/SALC-Sex-workers-rights-pamphlet-English.pdf>.

¹²⁹ *State v. Banda* [2018] No. 28 (High Ct. Malawi) (Malawi).

¹³⁰ *Malawi High Court Declares Mass Arrests (Sweeping Exercises) Unconstitutional*, S. AFR. LITIG. CTR. (Nov. 9, 2022), <https://www.southernafricalitigationcentre.org/news-release-malawi-high-court-declares-mass-arrests-sweeping-exercises-unconstitutional/>.

¹³¹ *Id.*

Committee on Legal Affairs to review the Penal Code's vagrancy-related offences.¹³²

Advocates' victory in the Malawi case study is a model for challenging statutes that indirectly target sex workers. While celebrating this advancement, sex workers' rights advocates in Malawi also astutely note that the repeal of laws negatively impacting sex workers must be coupled with advocacy for affirmative protections: they argue that no one can expect sex workers, who have already experienced so much abuse from law enforcement, to feel protected by police because the rogue and vagabond provision has been repealed—additional steps, including legal reforms that aim to end discrimination against sex workers, are necessary.¹³³

4. *Landmark Supreme Court Order Issues Directives on State Protection of Sex Workers' Rights in India*

In 2022, the Supreme Court of India issued a landmark order reaffirming sex workers' right to live with dignity and issuing directives to central and state governments regarding protection of sex workers' rights.¹³⁴ The order's directives address a range of pressing issues,

¹³² Thomas Kachere, *Parliament adopts report to review vagrancy offences in Penal Code*, S. AFR. LITIG. CTR. (Nov. 20, 2023), <https://www.southernafricalitigationcentre.org/parliament-adopts-report-to-review-vagrancy-offences-in-penal-code/>. The *Banda* ruling had admonished the executive and legislative branches for a history of not legislating changes to the penal code to reflect the High Court's rulings and ordered that they would be held in contempt of the Court if they did not complete a review of the Penal Code's vagrancy statutes by July 2024. *State v. Banda*, ¶ 3.8.1. After the press criticized the Parliament in May 2024 for failure to move forward on reform legislation, the Parliamentary Committee on Legal Affairs initiated the review process to comply with the Court's order. Thomas Kachere, *Parliament 'Sits on' Rogue, Vagabond Court Order*, S. AFR. LITIG. CTR. (Nov. 20, 2023), <https://www.southernafricalitigationcentre.org/parliament-sits-on-rogue-vagabond-court-order/>; Andrew Viano, *Parley, Executive Race to Amend Rogue & Vagabond Law*, MALAWI NEWS 360, <https://malawinews360.com/parley-executive-race-to-amend-rogue-vagabond-law> (last updated July 3, 2024).

¹³³ Rumbi Chakamba, *'They Say We're Sinners': Protecting Malawi's Sex Workers From Police*, HUFF POST (Aug. 12, 2017, 12:22 PM), https://www.huffpost.com/entry/protecting-malawi-sex-workers-from-police_n_598f2a5ce4b08a247274a7c8.

¹³⁴ See Nat'l Network of Sex Workers India, *Sex Workers not to be abused by police, rescued without their consent, and Press Council to regulate imagery around sex work, directs Honourable Supreme Court of India*, MEDIUM (May 25, 2022), <https://nationalnetworkofsexworkers.medium.com/sex-workers-not-to-be-abused-by->

including police violence against sex workers and the “protective homes” where sex workers are effectively imprisoned indefinitely after brothel raids.¹³⁵ Although the order did not call for the decriminalization of sex work in India, it sets an important judicial precedent for future legislation and court judgements furthering the goals of the sex workers’ rights movement in India and globally.¹³⁶

The 2022 Supreme Court order, issued under Criminal Appeal No. 135/2010, is an addition to and continuation of the Court’s 2011 judgment in *Budhadev Karmaskar v. State of West Bengal*, where the Court first affirmed sex workers’ right to dignity and formed a panel to develop recommendations on both the prevention of human trafficking and “conditions conducive to sex workers to live with dignity.”¹³⁷ In 2016, the panel issued recommendations; yet, as of 2022, the Government of India had still not passed legislation reforming sex work laws.¹³⁸ In light of this inaction, the Supreme Court used its power under the Constitution to issue its 2022 order and fill the gap in legislation on sex workers’ rights until the government passes a bill incorporating the panel’s recommendations.¹³⁹

police-rescued-without-their-consent-and-press-council-to-e89c10e3bd97; *see also* Varsha Nair, *Implications of the Recent Supreme Court Order on Sex Work*, CTR. FOR L. & POL’Y RSCH. (June 25, 2022), <https://clpr.org.in/blog/implications-of-the-recent-supreme-court-order-on-sex-work/>. Sex work in India is primarily governed by the Immoral Traffic (Prevention) Act of 1956 (ITPA). Sarthak Gupta, *India’s Supreme Court rules to protect sex workers amid the COVID-19 pandemic*, OPEN GLOB. RTS. (July 21, 2022), <https://www.openglobalrights.org/india-supreme-court-rules-to-protect-sex-workers-amid-covid-pandemic>. Under the ITPA, sex work is not criminalized; however, most conduct associated with sex work is prohibited, including public solicitation, owning and operating a brothel or knowingly supporting a brothel owner, or living on another person’s sex work earnings. Anubhuti Jain, *Supreme Court order on sex work historic, but execution will be the real hurdle*, PRINT (June 8, 2022, 3:53 PM), <https://theprint.in/campus-voice/supreme-court-order-on-sex-work-historic-but-execution-will-be-the-real-hurdle/988049/>; *see also* Gupta, *supra* note 134; this article also mentions the Indian Constitution and the Juvenile Justice Act.

¹³⁵ Nat’l Network of Sex Workers India, *supra* note 134.

¹³⁶ *See Sex workers in India celebrate Supreme Court Ruling Recognising Sex Work as a ‘Profession’*, GLOB. NETWORK OF SEX WORK PROJECTS (June 1, 2022), <https://www.nswp.org/news/sex-workers-india-celebrate-supreme-court-ruling-recognising-sex-work-profession> [hereinafter *Sex workers in India Celebrate Sup. Ct. Ruling*]; Nair, *supra* note 134.

¹³⁷ Criminal Appeal No. 135/2010.

¹³⁸ *Id.*

¹³⁹ *Id.* Article 142 of the Constitution allows the Court use orders to fill such legislative vacuums when there is a constitutional issue that neither the legislature nor the executive has addressed. *See id.*; *See also* The Wire Staff, *SC Orders Police Against Abuse of Sex*

The order contains ten directives to state governments and Union Territories (UTs) pertaining to sex workers and their rights.¹⁴⁰ Under the order, police must refrain from taking criminal action against consensual adult sex workers, and take seriously any complaint a sex worker makes to them.¹⁴¹ Sex workers who experience sexual assault are entitled to responsive care, “including immediate medical assistance.”¹⁴² Sex workers “should not be arrested or penalised or harassed or victimised” during brothel raids.¹⁴³ States must review all “Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner.”¹⁴⁴ The order specifically calls out law enforcement for abusing and failing to recognize sex workers’ fundamental human rights, and instructs that police “should be sensitised to the rights of sex workers.”¹⁴⁵ The Court also addresses insensitivity and stigma in news reports about sex workers, stating that the Press Council of India should issue guidelines to help prevent media from revealing sex workers’ identities.¹⁴⁶ Carrying personal protective equipment such as condoms cannot be used as evidence for a criminal offense.¹⁴⁷ Central and State governments must include sex workers in policy and program design and decision-making pertaining to sex work laws and regulations.¹⁴⁸ Government legal services should offer know-your-rights and awareness campaigns to educate sex workers about their legal rights.¹⁴⁹ Finally, sex workers’ children should not be separated from them simply because the parent is a sex worker, and it should not be

Workers, Media from Publishing Their Pictures, THE WIRE (May 25, 2022), <https://thewire.in/law/sc-orders-police-against-abuse-of-sex-workers-media-from-publishing-their-pictures>. [hereinafter *SC Orders Police Against Abuse of Sex Workers*].

¹⁴⁰ Utsarjana Mutsuddi, *Decoding the Recent Supreme Court Ruling on Sex Work*, FEMINISM IN INDIA (May 31, 2022), <https://feminisminindia.com/2022/05/31/criminalising-voyeurism-and-destigmatising-sex-work-the-recent-supreme-court-ruling/>; Rakesh Shukla et al., *Emerging Shifts in Sex Workers’ Rights*, SANGRAM (June 2023), <https://www.sangram.org/upload/resources/11-module-sangram-session-sc-order-release-ver-221123.pdf>. [hereinafter *Emerging Shifts in Sex Workers’ Rights*].

¹⁴¹ Criminal Appeal No. 135/2010, § (i).

¹⁴² *Id.* § (ii).

¹⁴³ *Id.* § (iii).

¹⁴⁴ *Id.* § (iv).

¹⁴⁵ *Id.* § (v).

¹⁴⁶ *Id.* § (vi).

¹⁴⁷ *Id.* § (vii).

¹⁴⁸ *Id.* § (viii).

