



Global Alliance Against Traffic in Women

## **The Global Alliance Against Traffic in Women’s Input to the Report of the Special Rapporteur on Violence against Women and Girls on Prostitution and Violence against Women and Girls**

January 2024

### **I. Introduction**

The Global Alliance Against Traffic in Women (GAATW) is an Alliance of non-governmental organisations from Africa, Asia, Europe, Latin America and the Caribbean, and North America. Member organisations include migrant rights organisations, anti-trafficking organisations and self-organised groups of migrant workers. This submission was prepared by the GAATW International Secretariat, which is based in Bangkok, Thailand.

GAATW was established to respond to the needs of women whose rights have been violated in the process of their labour migration. As feminists, listening to women and trying to understand their aspirations and the complexities of their lives has been at the core of our work. We hope that in preparing the report, the UN Special Rapporteur will similarly listen to the desires and experiences of the people whose lives are directly affected by the content of this report, including those currently working in the sex industry.

### **II. Sex work and human trafficking are distinct legal concepts.**

Sex work (or ‘prostitution’) and human trafficking are wrongly conflated in the call for input.<sup>1</sup> Prostitution is not an element of the legal definition of trafficking – the *exploitation* of prostitution is. In the same way, labour is not trafficking - it is the *exploitation* of labour that amounts to trafficking.

It is important to draw a clear distinction in terminology between sex work and human trafficking. Like any other work sector, sex work can involve situations of violence and trafficking, but there is a clear distinction between sex work as a sector of work, and instances of trafficking in persons and violence, which are human rights violations. Sex work is an income-generating activity and a sector of work, human trafficking is an individual human rights violation and criminal act.

### **III. Non-applicability of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.**

The call for input is wrong to cite the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (‘the 1949 Convention’) as applicable international law, for the following reasons.

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<sup>1</sup> For example “*International law has recognized that prostitution is incompatible with the dignity and the worth of the human person and has included prostitution as a key element for the crime of trafficking in persons for the purpose of sexual exploitation.*”

First, this convention has been superseded by the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ('the 2000 Trafficking Protocol'). Under Article 30 of the Vienna Convention on the Law of Treaties an earlier treaty only applies to the extent that it is compatible with a later treaty.<sup>2</sup> The 1949 Convention is incompatible with the 2000 Trafficking Protocol because it deems all sex work to be a form of trafficking,<sup>3</sup> whereas the 2000 Trafficking Protocol makes clear that only *the exploitation* of prostitution amounts to a form of trafficking.<sup>4</sup>

Second, the 1949 Convention has been rejected by the previous mandate-holder of the Special Rapporteur on Violence against Women and Girls on the basis that it does not take a human rights approach and it does not regard women as independent actors endowed with rights and reason.<sup>5</sup>

Third, just 82 countries have ratified the 1949 Prostitution Convention, compared with the 2000 Trafficking Protocol which has been ratified by 181 parties.

#### IV. Misinterpretation of CEDAW's General Recommendation No. 38.

The call for input miscites CEDAW's General Recommendation No. 38.<sup>6</sup> General Recommendation No. 38 only refers to *trafficking and the exploitation of* prostitution as a form of gender-based violence. Sex work (or 'prostitution') is not deemed to be a form of gender-based violence by CEDAW.<sup>7</sup>

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<sup>2</sup> Article 30 (3) Vienna Convention on the Law of Treaties 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331

<sup>3</sup> Article 1(2), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

<sup>4</sup> Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000

<sup>5</sup> Violence against women, its causes and consequences - Report of the Special Rapporteur, E/CN.4/2000/68, 29 February 2000, "[the Convention] does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason... the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights violations."

<sup>6</sup> The Call for Input states "General Recommendation No. 38 on Trafficking in Women in the Context of Global Migration of 2020 has clarified the indivisible link between trafficking and sexual exploitation, while also acknowledging prostitution as a phenomenon rooted in structural, sex-based discrimination, constituting gender-based violence."

<sup>7</sup> The correct quote from CEDAW is "the Committee acknowledges **that trafficking and exploitation of** prostitution in women and girls is unequivocally a phenomenon rooted in structural, sex-based discrimination, constituting gender-based violence..." (Emphasis added), see Committee on the Elimination of Discrimination against Women and Girls, General recommendation No.38 (2020) on trafficking in women and girls in the context of global migration, 2020

## V. Substantive responses to the questions contained within the call for input

### *Question 4: What forms of violence are prostituted women and girls subjected to?*

In countries where laws and policies conflate sex work and human trafficking and/or criminalise sex work, sex workers and victims of trafficking for sexual exploitation are subjected to violent raids by the police, who carry out physical and sexual assaults, impose arbitrary and prolonged detention and subject women and girls to extortion. Such raids often fail to distinguish between sex workers and victims of trafficking, subjecting all women and girls to the same violent treatment.

