

VIOLENCE AGAINST SEX WORKERS AND SURVIVORS OF TRAFFICKING

SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON
VIOLENCE AGAINST WOMEN



**AMNESTY
INTERNATIONAL**



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Amnesty International submits this document in response to the call for input for the report of the UN Special Rapporteur on violence against women and girls, its causes and consequences to the 56th session of the Human Rights Council on 'prostitution and violence against women and girls'. Amnesty international, as reflected in our institutional policies, supports efforts of states to deliver on their human rights obligations and implement laws and policies designed to address all forms of violence against women and girls, including victims and survivors of trafficking, while at the same time ensuring the rights of sex workers.

INTRODUCTION

Amnesty International submits this document in response to the call for input for the report of the UN Special Rapporteur on violence against women and girls, its causes and consequences to the 56th session of the Human Rights Council on 'prostitution and violence against women and girls'.¹

Amnesty international, as reflected in our institutional policies, supports efforts of states to deliver on their human rights obligations and implement laws and policies designed to address all forms of violence against women and girls, including victims and survivors of trafficking, while at the same time ensuring the rights of sex workers.

Multiple and intersecting forms of discrimination and structural inequalities have an impact on the lives of many sex workers and can play a role in a person's decision to engage or remain in sex work, as well as their experiences while in sex work. Women who face multiple forms of discrimination and structural inequalities, such as discrimination on the basis of their sexual orientation, gender identity, race, caste, ethnicity, Indigenous identity, migrant or other status are at increased risk of rights violations.

The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection. As a result, sex workers face an increased risk of violence and abuse, and such crimes against them often go unreported, under-investigated and/or unpunished, offering perpetrators impunity.

Likewise, some structural conditions, including lack of safe and legal routes for refugees, grave human rights violations, poverty and intersecting discrimination put some people at more risk of being victims of trafficking.

A human rights approach to this issue is one that protect sex workers and also protect victims and survivors of trafficking, putting their rights and needs at the centre. Amnesty International's research shows that conflating all sex work with trafficking is not conducive to expand the protection of any of these groups of right holders, quite the opposite, as we will explain in this document.

TERMINOLOGY (QUESTION 8)

The term sex work is understood by civil society organizations, UN mechanisms and states as the exchange of sexual services between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer.² Sex work takes different forms and varies between and within countries and communities. The term sex work is used to describe situations where adults who are engaging in commercial sex have consented to do so. Where affirmative consent is absent or negated for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse which must be treated as a criminal offence.

Consenting to sex or to sell sex is a voluntary and ongoing agreement and does not mean consenting to violence. Consent can be rescinded at any time. While discrimination and socio-economic status may play a role in the decision to sell sex, constrained circumstances do not eliminate an individual's ability to make decisions about their own lives, except under particular circumstances that amount to coercion – where an individual faces threats, violence or abuse of authority. Persons involved in sex work are diverse and include women and girls, cis and trans, in all their diversity, as well as cis and trans men, intersex and non-binary people.

Human trafficking, gender-based violence and coerced and forced labour constitute clearly defined human rights violations in international human rights law, which requires criminal proscription on the part of the state. States' responses to these human rights violations should comply with the principle of legality and should address the rights of all who are at risk of gender-based violence.³

¹ <https://www.ohchr.org/en/calls-for-input/2024/call-input-report-special-rapporteur-violence-against-women-and-girls-human>

² Amnesty International, Explanatory note on the Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the rights of Sex Workers, (POL 30/4063/2016), 26 May 2016, <https://www.amnesty.org/en/documents/pol30/4063/2016/en/>; UNAIDS Guidance Note on HIV and Sex Work, 2012, www.unodc.org/documents/hiv-aids/publications/guidance_note_English.pdf; Mandate of the Working Group on discrimination against women and girls, Eliminating discrimination against sex workers and securing their human rights, www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf

³ The European Coalition on Sex Workers' Rights and Inclusion, Spain: Submission to the United Nations Committee on the Elimination of Discrimination against Women (EUR 41/3929/2023), 11 April 2023, <https://www.amnesty.org/en/documents/eur41/3929/2023/en/>

IMPACT OF LEGISLATIVE FRAMEWORKS (QUESTIONS 9, 13)