¹⁴⁹ *Id.* § (ix).

assumed that a minor has been trafficked because they are “found living in a brothel or with sex workers.”¹⁵⁰

Sex workers' rights advocates identified the provisions regarding police brutality and protective homes as their biggest wins in this watershed order.¹⁵¹ Sex worker organizers have centered many of their advocacy efforts around fighting against police violence and unjust detainment of sex workers in protective homes, and the Court's recognition of these efforts came as a victory.¹⁵² Before the Supreme Court order, protective homes operated with little oversight, legally cutting sex workers off from their income, families, legal assistance, and rights organizations, sometimes for one or two years.¹⁵³ Some advocates in India are skeptical that police will comply with measures to reduce harassment against sex workers, but believe that the Supreme Court order creates a valuable legal framework to expose police harassment.¹⁵⁴ Indeed, in 2024 the Madras High Court relied on the order's provision protecting sex workers during brothel raids to dismiss a criminal case against two sex workers.¹⁵⁵ The Indian Supreme Court's wide-ranging and sex worker rights-affirming order is sure to continue to serve as an important precedent for pro-sex workers' rights legislation and court judgments inside and outside of India.

B. The Centrality of Sex Worker Rights Advocacy to

¹⁵⁰ *Id.* § (x).

¹⁵¹ See *Supreme Court Order on Sex Workers' Rights—What it Means*, THE SUNO INDIA SHOW, at 05:45, 10:30 (June 14, 2022), <https://podcasts.apple.com/us/podcast/supreme-court-order-on-sex-workers-rights-what-it-means/id1454403961?i=1000566339155.02:20>.

¹⁵² Meena Saraswathi Seshu & Aarthi Pai, *Why This is a Big Moment in Sex Worker Rights Movement*, TIMES OF INDIA (May 30, 2022, 10:16 PM), <https://sangram.org/upload/news/newsPdf/toi-sc-judgment-20.pdf>.

¹⁵³ *Id.*

¹⁵⁴ See Rimal Farrukh, *New Supreme Court Order Protects Sex Workers From Police Abuse*, VICE (May 31, 2022, 11:44 AM), <https://www.vice.com/en/article/k7w453/supreme-court-order-protects-sex-workers-india-from-police-abuse>; see also *Sex workers in India celebrate Sup. Ct. ruling*, *supra* note 136.

¹⁵⁵ See, e.g., *Prabakaran v. State* (2024), No. 7986 (Madras HC) (India) (“In this backdrop, the decision of the Hon’ble Apex Court in BUDHADEV KARMASKAR Vs. THE STATE OF WEST BENGAL & ORS (2022 Live Law (SC) 525), assumes significance, wherein, the Hon’ble Apex Court has held that whenever any brothel is raided, sex workers should not be arrested or penalised or harassed or victimised...”)(internal citations omitted).

Recent Legal Wins

Sex workers' rights advocacy must be at the center of all legal reform processes that seek to advance sex workers' rights: it was the main ingredient for all the successful reforms we chronicled in the previous section. A comparative analysis of our case studies reveals that sex workers' rights advocates have successfully engaged in coordinated, long-term advocacy to influence public opinion and judicial and legislative decision-making by (1) building coalitions with sympathetic politicians and other allied groups; (2) participating in legislative reform processes; (3) conducting research that provides evidence-based support for legal reform that centers sex workers' lived experiences; (4) developing public education and media campaigns; and (5) engaging in protest and direct action.

1. Coalition-Building with Politicians and Allies

To strengthen their legal reform efforts, sex workers' rights groups in our case studies have formed coalitions with strategic political partners in government and other allied groups and overlapping social movements. This coalition-building has been a crucial component in securing legal victories. For example, sex workers' rights advocates arguing for decriminalization in the Northern Territory formed strategic coalitions with politicians, local union groups, LGBTQ+ and HIV/AIDS organizations, and human rights and gender justice groups.¹⁵⁶ The main sex workers' rights groups that fostered the movement for change were the Sex Worker Outreach Program–Northern Territory (SWOP NT) and the Sex Worker Reference Group (SWRG), along with national body the Scarlet Alliance: Australian Sex Workers Association (Scarlet Alliance).¹⁵⁷ These groups collaborated with members of the Northern Territory government to push for three prongs of reform: decriminalization; work, health, safety, and industrial protections; and anti-discrimination amendments.¹⁵⁸ Key political figures in this coalition were Gerry McCarthy, a Member of the Legislative Assembly who introduced the Northern Territory decriminalization bill to the legislature,

¹⁵⁶ See generally Gregoire, *supra* note 66; see also Sarah Spina-Matthews, *With anti-discrimination changes, Northern Territory has some of the world's most progressive sex work laws. It wasn't always that way*, ABC NEWS (Nov. 26, 2022, 2:17 PM), <https://www.abc.net.au/news/2022-11-27/northern-territory-world-first-sex-worker-protections-laws/101697764>.

¹⁵⁷ Gregoire, *supra* note 66.

¹⁵⁸ Spina-Matthews, *supra* note 156.

Labor Minister Dale Wakefield, and Attorney General Natasha Fyles.¹⁵⁹ Support from these high-ranking political actors helped push the movement for decriminalization forward in the legislature; Scarlet Alliance and SWOP NT have also acknowledged that general solidarity and support from the Labor Government helped bring decriminalization to fruition.¹⁶⁰

In addition to their partnerships with sympathetic and influential politicians, sex workers' rights groups in the Northern Territory formed coalitions with allied groups that advocated for decriminalization and anti-discrimination protections for sex workers.¹⁶¹ Early in its advocacy, SWOP NT developed a long-lasting relationship with Unions NT—a trade union representing thirteen member unions in the Northern Territory—and the Northern Territory AIDS and Hepatitis Council.¹⁶² Trade unions in the Northern Territory provided technical support for sex workers' rights advocates that was vital to the legislative reform decriminalizing sex work.¹⁶³ Union members who were educated by sex worker peers also presented and supported motions to support sex workers' rights at NT Labor conferences.¹⁶⁴ Sex workers' rights organizations also strengthened their tactical collaborations with social movements and legal, medical, and women's rights organizations to eliminate the registration and licensing system in NT that existed before decriminalization.¹⁶⁵

Decriminalization legislation in Belgium was the culmination of efforts by Belgian sex workers' rights organizations and required

¹⁵⁹ EPSC, *Inquiry into the SIB 2019*, *supra* note 83, at 14, ¶ 2.5; Spina-Matthews, *supra* note 156.

¹⁶⁰ See NT Sex Work Laws, *supra* note 90. Sex worker advocates also directly thanked the Labor Government for their support in passing the Anti-Discrimination Act, with its protections for sex work and sex workers, in 2022. SCARLET ALL., SEX WORKER OUTREACH PROGRAM (SWOP NT) & SEX WORKER REFERENCE GRP. (SWRG), *In NT, sex workers, our family and associates finally receive protection for discrimination against us, our work and our identity*, N. TERRITORY AIDS AND HEPATITIS COUNCIL (Nov. 22, 2022), <https://www.ntahc.org.au/media-release>. Opposition to the SIA came primarily from MLA Gerry Wood and other legislators who preferred a Nordic-type model that would criminalize the purchase of sexual services. See Roberts & Breen, *supra* note 5.

¹⁶¹ See generally Gregoire, *supra* note 66; see also Spina-Matthews, *supra* note 156.

¹⁶² *Id.* At the time, SWOP-NT was known as PANTHER. *Id.*; *About Us*, UNIONS NT, <https://unionsnt.com.au/about/> (last visited Aug. 7, 2024); NSW, THE SMART SEX WORKER'S GUIDE TO DECRIMINALISATION 19 (2020).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Gregoire, *supra* note 66.

collaboration with sympathetic allies, including political figures.¹⁶⁶ In 2015, sex worker activists formed UTSOPI, the Belgian Union of Sex Workers, a central organizational actor in Belgium's decriminalization movement.¹⁶⁷ Belgian sex workers' rights advocates found a staunch ally in the Flemish Liberal Party, who invited UTSOPI to their headquarters to formulate a policy paper about improving sex workers' rights. Consequently, in September 2020, Belgium's majority political parties agreed to add "improving the living and working conditions of sex workers" to the federal coalition agenda.¹⁶⁸ Belgian sex workers' rights organizations used their coalitions to strengthen their ties to political parties, trade unions, and other sectors to keep sex workers' rights on the Parliament's agenda.¹⁶⁹

In Victoria, sex workers' rights advocates' partnership with politicians also proved crucial: Fiona Patten, an Upper House Member of Parliament, the Reason Party-leader, a staunch advocate for sex work decriminalization, and a former sex worker herself, headed the parliamentary review of Victorian laws governing sex work that provided recommendations on the decriminalization of sex work.¹⁷⁰ In Queensland, the decriminalization bill had substantial support from allied groups including the Queensland Human Rights Commission, Queensland Unions, the Public Health Association of Australia, and the University of Queensland School of Public Health.¹⁷¹

¹⁶⁶ See Joanna Gill, *How COVID-19 Helped Sex Workers in Belgium Make History*, REUTERS (May 31, 2022, 3:58 AM), <https://www.reuters.com/article/idUSL5N2X54FF/>.

¹⁶⁷ *Mission & Vision*, UTSOPI, <https://www.utsopi.be/about/mission-vision> (last visited July 25, 2024).

¹⁶⁸ See *Timeline Decriminalisation: From March 2020 until March 2022*, UTSOPI at 3 (2023), https://d2h846bfzrswm.cloudfront.net/images/TimelineDecriminalisation_2023UTSOP I.pdf [hereinafter UTSOPI, *Timeline*].

¹⁶⁹ See *id.* at 1-4.

