



Global Network of Sex Work Projects

Promoting Health and Human Rights

For the attention of: The United Nations Special Rapporteur on Violence Against Women

Submission: For a thematic report on rape as a grave and systematic human rights violation and gender-based violence against women

Date: 10 December 2020

NSWP welcomes the opportunity to make a submission to the UN Special Rapporteur on Violence Against Women, for her thematic report to be presented to the UN Human Rights Council in June 2021 to address States' responsibility to criminalise and prosecute rape as a grave and systematic human rights violation and a manifestation of gender-based violence against women, in line with international human rights standards. We are committed to supporting efforts to ensure full compliance with states' obligations to respect, protect and fulfil the human rights of all women, including sex workers.

NSWP is a global network of sex worker-led organisations, with 310 members in 95 countries, with the overwhelming majority of members being in the Global South. NSWP exists to uphold the voice of sex workers globally and connect regional networks advocating for the rights of female, male and transgender sex workers. It advocates for rights-based health and social services, freedom from abuse and discrimination, and for the self-organisation and self-determination of sex workers.

Introduction

Rape has been recognised as a crime of sexual violence, a war crime, a crime against humanity and genocide under international human rights framework. However, sex workers remain largely outside the purview of international human rights framework when they experience rape and other forms of sexual violence. As a result of criminalisation, sex workers experience increased physical and sexual violence, and experience discrimination and bias at all stages while accessing justice mechanisms.¹ Consequently, sex workers are denied their fundamental human rights — to equal protection under the law; to protection from torture and from cruel, inhuman and degrading treatment; and to the highest attainable standard of physical and mental health.

This submission outlines the human rights violations faced by sex workers due to criminalisation of sex work and highlights how crimes against sex workers are not taken as seriously as crimes against others. It highlights their lack of access to justice, as well as the increased vulnerability and exclusion they face due to discriminatory laws and legal practices. Finally, it urges States to criminalise and prosecute rape as a grave human rights violation and a manifestation of gender-based violence against all women, including sex workers.

Consent, sex work and rape

Legal frameworks, national and international, often misconstrue consent, especially conditional consent, when it comes to sex workers. This is why laws that are meant to extend protection to women, fail to include sex workers and they remain outside the purview of legal protection available to other 'respectable' women. As reflected in investigation, trial and media reportage on the rape and murder of sex workers across the world, prosecutors frequently express bias against sex workers during rape trials. They also fail to press charges or convict for crimes against sex workers, thereby denying sex workers' access to justice.

¹ NSWP, 2020, "[Sex workers lack of access to justice.](#)"

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For example, in the infamous case of the ‘Yorkshire Ripper’ the Attorney General in the case had remarked how “Some were prostitutes, but perhaps the saddest part of the case is that some were not. The last six attacks were on totally respectable women.”² In another case from India, in 2009, the Delhi High Court acquitted four men in the case of gang rape of a sex worker citing that the victim was ‘a woman of bad character who indulged in prostitution’. Eventually the ruling was overturned by the Supreme Court noting that a woman should not be subjected to rape for being a sex worker, thereby establishing a consent framework for sex workers. However, the language used in the judgment showed bias and prejudice as it noted, “Even assuming that the prosecutrix was of easy virtue, she has a right to refuse to submit herself to sexual intercourse to anyone.”³

In the context of sex work, non-payment is often not regarded as evidence of rape, whereas it should be regarded as part of conditional consent. When law is tested on non-payment of a sex worker - as it was in *R v Linekar*⁴ - the appeal ruling noted the refusal to make payment as fraud and not rape. The precedent under which non-payment is classified only as fraud is harmful for sex workers as it ignores conditional consent and denies the opportunity to report rape. However, in another case from the UK, in 2019, a man was convicted of rape after it was established by the court that the woman, a sex worker, had consented to sexual intercourse only on the condition that condoms were used.⁵

Criminalisation, stigma and violence against women

“Criminalisation has a negative impact on the ability and desire to report cases of violence because [sex workers] are convinced that instead of being rehabilitated in their rights after being subjected to violence, they will be incarcerated for their unregistered trade.”⁶

NSWP has consistently found that criminalisation increases sex workers’ vulnerability to violence, including rape, assault, and murder, by perpetrators who see sex workers as easy targets because they are stigmatised and unlikely to report crimes to or receive protection from the police.

Additionally, criminalisation forces sex workers to work in precarious settings to avoid police harassment and arrest. NSWP has documented how in criminalised environments, police officers harass sex workers, extort bribes, and physically, sexually and verbally abuse sex workers, and rape them.

When sex workers are viewed as criminals under the law, violence against them is not given the same importance as violence against ‘respectable’ women. Common attitudes among law enforcement officials that sex workers ‘deserve what they get’ when they face violence make it difficult for sex workers to obtain protection and to access support when they have experienced violence. For example, a report by Amnesty International records how a sex worker in Papua New Guinea after reporting sexual abuse was told by the police that they did not want to “waste time” on her. She did not report subsequent abuse thinking, “If I am abused and I go to the police, they’ll tell me ‘that’s what you deserve’”.⁷

Highlighting the high level of violence and discrimination faced by sex workers due to criminalisation, many international organisations have joined the call for the full decriminalisation of sex work including; [The Joint United Nations Programme on HIV/AIDS \(UNAIDS\)](#), [UNFPA](#), [WHO](#), [UNDP](#), [the World Bank](#), [Amnesty International](#), [Médecins Du Monde](#), [Human Rights Watch](#), the [Global Commission on HIV and the Law](#), [Open Society Foundations](#), the [Global Network of People Living with HIV](#), the [Global Action for Gay Men’s Health & Rights \(MPact\)](#), the International Women’s Health Coalition, the [Association for Women’s Rights in Development](#), the [American Jewish World Service](#), the [Global Alliance Against Traffic in Women \(GAATW\)](#), [The Lancet](#), The Global Fund for Women, the Elton John AIDS Foundation, [Frontline AIDS](#), the [International Community of Women Living with HIV](#), [Global Health](#)

² Helen Pidd and Alexandra Topping, “[It was toxic: how sexism threw police off the trail of the Yorkshire Ripper](#),” The Guardian, 13 November 2020.