The conflation of human trafficking and sex work creates numerous problems in both law and in practice. Where anti-trafficking initiatives are used to justify criminalizing sex work, this leads to serious adverse human rights outcomes for sex workers.⁴ Likewise, anti-trafficking initiatives that involve coercive interventions, such as raids or “rescues” solely on the basis that commercial sex is conducted, have resulted in sex workers facing arrest, theft of property, evictions and other adverse outcomes.⁵ Extending the definition of trafficking in persons beyond trafficking for the purpose of sexual exploitation, to include sex work, risks undermining anti-trafficking initiatives, and allows states arresting and prosecuting those involved in sex work to count these as anti-trafficking efforts,⁶ many times leaving those really responsible for trafficking untouched. States must take measures to address sexual exploitation, but this does not mean prohibiting sex work.

Criminalization of sex work can also prevent victims of trafficking, even if they have escaped, from reporting to law enforcement out of fear they will be criminally charged for sex work-related offences.⁷ Where states also criminalize irregular entry, migrants and refugees who have been trafficked into a country may fear being charged for both selling sex and irregular entry, leading to detention, and deportation.⁸

In order to effectively respond to trafficking, both UN mechanisms and states must address the potential conflation of sex work and trafficking and clarify explicitly that anti-trafficking initiatives should not be used to justify criminalizing sex work. To this end, states must assess the impact of national legal and policy frameworks on trafficking to ensure that they do not have harmful consequences on sex workers.

States must fulfil their obligations under international law to prevent, suppress and punish human trafficking, by adopting legislative and other measures necessary to establish human trafficking for all purposes as a criminal offence.⁹ States must also provide tailored support to survivors, and other means to prevent trafficking such as addressing the structural conditions which enable and perpetuate trafficking, which include lack of safe and legal routes for refugees and migrants, grave human rights violations in countries of origin or displacement locations, and poverty and lack of employment opportunities or denial of economic social and cultural rights.¹⁰

Sex workers and sex-worker led organizations, migrants and refugees and organizations working with them, women’s and LGBTI organizations, are often best placed to help identify victims of trafficking and to differentiate them from people consenting to sell sex.¹¹ These groups should be fully involved in helping states to identify victims of trafficking for the purposes of sexual exploitation, in designing and implementing screening mechanism and in supporting inspections for the identification of trafficking victims in workplaces.

⁴ Amnesty International, Argentina: ‘What I’m doing is not a crime’, (AMR 13/4042/2016), 26 May 2016, <https://www.amnesty.org/en/documents/AMR13/4042/2016/en/>

⁵ Amnesty International, Argentina: ‘What I’m doing is not a crime’, page 27-31.

⁶ Amnesty International, ‘Trafficking in Women and Girls in the Context of Global Migration: Submission to the UN Committee on the Elimination of Discrimination against Women in the context of the draft general recommendation’, (IOR 40/2274/2020), 12 May 2020, www.amnesty.org/en/documents/ior40/2274/2020/en/

⁷ Amnesty International, ‘Trafficking in Women and Girls in the Context of Global Migration’.

⁸ In Hong Kong, where sex work is de facto criminalized by the wide range of limitations on the operational aspects of sex work and irregular entry is an offence under the immigration Ordinance, Amnesty International found some evidence that the use of immigration laws to punish sex workers also potentially impedes the identification and provision of support to victims of trafficking. See, Amnesty International, *Criminalizing Sex Work in Hong Kong* (ASA 17/4032/2016), 26 May 2016, <https://www.amnesty.org/en/documents/ASA17/4032/2016/en/>, page 41. Additionally, Amnesty International received testimony from multiple Venezuelan refugee women in Trinidad that they regularly saw police visit their traffickers. Additionally, some reported that their traffickers had explained to them that “prostitution” is illegal in the country. Most also understood that they had entered the country irregularly. This combination of police involvement in trafficking, coupled with criminalization of sex work and irregular entry, created a climate of fear which resulted in almost none of the women Amnesty International interviewed reporting their traffickers, even after they had escaped. See Amnesty International, *Dominican Republic: “If they can have her, why can’t we?”: Gender-based torture and other ill-treatment of women engaged in sex work in the Dominican Republic* (AMR 27/0030/2019), 28 March 2019, <https://www.amnesty.org/en/documents/amr27/0030/2019/en/>