¹⁷⁰ Buckley, *supra* note 67. Animal Justice Party MP, Andy Meddick, also spearheaded the review alongside Patten. *Id.*; Sumeyya Ilanbey, 'Historic Day' for Victoria as Sex Work Is Decriminalised, THE AGE (Feb. 10, 2022, 9:07 PM), <https://www.theage.com.au/politics/victoria/historic-day-for-victoria-as-sex-work-decriminalisation-nears-20220210-p59v9r.html>.

¹⁷¹ Kenji Sato, *Queensland Parliamentary Inquiry Backs Full Sex Work Decriminalisation Reforms*, AUSTL. BROAD. CORP. (Apr. 12, 2024, 3:56 AM), <https://www.abc.net.au/news/2024-04-12/inquiry-supports-sex-work-decriminalisation-push-queensland/103697104>. The bill also drew opposition from several groups such as the Australian Christian Lobby, the Australian Federation for the Family, and Family Voice. *Id.*

2. Direct Participation in the Reform Process

The most significant legal advancements in our case studies were achieved in cases where sex workers were centered as key participants and leaders in legal reform processes. Sex workers' rights advocates in Queensland, the Northern Territory, Victoria, Belgium, and India were major stakeholders in government consultation processes that resulted in significant reform. Sex workers' rights advocates in Queensland participated in the legislative reform process by successfully advocating to eliminate the sex work licensing system that existed in Queensland from proposed decriminalization legislation.¹⁷² In August 2021, Queensland's Attorney General Shannon Fentiman empaneled the Queensland Law Reform Commission (QLRC) to review and recommend a structure for the decriminalization of sex work in Queensland.¹⁷³ The QLRC's review process consisted of the release of a public consultation paper and the review of submissions by stakeholders, including sex worker organizations.¹⁷⁴ Sex work organizations played an active role in the QLRC review process by making submissions to the commission.¹⁷⁵ When the QLRC's public consultation paper recommended maintaining a licensing system for sex work, sex workers' rights organizations pushed back and advocated for its elimination.¹⁷⁶ In a joint submission in response to the public consultation paper, sex workers' rights organizations DecrimQLD and Respect Inc argued for the elimination of Queensland's burdensome licensing system and advocated for a

¹⁷² See Explanatory Notes, Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 (Qld) 2 (Austl.), <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2022-034> [hereinafter EXPLANATORY NOTES]; see also RESPECT INC. & #DECRIMQLD, JOINT SUBMISSION: RESPECT INC & #DECRIMQLD RESPONDING TO THE QLRC 'A FRAMEWORK FOR A DECRIMINALISED SEX WORK INDUSTRY IN QUEENSLAND' CONSULTATION PAPER WP 80,' 66 (2022), https://respectqld.org.au/wp-content/uploads/Decrim/QLRC_COMPLETE.pdf.

¹⁷³ RESPECT INC. & #DECRIMQLD, *supra* note 172; See Explanatory Notes, *supra* note 172, at 1.

¹⁷⁴ QUEENSL. L. REFORM COMM'N, A DECRIMINALIZED SEX-WORK INDUSTRY FOR QUEENSLAND 4 (2023) [hereinafter A DECRIMINALIZED SEX-WORK INDUSTRY FOR QUEENSLAND]; QUEENSL. L. REFORM COMM'N, TERMS OF REFERENCE 4 (2022), https://www qlrc.qld.gov.au/_data/assets/pdf_file/0010/747316/Amended-ToRs-3-Nov-2022.pdf [hereinafter TERMS OF REFERENCE].

¹⁷⁵ See *Queensland Laws*, SCARLET ALL. (July 11, 2022), <https://scarletalliance.org.au/resources/laws/qld/>; see generally A DECRIMINALIZED SEX-WORK INDUSTRY FOR QUEENSLAND, *supra* note 174.

¹⁷⁶ RESPECT INC. & #DECRIMQLD, *supra* note 172, at 63, 66.

framework that incentivizes sex workers to “be part of the legitimate industry.”¹⁷⁷ They argued that licensing did not prevent crime, corruption, or sex worker exploitation.¹⁷⁸ The QLRC implemented this feedback from sex workers’ rights groups and ultimately recommended the removal of the licensing system in Queensland in the final decriminalization bill.¹⁷⁹

Following the Queensland Government’s announcement of support for the QLRC’s recommendations, the Decriminalising Sex Work Bill was introduced to Parliament on February 15, 2024.¹⁸⁰ The bill’s purpose was to implement the recommendations of the QLRC through amendments and repeals of several statutes.¹⁸¹ The bill was then referred to a parliamentary committee which considered nearly 180 submissions from stakeholders, including sex worker advocacy organizations.¹⁸² Scarlet Alliance made a submission to the committee and urged it to continue its rigorous consideration of sex worker experiences and comprehensive stakeholder consultation employed by the QLRC and Queensland Government.¹⁸³ Scarlet Alliance also successfully recommended that the Queensland Government enlist the sex workers’ rights group Respect Inc to create resources for sex workers to inform them of their new rights and responsibilities under decriminalization, to

¹⁷⁷ *Id.* at 67-68.

¹⁷⁸ *Id.* at 63, 66.

¹⁷⁹ A DECRIMINALIZED SEX-WORK INDUSTRY FOR QUEENSLAND, *supra* note 174, at 11. See Courtney Kruk, *Parliamentary Committee Accepts Framework to Decriminalise Sex Work in Qld*, BRISBANE TIMES (Apr. 13, 2024, 9:19 AM), <https://www.brisbanetimes.com.au/politics/queensland/parliamentary-committee-accepts-framework-to-decriminalise-sex-work-in-qld-20240401-p5fgly.html>.

¹⁸⁰ *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024*, QUEENSL. GOV: LEGISLATION (June 11, 2024), <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2022-034/lh>

¹⁸¹ See Explanatory Notes, *supra* note 172, at 2. Relevant statutes include the Anti-Discrimination Act 1991, the City of Brisbane Act 2010, the Criminal Code, the District Court of Queensland Act 1967, the Liquor Act 1992, the Local Government Act 2009, the Penalties and Sentences Act 1992, the Work Health and Safety Act 2011, and the Prostitution Act 1999. *Id.*

¹⁸² Kruk, *supra* note 179; Housing, Big Build and Manufacturing Committee, Report No. 4, 57th Parliament - Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024, QLD: Parliament, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=240&id=4366> (last visited Aug. 23, 2024); Explanatory Notes, *supra* note 172, at 9.

¹⁸³ *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024*, SCARLET ALL. (Mar. 8, 2024), https://scarletalliance.org.au/wp-content/uploads/FINAL_Scarlet-Alliance-submission-to-QLD-Committee-on-Criminal-Code-Decriminalising-Sex-Work-Bill-1.pdf.

educate the Queensland governmental bodies who would regulate the sex work industry through a new approach, and to foster connections between individual sex workers and the government agencies responsible for enforcing the new sex worker protections.¹⁸⁴

Sex workers' rights advocates in the Northern Territory participated in the decriminalization legislative reform process by submitting recommendations in response to governmental law reform discussion papers on the proposed decriminalization legislation known as Sex Industry Bill 2019, presenting evidence to legislative committees, and speaking at public hearings.¹⁸⁵ In 2019, the Northern Territory government assigned an Economic Policy Scrutiny Committee to conduct public consultations on best practices to recommend to the legislature regarding reform of laws that applied to the sex industry.¹⁸⁶ The final legislation, which decriminalized sex work, incorporated many of the recommendations contained in the sex worker rights advocates' submissions to the Committee during the public consultation period.¹⁸⁷ After decriminalization was achieved, sex workers' rights advocates conducted a study on the stigma and discrimination sex workers continued to face despite decriminalization.¹⁸⁸ Scarlet Alliance, SWOP NT, and SWRG submitted a collective response to the Northern Territory Exposure Draft Anti-Discrimination Amendment Bill (ADA) that detailed NT sex workers' experiences of discrimination, harassment, and vilification and successfully convinced the legislature to add "sex work" and "sex worker" as protected attributes under the ADA.¹⁸⁹

During the Victoria government's public consultation period on the decriminalization of sex work, sex workers and sex work advocacy organizations submitted written pieces, responded to surveys, and participated in meetings.¹⁹⁰ The legislative decriminalization process

¹⁸⁴ *Id.* at 10.

¹⁸⁵ Gregoire, *supra* note 66.

¹⁸⁶ See EPSC, *Inquiry into the SIB 2019*, *supra* note 83, at 11, ¶ 1.1, 1.2, 1.4.

¹⁸⁷ *Id.* at ¶ 1.3; 4; 16, ¶ 3.2. See recommendations in Sex Worker Outreach Program & Sex Worker Reference Grp., *Reforming Regulation of the Sex Industry in the Northern Territory* 6-8 (Mar. 29, 2019), https://irp-cdn.multiscreensite.com/7a46c311/files/uploaded/final_swop_nt_swrg_submission_law_reform_nt.pdf [hereinafter "SWOP/SWRG Collective Submission"]; see also Anti-Discrimination Amendment Submission, *supra* note 109.

¹⁸⁸ Spina-Matthews, *supra* note 156.

¹⁸⁹ See generally Anti-Discrimination Amendment Submission, *supra* note 109.