³ Soibam Singh, “[Women of ‘easy virtue’ have right to say no too, says SC](#)”, The Hindu, 1 November 2018.

⁴ “[R vs Linekar \(1995\)](#)”, E-lawresources.

⁵ Adam Forrest, “[Man who removed condom during intercourse with sex worker jailed for rape](#),” Independent, 24 April 2019.

⁶ NSWP, 2017, “[The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence](#).”

⁷ Amnesty International, 2016, “[Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers](#).”

[Justice Partnership of the Yale Law School and Yale School of Public Health](#), [European AIDS Treatment Group](#), [ILGA-Europe](#), the [Platform for International Cooperation on Undocumented Migrants \(PIKUM\)](#), [STOPAIDS](#) and [ILGA World](#).

Discrimination and bias in the legal system

“Police officers often come at night to force us to have sex with them. When we refuse, they threaten the hotel manager to ban us from working there.”⁸

Sex workers are subjected to arbitrary arrests, extortion, unlawful detention and coercion. Police frequently threaten sex workers with extra-legal action (e.g., notification of friends or family) or use intimidation to obtain a confession. These experiences of abuse of power prevent many sex workers from reporting rape and other forms of physical and sexual violence.

Many sex workers also face intersecting forms of discrimination that impact their access to justice and their treatment within justice systems. Sex workers frequently experience compounded discrimination in the form of misogyny, xenophobia, homophobia and transphobia, racism, and class discrimination. NSWP has documented how migrant sex workers, male and transgender sex workers, sex workers who use drugs, and sex workers living with HIV face additional layers of stigma and discrimination, exclusion from services, and forms of criminalisation.

For migrant sex workers, a lack of interpreters and information in their own language often undermines their access to justice. Lesbian, gay and bisexual sex workers experience violence based on their sexual orientation and often avoid reporting crimes to the police to avoid harassment, arrest or outing as a member of the LGBT community. Transgender sex workers also experience violence based on their gender identity and are also more likely to report discriminatory treatment by judges and court staff including being asked questions such as *‘How can you register an FIR [First Information Report] against the assaulter when this is your profession?’⁹*

Several regional studies conducted by and with sex worker-led networks in the Asia-Pacific¹⁰, Caribbean and Latin America¹¹, Africa¹², and Eastern Europe and Central Asia¹³ regions have documented that police are among the main perpetrators of sexual, physical and psychological violence against sex workers. A report from Amnesty International in 2019 found the routine use of rape, violence and torture by police to punish women sex workers in the Dominican Republic.¹⁴ Involvement with the criminal justice system also reaffirms sex workers’ fear of reporting violence to the police. The abuse and trauma carried after these experiences, makes sex workers less likely to report rape for fear of another arrest.

Recommendations

- Decriminalise all aspects of sex work. Governments, policymakers and advocates must actively pursue the full decriminalisation of sex work, including sex workers, clients and third parties.
- Hold law enforcement officers accountable for acts of physical, psychological and sexual violence and abuse of power against sex workers and ensure that victims of state violence have an enforceable right to compensation.
- Invest in education and sensitivity training for law enforcement officers, judges and others working in the legal system. Reducing bias and discrimination is necessary to secure sex workers’ access to justice.

⁸ NSWP, 2020, [“Sex Workers’ Lack of Access to Justice.”](#)

⁹ [“Violence Faced by Khwaja Sara Sex Workers in Pakistan,”](#) NSWP

¹⁰ UNDP, UNFPA, APNSW, & SANGRAM, 2015, [“The Right\(s\) Evidence | Sex Work, Violence and HIV in Asia: A Multi-Country Qualitative Study.”](#)

¹¹ RedTraSex, 2014, [“Human Rights Situation of Female Sex Workers in 15 Countries of the Americas.”](#)

¹² Africa Sex Worker Alliance, 2011, [“I expect to be abused and I have fear: sex workers’ experiences of human rights violations and barriers to accessing healthcare in four African countries.”](#)

¹³ SWAN, 2008, [“Arrest the Violence.”](#)

¹⁴ Amnesty International, 2019, [“Gender-based torture and other ill-treatment of women in sex work in the Dominican Republic.”](#)

- Ensure the accessibility, acceptability, and affordability of legal services for sex workers who are victims or accused of crimes. Governments should ensure that state services are accessible and welcoming to sex workers.
- Prioritise and fund community-based provision of legal aid and training in legal literacy, including through training sex workers as paralegals. Sex workers and sex worker-led organisations are best positioned to promote and disseminate knowledge of their rights, legal systems and services, an essential component in increasing sex workers access to justice.
- Actively seek opportunities for partnership and collaboration between sex worker-led organisations and organisations working for access to justice for other marginalised groups.
- Ensure addressing violence experienced by cis and transgender women sex workers is included in 'Ending Violence Against Women' Goal 5 of the Sustainable Development Goals which seeks to achieve gender equality and empowerment for *all* women and girls.
- Ensure sex workers and sex worker-led organisations are visible in campaigns such as the 'International Day for the Elimination of Violence against Women'.