In Thailand, the greatest fear for sex workers is workplace raids by the police<sup>8</sup> and anti-trafficking “raid and rescue” operations have been linked to frequent human rights violations, including physical violence and forced detention in government facilities.<sup>9</sup> In Canada, migrant sex workers have reported multiple instances of violence at the hands of law enforcement in the context of “anti-trafficking” operations, including being strip-searched and physically and sexually assaulted.<sup>10</sup> In India, many violent raids have been conducted by foreign NGOs and the police under the guise of anti-trafficking, which have subjected both sex workers and victims of trafficking to physical and sexual violence.<sup>11</sup> There are also reports of police and NGOs committing sexual violence in the course of “sting” operations, posing as clients and then raping underage girls.<sup>12</sup>

State actors also carry out these raids of places of sex work in a sensationalist manner that is abusive and traumatic, particularly for victims of sexual exploitation who are identified in such raids. In Thailand, the publication of photographs of raids of sex work establishments in national news outlets is commonplace.<sup>13</sup> In India, images of underage girls have been publicly shared by the police in high-profile “raid and rescue” operations.<sup>14</sup>

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<sup>8</sup> GAATW, “Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions,” 2018, p. 61 (**GAATW Sex Workers Organising**)

<sup>9</sup> GAATW Sex Workers Organising p. 43

<sup>10</sup> GAATW Sex Workers Organising p. 174

<sup>11</sup> For example, in Maharashtra in May 2005, the International Justice Mission (IJM) and Restore International induced the police to make a violent raid on brothels in order to look for victims of trafficking. Women were beaten and threatened with guns by more than 70 police officers. Around 35 women and girls were arrested and forced to undergo medical examinations, GAATW Sex Workers Organising p. 134

<sup>12</sup> In India, in May 2007, a team from two NGOs carried out a ‘sting’ operation in which one of the team posed as a client and, as alleged by some members of the community, raped a 13-year-old girl, See GAATW Sex Workers Organising p. 135

<sup>13</sup> GAATW Sex Workers Organising p. 43

<sup>14</sup> GAATW Sex Workers Organising, p. 38

When sex work is criminalised, women are also subjected to economic violence through harassment and extortion by the police, being forced to pay bribes to avoid being criminalised.<sup>15</sup> Sex workers are also subjected to other forms of economic violence in countries, like the United States, where engaging in sex work can constitute the basis for eviction or exclusion from public housing.<sup>16</sup>

*Question 5: Who is responsible for the perpetration of violence against women and girls in prostitution?*

As set out above, state actors are directly responsible for the perpetration of violence against sex workers through violent raids of places of sex work, and the harassment and extortion of sex workers.

Policymakers are also indirectly responsible for the perpetration of this violence when they fail to decriminalise sex work. It has been clearly demonstrated how the repeal of such laws and policies can drastically reduce the prevalence of police violence and extortion. For example, in Mexico City, since a new law that recognises sex workers as non-salaried workers came into effect, harassment and extortion of sex workers by the police has decreased sharply.<sup>17</sup>

Even in countries where the workers themselves are not criminalised, state actors are also indirectly responsible for violence against sex workers through laws and practices which criminalise clients and third parties. These laws create a situation where women are unable to work together safely in brothels, facilitating sex workers' dependency on pimps and managers and exacerbating their vulnerability to trafficking.<sup>18</sup> In a report published by the London School of Economics in December 2022, it was found that the criminalisation of clients and third parties in Sweden, Norway and Finland, pushes sex workers into dangerous situations as they try to protect their clients from prosecution, and the criminalisation of "brothel-keeping" has led to a dire lack of housing and safe spaces for sex workers in these countries.<sup>19</sup>

State actors are also responsible for hindering sex workers' ability to assist and rescue victims of violence. Laws which criminalise sex work and/or third parties mean that sex workers are less able to assist women and girls who may be in a situation of exploitation for fear of being criminalised themselves. For example, in South Africa sex

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<sup>15</sup> For example, in the Philippines, sex workers report that police officers used anti-trafficking as a cover to extort money from them, their clients, and owners of commercial sex establishments, S Parmanand, 'The Philippine Sex Workers Collective: Struggling to be heard, not saved', *Anti-Trafficking Review*, issue 12, 2019, pp. 57-73,