¹⁹⁰ See generally Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work* 2-3 (July 2022), <https://scarletalliance.org.au/wp->

began in 2019 with a parliamentary review of Victorian laws governing sex work.¹⁹¹ The review process examined workplace safety, criminal activity within the sex work industry, and stigma surrounding sex work with the goal of keeping sex workers safe.¹⁹² The review committee consulted with various stakeholders, including sex workers and sex workers' rights organizations.¹⁹³ Scarlet Alliance, Vixen, and Sex Work Law Reform Victoria (SWLRV) conducted community consultations with sex workers for the government review process.¹⁹⁴ They facilitated the participation of individual sex workers in the process and created a public information packet including details on the status of the decriminalization law, the mechanics of the legislative review process, how sex workers could participate in the legislative review process, and why sex workers were advocating for decriminalization.¹⁹⁵

In Belgium, government officials praised the essential role that sex workers' rights advocates played in the decriminalization legislative reform process. Minister of Justice Vincent Van Quickenborne stated, "I am proud to say that the oldest job in the world—as the cliché goes—is now the newest protected job in Belgium...We are grateful to [Belgian sex worker union] UTSOPI for working with us. Their advice led us to decriminalisation, not legalisation."¹⁹⁶ Belgian sex workers' rights advocates also played a central role in development of the landmark labor

content/uploads/2022/07/VIC_Decrim_Review_May2020.pdf [hereinafter Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*]; *Decriminalising Sex Work in Victoria*, VICTORIA STATE GOV'T: ENGAGE VICTORIA (Feb. 22, 2022), <https://engage.vic.gov.au/sex-work-decriminalisation>.

¹⁹¹ Sumeyya Ilanbey, 'Historic Day' for Victoria as Sex Work Is Decriminalised, AGE (Feb. 10, 2022, 9:07 PM), <https://www.theage.com.au/politics/victoria/historic-day-for-victoria-as-sex-work-decriminalisation-nears-20220210-p59v9r.html>.

¹⁹² Australian Associated Press, *Victorian Sex Work Inquiry to Review Outdated and 'Unfit for Purpose' Laws*, GUARDIAN (Nov. 26, 2019, 7:45 PM), <https://www.theguardian.com/australia-news/2019/nov/27/victoria-sex-work-inquiry-to-review-outdated-and-unfit-for-purpose-laws>.

¹⁹³ See *Decriminalising Sex Work in Victoria*, VICTORIA STATE GOV'T: ENGAGE VICTORIA, *supra* note 190.

¹⁹⁴ *Sex Workers' Voices VIC*, <https://swvoicesvic.com/> (last visited Aug. 9, 2024); Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190, at 1.

¹⁹⁵ Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190, at 1.

¹⁹⁶ Wszebor Sienkiewicz, *Turning the Tide: Sex Workers Stand for Their Rights at the European Parliament*, EUR. SEX WORKERS RTS. ALL. (Oct. 14, 2022), https://www.eswalliance.org/turning_the_tide_european_parliament [hereinafter *Turning the Tide*].

law for sex workers. Following the decriminalization win, sex workers' rights organizations UTSOPI, Violet, and Espace P. lobbied the Belgian Parliament and participated in periodic dialogues with the Labor, Health, and Justice Cabinets and their Ministers, to push for regulations that would help sex workers experience the same safety and independence as workers in other sectors.¹⁹⁷ During the labor law drafting process between May 2022 and June 2023, UTSOPI director Daan Bauwens said the organization was formally consulted five times, and sex workers had the opportunity to read the Cabinets' draft legislation and offer feedback.¹⁹⁸

In the *Buddhadev Karmaskar v. State of West Bengal* case, the Supreme Court of India called on sex workers to participate in its decision-making around issues that would have direct impacts on their lives.¹⁹⁹ The panel the Court created to develop key recommendations on reforms to ensure sex workers' right to dignity, included the meaningful and direct involvement of representatives from Durbar Mahila Samanwaya Committee (DMSC), a collective representing over 60,000 sex workers in West Bengal.²⁰⁰ The panel consulted with National Network of Sex Workers (NNSW) member organizations to inform the panel's recommendations.²⁰¹

¹⁹⁷ See *id.*; see also NSWP, *Sex Workers in Belgium Celebrate Historic Vote*, *supra* note 8; Maïthé Chini, 'Same Rights as Other Jobs': Belgium Introduces Employment Contracts for Sex Workers, BRUSSELS TIMES (June 26, 2023), <https://www.brusselstimes.com/572721/same-rights-as-other-jobs-belgium-introduces-employment-contracts-for-sex-workers> [hereinafter Chini, *Same Rights as Other Jobs*].

¹⁹⁸ Lyons, *supra* note 104.

¹⁹⁹ Shardha Rajam, *Buddhadev Karmaskar: A Step Towards Decriminalisation of Sex Work? Dr. Prabha Kotiswaran in Conversation with Shardha Rajam*, P39A CRIM. L. BLOG (Aug. 30, 2022), <https://p39ablog.com/2022/08/buddhadev-karmaskar-a-step-towards-decriminalisation-of-sex-work/>; *Indian Partners Reflect on a Year After Sex Workers' Hum. Rts. Affirmed*, UNAIDS (Oct. 5, 2023), https://www.unaids.org/en/resources/presscentre/featurestories/2023/october/20231005_india-sex-workers-human-rights.

²⁰⁰ *Sex workers in India Celebrate Sup. Ct. Ruling*, *supra* note 136; *Durbar Mahil Samanwaya Committee (DMSC)*, GLOB. ALL. AGAINST TRAFFIC IN WOMEN, <https://gaatw.org/members/asia/127-membership/asia/553-durbar-mahila-samanwaua-committee-dmsc> (last visited July 25, 2024); Rajam, *supra* note 199; Gupta, *supra* note 134.

²⁰¹ NNSW member organizations consulted included including VAMP, Karnataka Sex Workers Union, Uttara Karnataka Mahila Okkuta, Vadamalar Federation, Saheli Sangh, Sangama, Women's Initiatives (WINS), and Sampada Grameen Mahila Sanstha (SANGRAM) to inform their recommendations. Seshu & Pai, *supra* note 152.

3. Research to Support Legal Reform

As part of their legal reform advocacy, sex workers' rights advocates in our case studies developed research that centered sex workers' lived experiences to lay the foundation for evidence-based legal reforms. In the Northern Territory, sex workers' rights organizations and allies conducted research on sex workers' experiences of discrimination and stigmatization to advocate for the inclusion of sex workers as a protected class under the Anti-Discrimination Act.²⁰² A 2020 survey of 647 sex workers conducted by Scarlet Alliance and the Centre for Social Research and Health (CSRH) found that 96% of sex workers surveyed reported experiencing discrimination or stigmatization.²⁰³ SWOP NT collected qualitative evidence of discrimination against sex workers in "Magistrate, Family and Supreme Courts, medical settings inclusive of private and public hospitals, real estate and hotel and apartment rentals, banks, financial consultants, accountants, crisis support services, counseling and psychiatric services."²⁰⁴ The organizations drew on this research to recommend that protected attributes under the ADA include current or past sex work status.²⁰⁵

Advocates in Malawi conducted and disseminated research documenting the impact of oppressive laws on sex workers to influence judicial decision-makers and advocate for criminal and administrative legal reforms. The Centre for Human Rights Education Advice and Assistance (CHREAA) and the Southern African Litigation Center (SALC), the two human rights organizations that were central to Malawi's legal reform of sex work-related laws, have researched and documented issues in the law and law enforcement that harm sex workers.²⁰⁶ In 2013, before intervening in the *Gwanda* case, CHREAA and SALC published a report on the history and arbitrary enforcement of Malawi's vagrancy laws to criminalize the poor in Malawi, which included a chapter detailing the negative effects of these laws on sex workers.²⁰⁷ Based on their findings, CHREAA and SALC advocated for the repeal of the rogue and vagabond statute and continue to push for decriminalization and removal

²⁰² See generally Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 17.

²⁰⁶ See generally *No Justice for the Poor*, *supra* note 125, at Ch. 7.

²⁰⁷ CHREAA Blog, *Decriminalization of Vagrancy Campaign*, *supra* note 123. See generally SALC & CHREAA, *No Justice for the Poor*, *supra* note 125.

of other petty offenses that disproportionately harm sex workers.²⁰⁸

In India, advocates conducted research on the impacts of the COVID-19 pandemic on sex workers to encourage the Supreme Court to intervene on their behalf, advocacy that ultimately preceded and influenced the Court's landmark 2022 order. Sex workers' rights organizations documented the pandemic's impact on sex workers, who disproportionately experienced hunger, homelessness, debt, and suicide.²⁰⁹ In 2020, a NNSW member conducted a survey that found that less than 35% of sex worker households had access to documents that would entitle them to pandemic-related government programs.²¹⁰ Additional research reported that 66% of surveyed sex workers reported a total loss of work during 2020 pandemic lockdowns.²¹¹ Sex workers' rights organizations used this research to push the Supreme Court to challenge the government's exclusion of sex workers from pandemic relief policies.²¹² In September 2020, the Supreme Court responded by ordering states to supply dry rations to sex workers without requiring them to show ID cards.²¹³ In December 2021, the Court issued an additional ruling requiring federal and local governments to issue voter and ration cards to sex workers, so they could access pandemic benefits.²¹⁴ Shortly after, in 2022, the Supreme Court issued its landmark order comprising comprehensive rights-based directives on state protection of sex workers.²¹⁵

²⁰⁸ *News Release: Malawi High Court Declares Rogue and Vagabond Offence Unconstitutional*, *supra* note 122.

²⁰⁹ *Invisible and Uncounted: Sex Workers in India*, IISG: SDG KNOWLEDGE HUB (Oct. 16, 2020), <https://sdg.iisd.org/commentary/guest-articles/invisible-and-uncounted-sex-workers-in-india/>; *See Indian Partners Reflect on a Year After Sex Workers' Hum. Rts. Affirmed*, *supra* note 199.