⁹ UN Trafficking Protocol, Article 5

¹⁰ Amnesty International, ‘*Trafficking in Women and Girls in the Context of Global Migration*’; Amnesty International, ‘*Today or Tomorrow, They Should be Brought Before Justice*’: Rape, Sexual Slavery, Extrajudicial Executions, and Pillage by Eritrean Forces in Tigray’, (AFR 25/7152/2023), 4 September, 2023, www.amnesty.org/en/documents/afr25/7152/2023/en/

¹¹ See Global Alliance Against Traffic in Women GAATW, ‘*Sex Workers Organising for Change: Self-representation, community mobilization, and working conditions*’, <https://gaatw.org/resources/publications/941-sex-workers-organising-for-change>; APNSW, UNAIDS, UNFPA, ‘*Building Partnerships on HIV and sex work: Report and recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*’, [Building Partnerships on HIV and Sex Work 2.pdf](http://BuildingPartnerships.onHIVandSexWork2.pdf) (unfpa.org)

SEX WORKERS' EXPERIENCES OF GENDER- BASED VIOLENCE AND TORTURE AND OTHER ILL-TREATMENT (QUESTION 4, 5, 6, 10)

Amnesty International has documented human rights violations against sex workers in countries all over the world, highlighting the fact that they are consistently at heightened risk of abuse. In 2016, the organization published four detailed research reports on the situation for sex workers in [Argentina](#), [Hong Kong](#), [Norway](#) and [Papua New Guinea](#).¹²

Recent Amnesty International research has also focused on the issue of violence against sex workers in Ireland and found that the criminalization of aspects of sex work is forcing sex workers to take more risks as they avoid the police, putting their lives and safety in jeopardy. The research shows how the lack of trust in the police and social stigma reinforced by the criminal law are key concerns for sex workers. The overwhelming majority of sex workers interviewed reported experiencing violence while engaging in sex work. Yet sex workers also reported being fearful of the police. Among the reasons given for preferring not to engage with the police when experiencing violence were a lack of trust and a belief that no action would be taken. In addition, sex workers expressed a fear of harassment or violence at the hands of the police, as well as their landlords being notified or targeted, which could lead to eviction and homelessness.¹³ The majority of the sex workers interviewed for the research wanted sex work fully decriminalized, including the purchase of sex. They also said that sharing premises with other sex workers helped to increase their safety and limited the potential risk of violence.¹⁴

Similar evidence from Amnesty International's research in the Dominican Republic suggests that women sex workers are routinely humiliated and insulted and frequent targets for sexual torture and other ill-treatment by police, as punishment for transgressing socially constructed views about femininity, acceptable sexuality, and gender identity and expression. Women sex workers who experience intersectional discrimination, such as transgender women, experience even more pronounced exclusion and are at greater risk of torture from the state and individuals. Despite this, women sex workers who have experienced violence, including sexual violence, very rarely make official complaints due to fear of being further humiliated or receiving reprisals from police. The Dominican Republic has failed to collect any data that would help determine the scope and severity of the problem of gender-based torture and ill-treatment by police, which is an essential step to combating and holding perpetrators account for this violence. This impunity fuels the normalization of such crimes by the authorities, as well as by victims themselves in some cases.¹⁵

Even though such treatment and violence can amount to gender-based torture and other ill-treatment under international law, states tend to do little to stop it. This is, in part, because the abuses are a consequence of the high levels of stigma and discrimination that sex workers face in many societies.¹⁶

MEANINGFUL PARTICIPATION OF SEX WORKERS AND VICTIMS AND SURVIVORS OF TRAFFICKING (QUESTIONS 13, 14)

The voices of sex workers are frequently silenced because of the marginalization they experience, even though they are best placed to define the most appropriate mechanisms to maximize their own welfare and

¹² Amnesty International, *Criminalizing Sex Work in Hong Kong* (ASA 17/4032/2016), 26 May 2016, <https://www.amnesty.org/en/documents/ASA17/4032/2016/en/>; Amnesty International, *Outlawed and abused: Criminalizing sex work in Papua New Guinea* (ASA 34/4030/2016), 26 May 2016; Amnesty International, *The human cost of 'crushing' the market: Criminalization of sex work in Norway* (EUR/36/4034/2016), 26 May 2016; Amnesty International, *"What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina* (Index: AMR 13/4042/2016), 26 May 2016

¹³ Amnesty International, *"We live within a violent system": Structural violence against sex workers in Ireland*, (EUR 29/5156/2022), 25 January, 2022, www.amnesty.org/en/documents/eur29/5156/2022/en/

¹⁴ Amnesty International, *"We live within a violent system"*.