<sup>16</sup> C S Shdaimah, N D Franke, T D Becker, C S Leon, 'Of House and Home: The meanings of housing for women engaged in criminalised street-based sex work,' *Anti-Trafficking Review*, issue 20, 2023

<sup>17</sup> GAATW Sex Workers Organising p. 294

<sup>18</sup> For example in Canada, three years after the laws criminalising clients and third parties were enacted, research found that this has intensified the isolation of sex workers, and increased targeted violence and stigma towards them, Canadian Alliance for Sex Work Law Reform, Safety, Dignity, Equality: Recommendations for sex work law reform in Canada, March 2017, p. 7

<sup>19</sup> Niina Vuilajarvi, "Criminalising the Sex Buyer: Experiences from the Nordic Region," June 2022, London School of Economics, Centre for Women, Peace and Security

workers report occasionally coming across young women working who they believe are underage, but feeling helpless due to the risk of being criminalised themselves should they go to the police.<sup>20</sup> By contrast, in New Zealand, decriminalisation has shifted the relationship between the sex worker community and the police from one of harassment and mistrust to one of collaboration.<sup>21</sup>

*Question 6: Describe the linkages, if any, between prostitution and the violation of the human rights of women and girls.*

a. Labour rights and socioeconomic rights

Sex workers around the world report a range of labour rights violations including excessive working hours, wage theft, and unsafe working environments.<sup>22</sup> When their work is criminalised and stigmatised sex workers are denied access to labour tribunals and justice mechanisms meaning employers are free to impose exploitative policies with impunity.<sup>23</sup>

Further, the labour rights movement has been a crucial ally in the fight against other forms of trafficking for forced labour, yet sex workers have been historically denied access to these labour rights movements because of attitudes which present “sex trafficking” as completely different from “labour trafficking”.<sup>24</sup>

b. Discrimination on the basis of race, ethnicity and nationality

Discriminatory so-called “anti-trafficking operations” are often used to fine, detain, prosecute and deport migrant sex workers.

In Canada, migrant workers, including those with open work permits, are specifically prohibited from working in sex-related businesses. This has led to intensified profiling and harassment by law enforcement of migrant women,<sup>25</sup> particularly women of Asian descent and migrant women working in massage parlours.<sup>26</sup>

Similarly, in Thailand, the Anti-Trafficking in Persons Act of 2008 is being used to fine, detain, prosecute, and deport migrants for “crimes” such as working in a place where sex is sold.<sup>27</sup>

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<sup>20</sup> GAATW Sex Workers Organising p. 222

<sup>21</sup> GAATW Sex Workers Organising p. 32

<sup>22</sup> GAATW Sex Workers Organising, p. 27

<sup>23</sup> See for example the situation in Thailand, GAATW Sex Workers Organising p. 66

<sup>24</sup> A W Peters, “‘Things that Involve Sex are Just Different’: US anti-trafficking law and policy on the books, in their minds, and in action”, *Anthropological Quarterly*, vol. 86, no. 1, 2013, pp. 221–255.

<sup>25</sup> GAATW Sex Workers Organising p. 170

<sup>26</sup> GAATW Sex Workers Organising p. 173

<sup>27</sup> GAATW Sex Workers Organising p. 48

In New Zealand, whilst sex work for nationals is decriminalised, migrants who are found to be doing sex work can be deported. This has led to instances of migrant workers being extorted and abused by clients who threaten to report them to immigration authorities.<sup>28</sup>

In South Africa, xenophobic police raids in areas with a higher concentration of migrant sex workers have often been justified as attempts to combat human trafficking and other perceived forms of criminality of migrants.<sup>29</sup>

*Question 7: What links are there between pornography and/or other forms of sexual exploitation and prostitution?*

When pornography and/or online sex work is censored or criminalised it impacts sex workers' ability to operate online, which can be a much safer type of sex work with better working conditions. It also limits sex workers' ability to communicate with each other, to offer advice and guidance and to organise. This all increases the risk of violence and sexual exploitation.

Advances in technology have also enabled state censorship of pornography and online sex work to extend beyond national borders and to interfere with the rights and freedoms of sex workers in other countries. A law that prohibits users of online platforms from selling sexual services in one country, such as the SESTA/FOSTA laws in the United States, can harm sex workers who are providing legal and regulated sexual services in another.<sup>30</sup>

*Question 8: How is the issue of consent dealt with? Is it possible to speak about meaningful consent for prostituted women and girls?*

Sex workers can and do consent to their work. Sex work is first and foremost a livelihood strategy. Like everyone else, sex workers choose the best option for work from the limited options they have, and they want to be able to earn that living without discrimination, harassment, or judgement.