²¹⁰ Gupta, *supra* note 134.

²¹¹ GLOB. CALL TO ACTION AGAINST POVERTY & WADA NA TODO ABHIYAN, TRACKING IMPACT OF COVID-19 ON SEX WORKERS IN INDIA 6-7 (2022) [hereinafter TRACKING IMPACT OF COVID-19 ON SEX WORKERS IN INDIA].

²¹² Rajam, *supra* note 199; Schmall & Yasir, *supra* note 14; Gupta, *supra* note 134.

²¹³ Alok Ranjan, *Hist. of Indian Cts. Ruling in Favour of Sex Workers*, INDIA TODAY (May 27, 2022, 5:02 PM), <https://www.indiatoday.in/law/story/sex-workers-indian-court-ruling-in-favour-history-1955043-2022-05-27>.

²¹⁴ Sameer Yasir, *India's Sex Workers Win Benefits from the Country's Top Ct.*, N.Y. TIMES (Dec. 15, 2021), <https://www.nytimes.com/2021/12/15/world/asia/india-sex-workers-benefits.html>.

²¹⁵ *SC Orders Police Against Abuse of Sex Workers*, *supra* note 139.

4. Public Education and Media Campaigns

Sex worker rights' advocates in our case studies successfully engaged in public education and media campaigns to de-stigmatize and shift narratives around sex work and to sensitize the public, judiciary, and legislatures on the need for legal reforms to protect sex workers' rights. Advocates have trained journalists to consult sex workers when reporting on sex work-related issues, published informational materials to educate the public on decriminalization, used current events like the COVID-19 pandemic to shift public perception of sex work, and shaped media narratives of sex worker organizing.

Sex worker-led media advocacy in Malawi has sensitized the public to sex workers' rights issues.²¹⁶ The Female Sex Worker Association (FSWA), formerly known as the Malawi Sex Workers Alliance, has played a key role in training Malawian journalists to listen to sex workers who are ensnared in the criminal justice system and to take an issue-based approach to reporting on sex work-related cases.²¹⁷ Advocates say these efforts have effectively turned the media into "an ally for [sex worker] advocates, and hence for decriminalization efforts."²¹⁸ In Queensland, prior to and during the QLRC review process, sex workers' rights organizations published educational resources on Queensland's sex work laws and the arguments for decriminalization: DecrimQLD published several webinars, campaign videos, and graphics on these topics.²¹⁹ These resources covered a range of issues, including a 50-minute webinar explaining the impact of Queensland laws on sex worker safety, infographics explaining why licensing is a failure and a waste of resources, and a campaign video advocating for the removal of police as regulators of the sex industry.²²⁰

Advocates have also successfully inspired shifts in public discourse that create a more welcoming environment for legal change in sex work's status. Decriminalization had been a long-term goal for sex workers' rights advocates in Belgium, and the COVID-19 pandemic gave them crucial leverage to force politicians and the government to listen to their demands.²²¹ The Belgian public was disturbed to see sex workers

²¹⁶ Kachipande, *supra* note 12, at 75, 123.

²¹⁷ *Id.* at 134-35.

²¹⁸ *Id.* at 134.

²¹⁹ See generally *DecrimQLD Resources*, RESPECT INC., <https://respectqld.org.au/decriminalise-sex-work/resources/> (last visited June 30, 2024).

²²⁰ *Id.*

²²¹ See Sienkiewicz, *supra* note 196; see also Gill, *supra* note 166; see also *Timeline*

lining up in the streets for hand-outs during the pandemic, which marked a turning point in decriminalization efforts.²²² According to UTSOPI's Dan Bauwens, "Belgium has a high standard of living because of a huge social safety net, which we can be really proud of. So people were actually quite shocked that sex workers just had no government support [during the pandemic], when every other sector did."²²³ Sex worker organizations channeled this shock into sympathy for sex workers and exposed the government's failure to grant them access to unemployment benefits.²²⁴ They engaged in media advocacy and public education campaigns to change public perceptions of sex workers and build momentum for sex workers' rights issues on the political agenda.²²⁵ This advocacy included publicizing UTSOPI's and fellow sex workers' rights organizations Violett's and Espace P's material support for sex workers through mutual aid efforts during the pandemic; drawing public attention to the need for social, medical, and labor rights for sex workers by publishing a COVID-19 help-guide for sex workers; and hosting UTSOPI Corona TV, a virtual live debate program that engaged sex workers in discussions with criminal lawyers, international sex worker rights activists, and politicians.²²⁶ Sex workers' rights advocates explained how they successfully influenced the media's tone and portrayal of sex workers during the pandemic and reframed the situation as a failure of the social safety net to protect sex workers' rights, noting that their organizing was regularly featured in mainstream newspaper and TV channels, which no longer portrayed sex workers as helpless victims but as empowered, capable individuals working in solidarity to create their own safety net.²²⁷

This reframing led a primetime news reporter to ask Belgian Minister-President Jan Jambon whether he would permit sex workers to resume work as other businesses reopened after the first pandemic lockdown, forcing Jambon to publicly recognize sex workers' role in

Decriminalisation: From March 2020 until March 2022, UTSOPI at cover page (2023), https://d2h846bfzrswm.cloudfront.net/images/TimelineDecriminalisation_2023UTSOP I.pdf [hereinafter UTSOPI, *Timeline*].

²²² Wszebor Sienkiewicz, *In Conversation With: Utsopi, Belgium*, EURO. SEX WORKERS RTS. ALL. (Apr. 4, 2022), https://www.eswalliance.org/in_conversation_with_daan_and_lais_utsopi.

²²³ *Id.*

²²⁴ See Gill, *supra* note 166.

²²⁵ UTSOPI, *Timeline*, *supra* note 168, at 3.

²²⁶ See *id.* at 2-3, 6.

²²⁷ *Id.* at 1.

society and promise to consult with them.²²⁸

C. Successful Framing of Arguments to Sway Legislators, Judges, and the Public

A comparative analysis of the case studies illuminates how sex workers' rights advocates and their allies use several main arguments to successfully make a case for legislative and judicial reform in favor of sex workers' rights. To advance their legal positions, advocates frame sex work as a labor rights issue, highlight the harmful effects of criminalizing sex work and mandating stigmatizing health controls that run contrary to accepted public health guidance, reference influential international institutions that champion sex workers' rights, and present rights-based arguments for reform. Together these appeals comprise the types of arguments that are more likely to sway legislators, judges, and the public to embrace sex workers' rights reforms.

1. Sex Work as Labor

A central tenet of the sex workers' rights movement is the idea that sex work is work.²²⁹ Advocates in the case studies often frame sex work as a form of labor—not an inherently violent or exploitative activity—and characterize sex workers as individuals who need laws and policies that will allow them to exercise power over their labor, like other workers. They argue that decriminalization is a necessary precursor to formal structures that protect sex workers' labor rights, but also note that decriminalization is not a panacea: in the absence of positive protections for sex workers, they will not be able to fully realize their labor rights.

Proponents of decriminalization in the Northern Territory, for example, argued for legal and policy changes that would treat sex workers and sex work like workers and businesses in other NT industries.²³⁰ In reference to the Northern Territory decriminalization bill, Dale Wakefield, a Labor member of the Northern Territory Legislative Assembly, stated, “I do know many fabulous and fierce women who have

²²⁸ See *id.* at 2. As a result, an expert committee that advised the Belgian government on resuming public and economic activity after the first wave of the pandemic invited UTSOPI and Violet to coordinate health protocols for resuming sexual services. See *id.*; see also *Scientific groups*, FOR A HEALTHY BELGIUM (Jan. 19, 2023), <https://www.healthybelgium.be/en/key-data-in-healthcare/covid-19/organisation-en/consultative-bodies-and-crisis-units/scientific-groups>. (GEES stands for “Group of Experts tasked with the Exit Strategy”).

²²⁹ See *supra* Part I.B.

²³⁰ See Roberts & Breen, *supra* note 5.

been in the sex work industry in the past, in the present and possibly in the future and they deserve, like anyone, any worker anywhere...to have a violence-free workplace and to be able to control the manner in which they do their job.”²³¹ Sex worker organization representatives in Queensland highlighted decriminalization as a necessary step to create the foundation for workplace safety for sex workers: Lulu Holiday, state coordinator of Respect Inc, stated that: “[L]aws that criminalise sex work and workplaces and our safety strategies diminish our ability to work safely or legally.”²³² In Victoria, Vixen and Scarlet Alliance created an information packet to help sex workers participate in the Labor government’s formal review of decriminalization proposals that put forth a strong labor rights argument for decriminalization, explaining that decriminalization would expand the places and ways in which sex workers could work, thereby increasing their capacity to exercise control over their work, bargaining power in negotiations around workplace conditions, and ability to organize collectively.²³³

Arguing for labor protections for sex workers in Belgium, Daan Bauwens of UTSOPI explained that sex work “needs to be considered as work to give sufficient protection to the people working in it.”²³⁴ Advocates from UTSOPI also reasoned that decriminalization alone would not achieve these goals and needed to be combined with a labor law to protect sex workers’ employment rights.²³⁵ Advocates like Belgian Minister of Justice van Quickenborne also made the case for treating sex workers as consenting adults and laborers with rights: “Sex work is a regular, economic activity,” van Quickenborne argued, “In this way people can practice their profession as the rest of us do, and...enjoy social protection.”²³⁶

²³¹ *Id.*

²³² See Press Release, #DecrimQLD, Respect Inc, and Scarlet Alliance (Apr. 24, 2023), <https://respectqld.org.au/wp-content/uploads/Media-Release-24-April-2023.pdf>.