¹⁵ Amnesty International, Dominican Republic: "If they can have her, why can't we?"

¹⁶ Amnesty International, *This is how sex workers fight torture and gender-based violence*, www.amnesty.org/en/latest/research/2021/12/this-is-how-sex-workers-fight-torture-gender-based-violence/

safety and have a right to be involved in all state decision making that affects them.¹⁷ Instead of developing policies that centre on the lived realities of sex workers, there is reliance on outdated and flawed research and unreliable data that conflates human trafficking for sexual exploitation with sex work.¹⁸ The rights of all sex workers to participate without discrimination in decisions affecting their lives must be respected; the establishment of laws and policies relevant to sex work must include the meaningful participation and consultation of current sex workers. Participation must involve sex workers from marginalized groups, and those facing discrimination based on, for example, sexual orientation, gender identity, race, ethnicity, and Indigenous identity.¹⁹

Similarly, states should specifically guarantee the meaningful participation of survivors of trafficking for the purpose of sexual exploitation, migrants and refugees, women, girls, LGBTI people and other key stakeholders in the design, monitoring and evaluation of anti-trafficking measures.²⁰ Consultative processes must permit anonymous engagement and other measures required to protect survivors from criminalization, retaliation, or harm, and should ensure effective access to information and resources, to allow meaningful engagement.

RECOMMENDATIONS (QUESTION 15)

Amnesty International recommends that states:

- Address underlying harmful gender and other stereotypes, denial of economic, social and cultural rights, and structural inequalities that drive marginalization, exclusion and discrimination against sex workers.
- Address the conflation of sex work and trafficking for the purpose of sexual exploitation and clarify that anti-trafficking initiatives should not be used to justify criminalizing sex work.
- Repeal laws that criminalize sex work and otherwise punish sex work as a key component to create an enabling environment to effectively combat trafficking.
- Fulfil their obligations under international law to prevent, suppress and punish human trafficking, by adopting legislative and other measures necessary to establish human trafficking for all purposes as a criminal offence. These laws must comply with human rights standards.
- Ensure that sex workers enjoy full and equal protection under the law as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, extortion and all other crimes.
- Refocus laws away from catch-all offences that criminalize most or all aspects of sex work and towards laws and policies that protect sex workers' health and safety and that oppose all acts of exploitation and trafficking in commercial sex.
- Provide tailored support to survivors, and meaningful measures to prevent trafficking such as addressing the structural conditions which enable and perpetuate trafficking, which include lack of safe and legal routes for refugees and migrants, grave human rights violations in countries of origin or displacement locations, and poverty and lack of employment opportunities or denial of economic social and cultural rights.
- Ensure the meaningful participation of sex workers, survivors of trafficking and other key stakeholders in the development of law and policies that directly affect their lives and safety, the identification of victims of trafficking and the design, monitoring and evaluation of anti-trafficking measures.

¹⁷ Amnesty International, "Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers" (POL 30/4062/2016), 26 May 2016, www.amnesty.org/en/documents/pol30/4063/2016/en/

¹⁸ Amnesty International, "We live within a violent system".

¹⁹ See Amnesty International, "Explanatory note on Amnesty International's policy on state obligations to respect, protect and fulfil the human rights of sex workers" POL 30/4063/2016, 26 May 2016, www.amnesty.org/en/documents/pol30/4063/2016/en/

²⁰ Amnesty International, 'Trafficking in Women and Girls in the Context of Global Migration'; Spain, Submission to the UN Committee on Elimination of Discrimination against Women 85th Session, (EUR 41/6683/2023), 8 - 26 May 2023, www.amnesty.org/en/wp-content/uploads/2023/04/EUR4166832023ENGLISH.pdf

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