For many women, sex work is preferable to the generally lower-paid jobs available to them, such as domestic work, factory work or farming. In South Africa, sex workers earn an average of six times more than domestic workers.<sup>31</sup> In Thailand, sex workers' incomes range between two and ten times more than the national minimum wage.<sup>32</sup>

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<sup>28</sup> GAATW Sex Workers Organising p. 92

<sup>29</sup> GAATW Sex Workers Organising p. 211

<sup>30</sup> The Stop Enabling Sex Traffickers Act (SESTA) and the Fight Online Sex Trafficking Act (FOSTA)

<sup>31</sup> C Gould and N Fick, *Selling sex in Cape Town: Sex work and human trafficking in a South African city*, Institute for Security Studies, 2008, <https://issafrica.org/research/books/selling-sex-in-cape-town-sexwork-and-human-trafficking-in-a-south-african-city>

<sup>32</sup> E Bernstein and E Shih, 'The Erotics of Authenticity: Sex trafficking and "Reality Tourism" in Thailand', *Social Politics*, vol. 21, issue 3, 2014, pp. 430–460

To suggest that adult sex workers cannot meaningfully consent to sex is extremely dangerous and denies sex workers the right to make decisions about their lives and bodies. If all sex work is considered to be rape, then this diminishes and obscures actual instances of rape and sexual violence that a worker experiences and makes it harder for her to report such instances to the police.

*Question 12: What are the obstacles faced by organizations and frontline service providers in their mission to support victims and survivors of prostitution?*

Sex workers are exceptionally well positioned to prevent, detect and respond to cases of violence and human trafficking within the industry.<sup>33</sup> In the words of one sex worker in Canada *“everything I learnt about keeping myself safe when I was a sex worker came from other sex workers ... That sort of inside information on what to look out for, how to keep yourself safe, you can’t get that from anyone else.”*<sup>34</sup>

Despite this, sex worker organisations continue to be deliberately excluded from anti-trafficking responses<sup>35</sup> and have experienced blatant hostility from other anti-trafficking actors.<sup>36</sup>

Anti-trafficking organisations face further obstacles in their prevention of violence due to repressive funding requirements from donors rooted in discriminatory attitudes towards sex work. For example, the US government requires foreign-based grantees of federal funds for anti-trafficking programmes to adopt an organisation-wide policy opposing the legalisation and practice of “prostitution”.<sup>37</sup>

## VI. Recommendations

- a. **Listen to sex workers:** The people who are affected by violence in the context of sex work, and the organisations that represent them, should participate in policymaking, programme planning, implementation, and evaluation. This is accepted in other sectors where violence and exploitation occurs, such as domestic work, fisheries or agriculture. Sex worker organisations know best what the problems in the industry are and how to address them. Anti-VAWG stakeholders need to recognise sex workers as partners, not adversaries, in their work.
- b. **Decriminalise sex work:** Complete decriminalisation of sex work is a vital first step to ending violence against women. Decriminalisation is a precondition for establishing safer, healthier workplaces in an industry in which sex workers’ rights are protected by labour laws, and in which sex workers are afforded the same labour

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<sup>33</sup> GAATW Sex Workers Organising p. 221

<sup>34</sup> GAATW Sex Workers Organising p. 184

<sup>35</sup> GAATW Sex Workers Organising p. 218

<sup>36</sup> For example, organisations in Spain report being refused membership in the Spanish anti-trafficking network due to their stance on the decriminalisation of sex work. GAATW Sex Workers Organising p. 232

<sup>37</sup> S Parmanand, ‘The Philippine Sex Workers Collective: Struggling to be heard, not saved’, Anti-Trafficking Review, issue 12, 2019, pp. 57-73,

protections which other workers enjoy. As in other sectors, this would lead to fewer opportunities for abusive and violent working conditions.

- c. **Change the approach to human trafficking:** Trafficking in persons is not primarily a law enforcement issue, but rather a social and economic issue. To eliminate trafficking in persons for the purpose of sexual exploitation, anti-trafficking measures must move away from the criminalisation of sex work and instead take into account the structural conditions which produce and reproduce exploitation of all forms.
- d. **End the conflation of sex work and trafficking:** The conflation of sex work and trafficking leads to inappropriate responses that fail to assist sex workers and trafficked women and girls in realising their rights. The two issues are both complex and need their own individual policies, which take into account the economic, political, and social root causes of each.

#### X. Further reading

- Anti-Trafficking Review, issue 12, 2019: <https://www.antitraffickingreview.org/index.php/atrjournal/issue/view/20>
- GAATW, “Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions,” 2018: <https://gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>