²³³ Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190, at 14. (“When as sex workers we have few workplace options open to choose from, our ability to organise effectively, have bargaining power regarding workplace conditions, and exercise control over our work is dramatically reduced. Decriminalisation would produce new ways to work: in small collectives together with no boss, for example...Workers who still choose to work in larger brothels would have more choices of where to work, and therefore more leverage around negotiating work conditions, organising formally or informally, and accessing work safety mechanisms and processes.”)

²³⁴ Sienkiewicz, *supra* note 222.

²³⁵ See *id.*; see also Chargois, *supra* note 105.

²³⁶ See Elizabeth Nolan Brown, *Belgium Decriminalizes Prostitution*, REASON (Mar. 23,

2. Harmful Effects of Criminalization

One of the main organizing principles of the sex workers' rights movement is the rejection of all forms of criminalization of sex work, including the criminalization of activities related to sex work, the Nordic model which penalizes the purchase of sexual services, and stringent licensing and regulatory frameworks that lead to underground and vulnerable sex work sectors operating outside the law.²³⁷ Advocates in our case studies have successfully advanced their legal cases by highlighting the harmful effects of these criminalized environments. They highlight the unfairness of strict licensing systems that force sex workers to publicly register with the government, thus violating their privacy. They argue that criminalization makes it difficult for sex workers to engage in safety strategies like working collectively and leads to poor working conditions because sex workers are forced to labor in the shadows to avoid detection. They also highlight how sex workers can suffer under laws that do not directly address sex work but are used by the state and police to abuse sex workers and other marginalized populations.

Sex workers' rights organizations in the Northern Territory and the Northern Territory Department of the Attorney General used evidence of the harmful effects of criminalization and policing to frame their arguments for decriminalization.²³⁸ They noted, for example, how sex

2022), <https://reason.com/2022/03/23/belgium-decriminalizes-prostitution/>.

²³⁷ See *supra* Part I.A.

²³⁸ See SWOP/SWRG Collective Submission, *supra* note 187, at 35, § 8.2.1b; *Discussion Paper: Reforming Regulation of the Sex Industry in the Northern Territory*, NT DEP'T OF THE ATT'Y GEN. AND JUST. 12-13 (Mar. 2019), <https://haveyoursay.nt.gov.au/44180/documents/100576> [hereinafter AG Discussion Paper]. Before the Sex Industry Act (SIA) was passed in the Northern Territory in 2019, the Prostitution Regulation Act (PRA) regulated sex work and the sex industry. AG Discussion Paper, *supra* note 238, at 1. The PRA was a licensing and registration model that isolated sex workers and increased police oversight of the industry. See EPSC, *Inquiry into the SIB 2019*, *supra* note 83. Prior to decriminalization reform, in the Northern Territory selling sexual services was not illegal, but related practices like operating brothels, advertising to provide or hire for sexual services, soliciting in public places, and working together with other sex workers or third parties were criminalized. AG Discussion Paper, *supra* note 238, at 1; see *Prostitution Regulation Act 1992* (N. Terr.) (Austl.); EPSC, *Inquiry into the SIB 2019*, *supra* note 83, at 13, ¶ 2.1. The PRA required registration and licensing for escort agencies, sex workers who worked for escort agencies, and independent workers. See AG Discussion Paper, *supra* note 238, at 12 ¶ 6.3. The director-general of licensing and the commissioner of police reviewed licenses, and individual sex workers were required to file lifelong registration with the police commissioner. See *id.* at 3 ¶ 3.2; see also Gregoire, *supra* note 66. The PRA also created safety issues for independent sex workers because it required isolation for them to operate

workers' registration information under the Northern Territory's previous strict licensing framework remained on their records for life and was often used against them in courts or custody disputes even after they left the industry.²³⁹ In their joint submission to the QLRC, Respect Inc and DecrimQLD argued that licensing was an ineffective model in Queensland because it created a split of non-compliant and compliant sectors.²⁴⁰ Queensland only licensed a small number of brothels and criminalized all other forms of sex work businesses, and thus, street-based sex work, massage parlors, and escort services were all considered illegal and were heavily policed.²⁴¹ Respect Inc and DecrimQLD further maintained that policy makers need to acknowledge that criminalization and licensing are the result of "stigmatised narratives of disgust," and they must ensure that a new framework "does not replicate these stigmas."²⁴² Their joint submission also noted that in surveys, sex workers said that they worked illegally and did not comply with Queensland's stringent sex work laws in order to guard their safety.²⁴³ For example, one survey respondent stated that, "[W]hen it comes to safety calls, checking in with other workers, sharing resources, allowing more than one worker to work from the same property venue, etc., there are times where I choose my safety over the law."²⁴⁴

legally: independent workers could not work together (such as by sharing accommodations or monitoring one another's safety during jobs) or hire support workers such as drivers, security, or booking agents. *See* SWOP/SWRG Collective Submission, *supra* note 187, at 21.

²³⁹ *See* SWOP/SWRG Collective Submission, *supra* note 187, at 12, 26; AG Discussion Paper, *supra* note 238, at 12-13.

²⁴⁰ RESPECT INC. & #DECIMQLD, *supra* note 172, at 2. Prior to decriminalization, the Prostitution Act 1999 created a licensing framework for sex workers in Queensland. *Queensland Laws*, *supra* note 175. Under this licensing regime, brothel owners and managers were required to apply for and retain brothel licenses. Prostitution Act 1999 (Queensl.) § 19(1) (Austl.).

²⁴¹ ELENA JEFFREYS ET AL., THE CASE FOR DECRIMINALISATION: SEX WORK AND THE LAW IN QUEENSLAND, CRIME AND JUSTICE BRIEFING PAPER 2 (2019), <https://research.qut.edu.au/centre-for-justice/wp-content/uploads/sites/304/2021/06/Briefing-paper-series-June-2019-Issue-1.pdf>. The licensing requirement created a two-tiered industry where 10% of the industry was licensed and operating legally, and the remaining 90% was unlicensed and operating illegally. *See* A DECRIMINALIZED SEX-WORK INDUSTRY FOR QUEENSLAND, *supra* note 174, at 9.

²⁴² RESPECT INC. & #DECIMQLD, *supra* note 172, at 2-3.

²⁴³ *Id.* at 74.

²⁴⁴ *Id.* Under the previous licensing system, sex workers in Queensland were either required to work alone or at a licensed brothel; however, only 16 of these licensed

Sex workers' rights advocates in Victoria made similar arguments regarding the harms of Victoria's licensing system.²⁴⁵ Vixen and Scarlet Alliance argued that the licensing system's requirement that sex workers register with the Victorian government created official government records of their sex work involvement that negatively affected their future employment, housing, and other life options.²⁴⁶ In addition to formal registration, licensed sex workers were required to adhere to stigmatizing health mandates, could not work with more than one individual at a time, and were required to receive permission from their landlords to work out of their homes.²⁴⁷ Vixen and Scarlet Alliance argued that these stringent licensing requirements could only be fulfilled by a small percentage of sex workers, effectively pushing a majority of the sex worker industry to illegal operation and increasing their risk of exposure to violence.²⁴⁸

Advocates for decriminalization in Belgium also highlighted how criminalization hurts sex workers, arguing that under the previous legal regime, sex workers could not access necessary services.²⁴⁹ Before decriminalization reform, selling and purchasing sex were not illegal in Belgium, but as UTSOPI's Dan Bauwens argued, "all third parties were criminalised, which meant that sex workers using *any* services—renting a house, having a bank account, employing an accountant—the landlords, banks and accountants were liable to prosecution because they'd be financially benefiting from prostitution."²⁵⁰ Sex workers had no access to benefits, endured poor working conditions, and were at increased risk of violence because they feared retaliation from the police if they tried to

brothels existed in Queensland as of April 2024. Sato, *supra* note 171.

²⁴⁵ Prior to the passage of the Sex Work Decriminalisation Act, sex work in Victoria was governed by the Sex Work Act 1994 under which sex work was regulated by a licensing system and was only legal if it occurred in certain locations and under specific conditions set forth in the statute. *See generally Sex Work Act 1994* (Vic.) (Austl.); *Decriminalising Sex Work in Victoria*, *supra* note 7.

²⁴⁶ Scarlet Alliance et al., Information for the Review into Decriminalisation of Sex Work, *supra* note 190, at 4.

²⁴⁷ Judd Boaz, *Victoria Plans to Decriminalize All Sex Work within Two Years. Here's What That Means*, ABC NEWS (Jan. 3, 2022, 5:33 PM), <https://www.abc.net.au/news/2022-01-04/victorian-sex-worker-decriminalisation-debate/100415174#>.

²⁴⁸ Scarlet Alliance et al., Information for the Review into Decriminalisation of Sex Work, *supra* note 190, at 4.

²⁴⁹ Sienkiewicz, *supra* note 222.

²⁵⁰ *See Decriminalisation*, *supra* note 73; Sienkiewicz, *supra* note 222. These restrictions prevented sex workers from conducting their business in a safe way. *Decriminalisation*, *supra* note 73.

report violence.²⁵¹

As explored previously, Malawi is an important case study of how the state can use criminal and administrative laws that do not directly address sex work to criminalize sex workers. CHREAA and SALC challenged and were successful in securing the court judgment striking down vagrancy laws in the penal code that facilitated police abuse and arbitrary arrests of marginalized groups, including sex workers.²⁵² They argued that these laws should be repealed in part because they are products of colonial rule—the colonial state used these laws to persecute local populations in the past—and the current state uses these laws to discriminate against sex workers and other poor and marginalized groups in the present.²⁵³

3. *Harmful Effects of Health Mandates Targeting Sex Workers*

Victoria is an illustrative case study of how sex workers' rights advocates can successfully frame public health concerns when advocating for decriminalization. Under Victoria's previous licensing system, licensed sex workers were legally required to be screened for STIs three times per month and to practice safe sex, and sex workers with STIs or HIV were criminalized.²⁵⁴ As noted previously, Victoria's licensing structure, including these stigmatizing health mandates, pushed the majority of sex workers underground, creating an "unequal industry, where about 80% of the workers [were] still criminalized."²⁵⁵ During the government review process to consider decriminalization, Scarlet Alliance and Vixen published an information packet that included comprehensive arguments on why Victoria's compulsory health mandates

²⁵¹ See Gill, *supra* note 166.

²⁵² See News Release: *Malawi High Court Declares Rogue and Vagabond Offence Unconstitutional*, *supra* note 122; see also NSWP, *Malawi High Court Rules Use of Rogue and Vagabond Law Unconstitutional*, *supra* note 12.

²⁵³ See Anneke Meerkotter, *Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces*, 74 U. MIA. L. REV. 1, 20-21 (2020).

²⁵⁴ Judd Boaz, *Victoria Plans to Decriminalize All Sex Work within Two Years. Here's What That Means*, ABC NEWS (Jan. 3, 2022, 5:33 PM), <https://www.abc.net.au/news/2022-01-04/victorian-sex-worker-decriminalisation-debate/100415174#>; Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190.

²⁵⁵ *Victoria Becomes Australia's Third State to Decriminalize Sex Work*, DECRIMINALIZE SEX WORK (Feb. 10, 2022), <https://decriminalizensex.work/victoria-becomes-australias-third-state-to-decriminalize-sex-work/>. For more on other harmful aspects of Victoria's previous licensing structure see *supra* Part II.C.2.

targeting sex workers were contrary to public health guidance and human rights.²⁵⁶

Regarding mandatory STI and HIV testing, Scarlet Alliance and Vixen asserted that the stigmatizing health controls under Victoria's licensing regime were antithetical to the Australian government's own National HIV Strategy developed by its Department of Health, which "explicitly identifies mandatory testing of sex workers as a key barrier to evidence-based prevention, and access to testing and healthcare services."²⁵⁷ Indeed, leading practitioners of global public health, including influential organizations like UNAIDS and the World Health Organization (WHO), reject mandatory HIV testing as incompatible with public health goals.²⁵⁸ Mandatory testing pushes targeted populations underground, complicating their access to health services.²⁵⁹ Scarlet Alliance and Vixen also argued that mandatory testing reinforces stigma and leads to discrimination: "Mandatory sexual health testing relies on and reinforces the harmful 'vectors of disease' stereotype, which baselessly frames sex workers as a risk to the wider public, fuels sex work stigma, and is used to justify discriminatory practices. This can impact sex workers as members of their communities...negatively impacting care outcomes."²⁶⁰ UNAIDS and WHO have long promoted voluntary and confidential counseling and testing as the gold standard for destigmatized intervention.²⁶¹

Scarlet Alliance and Vixen also presented arguments against legal mandates for condom use and the criminalization of sex workers with STIs and HIV. They asserted that mandatory condom use laws work under

²⁵⁶ Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190. For more on their human rights arguments related to stigmatizing health mandates see *infra* Part II.C.4.

²⁵⁷ *Id.*

²⁵⁸ WHO AND UNAIDS, STATEMENT ON HIV TESTING SERVICES: NEW OPPORTUNITIES AND ONGOING CHALLENGES 2 (2017), https://www.unaids.org/sites/default/files/media_asset/2017_WHO-UNAIDS_statement_HIV-testing-services_en.pdf.

²⁵⁹ UNAIDS AND UNDP, STILL NOT WELCOME: HIV-RELATED TRAVEL RESTRICTIONS 5 (2019), https://www.unaids.org/sites/default/files/media_asset/hiv-related-travel-restrictions-explainer_en.pdf.

²⁶⁰ Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190, at 12.

²⁶¹ WHO and UNAIDS, WHO AND UNAIDS ISSUE NEW GUIDANCE ON HIV TESTING AND COUNSELLING IN HEALTH FACILITIES (May 30, 2007), <https://www.who.int/news/item/30-05-2007-who-and-unaid-issue-new-guidance-on-hiv-testing-and-counselling-in-health-facilities>.

the misguided assumption that the best way to encourage safe sex practices is through compulsory legal intervention—which often just gives law enforcement another tool to harass sex workers—when in fact it has been peer-based sex worker sexual health education and outreach programs that have resulted in high rates of safe sex practices and low rates of STIs among sex workers in Australia.²⁶² Regarding the criminalization of sex workers with STIs, including HIV, they argue that this type of stigmatizing mandate results in a number of significant harms, including forcing sex workers to work underground where it is harder to access outreach health and legal services; disincentivizing sex workers to test for HIV since a positive HIV test could result in expulsion from the formal sex industry and increased risk of criminalization; and increasing fears of breaches of medical confidentiality.²⁶³

Following decriminalization, including the repeal of health mandates targeting sex workers under the previous legal framework, sex workers in Victoria have already reported increased access to health services.²⁶⁴

4. *International Policies and Rights-Based Arguments*

International organizations of influence have rallied in defense of sex workers' rights, arguing that decriminalization is the only legal framework that upholds sex workers' human rights.²⁶⁵ To buttress their arguments for decriminalization, advocates in our case studies in the

²⁶² “Sex workers undertake education in sexual health and safer sex both as peer educators within their own community and with clients. This is reflected not only in low STI and HIV rates for sex workers in Australia, but in high uptake of safer sex practices...In fact, rates of STI...transmission among sex workers is often less than or equal to that of the broader community.” Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190, at 12.

²⁶³ *Id.* at 13. (“[It] forces sex workers to operate covertly, creating barriers to accessing essential targeted supportive, legal and health services...creates disincentives for all sex workers to test and know our HIV status as a positive HIV result can lead to instant exclusion from the regulated sex industry, unemployment, stigma and discrimination, and in the instance that we need to keep working, criminal prosecutions, incarcerations and fines...compromises our medical confidentiality, making it difficult to roll out targeted HIV responses to sex workers with HIV. Fear of criminal investigations and having our confidentiality breached creates barriers for sex workers with HIV to disclose our HIV status and sex work, reducing health professional’s ability to comprehensively assess our health needs.”)

²⁶⁴ See *Decriminalising Sex Work in Victoria*, *supra* note 7.

²⁶⁵ See *supra* Part I.B.

Northern Territory and Queensland, including SWOP NT, SWRG, Scarlet Alliance, and Vixen, highlighted the numerous influential international organizations that support sex workers' rights and call for full decriminalization, including UNAIDS, Amnesty International, the International Labor Organization, the World Health Organization, the Lancet Medical Journal, the Global Alliance Against Trafficking in Women, and more.²⁶⁶

Sex workers' rights advocates in our case studies also use rights-based arguments to support their claims. Advocates in the Northern Territory, Victoria, Malawi, and Queensland argued that the legal frameworks they were seeking to overturn violate sex workers' right to dignity, equality, healthcare, privacy, security, work, and right to be free from discrimination and degrading treatment. SWOP NT and SWRG in the Northern Territory framed decriminalization and anti-discrimination protections as reforms that would help the Northern Territory government comply with international human rights laws.²⁶⁷ Politicians in Victoria in favor of decriminalization also made rights-based arguments: for example, Ingrid Stitt, a Member of Parliament and the Minister for Workplace Safety, stated that decriminalization in Victoria is compatible with the Charter of Human Rights and Responsibilities Act 2006 because decriminalizing sex work would allow women and LGBTQ+ sex workers to "better access the rights and protections afforded to other community members" including equality before the law.²⁶⁸ Advocates in Malawi have argued that restrictions commonly used to punish and prosecute sex workers make doing sex work nearly impossible without having one's rights to dignity, personal liberty, security, and freedom to engage in economic activity violated, which is disallowed under international human rights standards.²⁶⁹

In their joint submission regarding decriminalization in Queensland, Respect Inc and DecrimQLD argued that mandatory STI testing of sex workers, which was part of Queensland's previous regulatory framework for sex work, was incompatible with the Human

²⁶⁶ See SWOP/SWRG Collective Submission, *supra* note 187, at 18; SCARLET ALL., SUBMISSION TO THE REVIEW INTO THE DECRIMINALISATION OF SEX WORK 13 (July 20, 2020), <https://scarletalliance.org.au/library/submission-to-the-review-into-the-decriminalisation-of-sex-work/>.

²⁶⁷ See SWOP/SWRG Collective Submission, *supra* note 187, at 18, 29.

²⁶⁸ Victoria, Parliamentary Debates, Legislative Council, Oct. 13, 2021, 4274 (Ingrid Stitt) (Austl.).

²⁶⁹ SALC & CHREAA, *No Justice for the Poor*, *supra* note 125, at 89.

Rights Act, “which provides for equality before the law, protection from torture and cruel, inhuman or degrading treatment, right to privacy as well as the right to health services.”²⁷⁰ Similarly, in Victoria, Scarlet Alliance and Vixen stressed that mandatory testing is criticized by UNAIDS, the United Nations Human Rights Office of the High Commissioner for Human Rights, and other international human rights bodies as a violation of human rights.²⁷¹ They also argued that the criminalization of HIV-positive sex workers is a violation of their right to be free from discrimination, right to work, and right to privacy.²⁷²

D. Managing Threats to Positive Legal Reform

Despite the recent history of positive legal advancements, sex workers’ rights advocates face challenges from anti-prostitution politicians and activists who attempt to prevent or undo hard-earned legal victories. Moreover, the conflation of sex work with human trafficking as a specific form of anti-prostitution activism threatens to serve as a roadblock to sustained reform. Advocates in our case studies are attempting to manage these political threats to reform by continuing to nurture coalitions and cultivate strong political buy-in among allied groups. The advocacy power of their strong coalitions in support of sex workers’ rights can play an important role in blunting the force of anti-prostitution opposition. They are also using data collection and research in their advocacy to fight against disinformation by anti-prostitution opponents.

In Belgium, anti-prostitution organizations like the European Women’s Lobby and FACES, a coalition of six French-speaking feminist organizations, emerged to oppose the sex work decriminalization bill.²⁷³ The opposition initially appeared to gain traction, but sex workers’ rights organizations continued to broaden their coalition and fight misinformation, and the Justice Cabinet and Flemish Liberal Party remained staunch allies.²⁷⁴ In Queensland, sex workers’ rights advocates have expressed concern that decriminalization could be overturned if the anti-prostitution opposition Liberal National Party (LNP), which

²⁷⁰ RESPECT INC. & #DECIMQLD, *supra* note 172, at 99-100.

²⁷¹ Scarlet Alliance et al., *Information for the Review into Decriminalisation of Sex Work*, *supra* note 190, at 12.

²⁷² *Id.*

²⁷³ Gill, *supra* note 166; UTSOPI, *Timeline*, *supra* note 168, at 8.

²⁷⁴ UTSOPI, *Timeline*, *supra* note 168, at 7-8.

originally voted against the decriminalization bill, gains power.²⁷⁵ Refreshingly, sex workers' allies in Queensland, like the Queensland Council of Unions, have assured advocates they will provide support if the LNP threatens repeal of the decriminalization laws, underscoring the importance of coalition-building as a bulwark to political threats to reform.²⁷⁶

The conflation of sex work and trafficking presents one of the biggest political threats to sustained legal reform for sex workers' rights.²⁷⁷ Belgian sex workers' rights advocates have ensured that their coalitions for reform include organizations supporting survivors of human trafficking, as these alliances assisted them in persuading policy makers to reject the conflation of sex work and trafficking and support decriminalization.²⁷⁸ In response to a statement from the Board of Prosecutors General that called for blanket criminalization of the sex work industry in Belgium, claiming that decriminalization would sharply increase trafficking, UTSOPI collaborated with three national centers for victims of trafficking to formally call out disinformation from their opponents and issue a public statement supporting decriminalization.²⁷⁹ Together, they drafted a set of criminal law amendment proposals to send to the Justice Department, which were endorsed by organizations like the Fédération des Services Sociaux, a federation of 82 social services, Médecins du Monde Belgique, and the Flemish Human Rights League.²⁸⁰

In addition to coalition-building, raising-awareness about the conflation of sex work and human trafficking through data collection, research, and reporting, is another strategy advocates are using to attempt to blunt political threats to reform. In India, leading sex workers' rights advocate Meena Seshu has noted that “for a long time, advocacy around sex work was focused on the rehabilitation of sex workers and the prevention of trafficking, [which] created a misconception that all sex

²⁷⁵ Andrew Messenger, *Sex Work Decriminalised in Queensland After Decades of Campaigning*, THE GUARDIAN (May 2, 2024, 4:41 AM), <https://www.theguardian.com/australia-news/article/2024/may/02/queensland-sex-work-decriminalised-law-passes>.

²⁷⁶ Chloe Sargeant, *Sex Work Finally Decriminalised in QLD After Decades of Campaigning*, STAR OBSERVER (May 3, 2024), <https://www.starobserver.com.au/news/national-news/queensland-news/sex-work-queensland-decriminalised/23047>.

²⁷⁷ See *infra* Part I.B.

²⁷⁸ See Sienkiewicz, *supra* note 222.

²⁷⁹ See UTSOPI, *Timeline*, *supra* note 168, at 4, 10, 12.

²⁸⁰ *Id.* at 10.

workers are trafficked and need to be rescued.”²⁸¹ The need to disrupt this paradigm has become more evident as public awareness has grown about the forcible detention and abuse of sex workers in “protective homes,” some of which are run by anti-trafficking organizations.²⁸² The Immoral Traffic Prevention Act (ITPA), which governs sex work in India, was drafted under the misconception that all sex work is non-consensual and therefore all sex work is trafficking.²⁸³ A major consequence of the act are the ITPA protective homes where women the police detain during brothel raids or remove from the street as “trafficked victims” are held against their will regardless of if they were consensually performing sex work.²⁸⁴ Seshu has noted how advocates’ data collection, research, and reporting on the protective homes’ abuses are an attempt to publicly refute the conflation of sex work and trafficking.²⁸⁵ Sex workers’ rights advocates in India celebrated the Supreme Court’s 2022 order which mandated review of the ITPA protective homes.²⁸⁶

The nature of anti-prostitution opposition may also be a factor influencing the success or failure of legal reform efforts to advance sex workers’ rights. Proponents of sex workers’ rights in Belgium recognize that their successful decriminalization efforts may be hard to replicate in European countries where religious institutions have an outsized influence in politics.²⁸⁷ Daan Bauwens of UTSOPI notes that other countries in Europe have shifted to the Nordic model of sex work, in part, because “[i]n other countries the church might also have had an influence,

²⁸¹ Sushmita Pathak, ‘We are demanding full decriminalization’: Sex workers in India rally for labor rights, THE WORLD (June 10, 2022), <https://theworld.org/stories/2022/06/10/if-we-re-doing-willingly-how-can-it-be-wrong-asks-sex-worker-her-profession>.

²⁸² See Kimberly Walters & Meera Raghavendra, *India’s Supreme Court rules in favour of sex workers, and women rise up*, OPENDEMOCRACY (July 27, 2022, 6:00 AM), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/indias-supreme-court-rules-in-favour-of-sex-workers-sparking-riot/>; The Suno India Show, *supra* note 151, at 10:30.

²⁸³ “The [ITPA] characterizes prostitution as the sexual maltreatment of people for business purposes and brothel as any spot utilised for sexual abuse or maltreatment for business purposes.” Palash Varyani & Pratishtha Shrivastava, *Supreme Court Declares Prostitution as a Profession*, 2 JUS CORPUS L.J. 267, 269-70 (June 29, 2022), <https://www.juscorpus.com/wp-content/uploads/2022/06/48.-Palash-Varyani-Pratishtha-Shrivastava.pdf>.

²⁸⁴ See Seshu & Pai, *supra* note 152, at 3.

²⁸⁵ The Suno India Show, *supra* note 151, at 12:05.

²⁸⁶ *Id.* at 15:44.

²⁸⁷ Sienkiewicz, *supra* note 222.

whereas [in Belgium] it would be unthinkable that they have a voice in this debate [around sex work] – or partner with ‘feminist’ groups.”²⁸⁸ For reformers in countries where religious institutions have significant influence in political debates, they should not give up on nurturing coalition-building and cultivating political buy-in: attempting to win allies among progressive religious leaders interested in building bridges to marginalized groups may provide potential additional opportunities for the development of helpful allyship in the fight for sex workers’ rights.

CONCLUSION

This article used a comparative analysis of case studies highlighting positive legislative advancements and court orders in favor of sex workers’ rights in the past decade in Australia, Belgium, India, and Malawi to offer practical guidance on the best strategies to advance sex workers’ rights through legal reform. We presented and analyzed the substantive achievements and limitations of recent legal advancements in our geographically diverse and under-examined case studies. In doing so, we highlighted fault lines in decriminalization reform regarding the status of street-based sex work, regulation, and advertising and argued that legislative reform should include innovative labor and anti-discrimination protections for sex workers, that advocates should interpret decriminalization efforts expansively to also include the repeal of laws that indirectly target sex workers, and that positive court judgments can help create a foundation for future reforms.

We asserted the centrality of sex worker advocacy contributions to these legal advancements by identifying and exploring successful advocacy strategies for reform that center sex worker participation, including coalition-building between sex workers’ rights organizations and allied groups like supportive government officials; sex workers’ direct participation in legal reform processes; research to support legal reform advocacy that centers sex workers’ lived experiences; and sex worker-led public education and media campaigns, including the use of current events to shift public discourse on sex workers’ rights.

From our case studies, we unearthed the most successful arguments to sway government officials, judges, and the public, including framing sex work as a labor rights issue, highlighting the harmful effects of criminalization and health mandates that target sex workers, referencing influential international institutions that have championed sex

²⁸⁸ *Id.*

workers' rights, and presenting rights-based arguments for reform. Finally, we argued that advocates can manage political threats to positive reform by cultivating strong political buy-in and coalition-building with allied groups that can help blunt the influence of anti-prostitution opposition that can derail legal reform efforts.

This article highlighted an upward trajectory of positive legal reform for sex workers' rights. All in all, the cumulative achievements of our case studies have set an important precedent for advocacy best practices regarding the legal advancement of sex workers' rights.