**Input to the Report on** **prostitution and violence against women and girls**

**Framing sex work and sex workers**

The term “prostituted women” to refer to women who do sex work and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, on which this call for inputs references, assumes that all women who sell sexual services are victims lacking agency over their circumstances. The term “sex worker” is used to reflect and respect the immense diversity within this population. Sex workers are diverse in terms of, but not limited to, gender, age, health status, documentation, ability, location, area of work, background.[[1]](#footnote-1) Likewise, the clients of sex workers are diverse in their profiles, gender identities and motivations for seeking sexual services.[[2]](#footnote-2),[[3]](#footnote-3) Sex work is the consensual provision of sexual services between adults, which takes many forms, and varies between and within countries and communities. Sex work is work, providing a livelihood for millions around the world and includes the exchange of sexual services for money, goods, or reward, either regularly or occasionally.[[4]](#footnote-4) The term ‘sexual exploitation’ is regularly and harmfully used to describe all sex work, increasing the stigma and discrimination faced by sex workers. The conflation of sex work with exploitation, and the conflation of exploitative work conditions in the sex industry with trafficking, leads to harmful legislation that create impediments to sex workers access to resources, support and services and prevents them from organising for better work conditions.[[5]](#footnote-5) Exploitation, unsafe and unhealthy working conditions exist in many labour sectors. Work does not become something other than work in the presence of these conditions. Instead, criminalisation creates the conditions in which violations of sex workers’ rights continue with impunity.[[6]](#footnote-6)

**Factors perpetuating violence against sex workers**

Criminalisation, stigma and discrimination are underlying conditions that foster all types of violence against sex workers, including extortion, threats, humiliation, detention, isolation, deprivation of basic human rights and access to services. The stigma and social rejection accompanied by criminalisation fuel human rights abuses, including from healthcare providers. Violence perpetrated by health service providers can take many forms, including refusal of services, medication and prevention commodities, stigmatising and shaming remarks, and requiring sex workers to undergo testing or procedures unconnected to their medical condition. Sex workers also experience violence from clients, family, intimate partners, acquaintances, strangers, and from management and colleagues due to stigmatisation. This violence occurs in many contexts: in workplaces, at health and social service agencies, in detention centres, public spaces, and at home. [[7]](#footnote-7)

When sex workers are forced to operate in a criminalised context, they are denied basic rights, such as the right to health, labour and social protections, economic services, and justice because they are seen and treated as criminals. Criminalisation of sex work is one of several interrelated structural factors that create vulnerability and barriers to sex workers’ right to health. [[8]](#footnote-8),[[9]](#footnote-9) In almost every country, sex work is in some way criminalised, compromising the health and wellbeing of sex workers worldwide. Criminalisation of sex work creates a culture of impunity, hindering sex workers from reporting violence. When sex workers are viewed as ‘criminals’ under the law, violence against them is encouraged, even when they are reporting violence. As criminalisation puts sex workers under a constant threat of arrest, law enforcement may even extort money, information and sex in exchange for avoiding arrest.[[10]](#footnote-10) Regional studies conducted by and with sex worker networks in the Asia-Pacific[[11]](#footnote-11), Latin America[[12]](#footnote-12), Africa[[13]](#footnote-13), and Eastern Europe and Central Asia[[14]](#footnote-14) regions document that police are among the main perpetrators of sexual, physical and emotional violence against sex workers.

Under the ‘Nordic model’, which purports to ‘only’ criminalise clients or third parties, the criminalisation of the purchase of sex leads to sex workers being subject to increased violence, stigma, exploitation, police repression, and reduced access to justice and services. A study from researchers at the London School of Hygiene and Tropical Medicine found that criminalisation and repressive policing of sex work, including in countries with the 'Nordic Model', is linked to increased risk of violence, HIV and sexually transmitted infections. The research showed that criminalisation of the clients in Sweden and Canada did not improve sex workers’ safety or access to services.[[15]](#footnote-15) In France, where Nordic model policies were introduced in 2016, the police continue to target sex workers for arrest and there are regular police campaigns designed to ‘clean up’ areas of public sex work in France. Sex workers are now working in more remote areas to avoid police attention, which has increased their vulnerability to violence. [[16]](#footnote-16) Research has shown that ‘End Demand’ models have not reduced sex work[[17]](#footnote-17) or trafficking.[[18]](#footnote-18) Instead, sex workers have reported that ‘End Demand’ models have increased their vulnerability to violence and police harassment, perpetuated stigma and discrimination, and reduced their access to health, labour rights, financial services, and housing.[[19]](#footnote-19),[[20]](#footnote-20)

**Sex workers’ lack of access to justice**

Sex workers’ access to justice is directly impacted by the legislative framework under which they operate. Sex workers face a wide range of barriers to accessing justice, both as victims of crime and when charged with crimes. Criminalisation of sex work, stigma and discrimination, and police corruption and violence limit the reporting of crimes, the successful prosecution and conviction of perpetrators, and access to victim compensation and support services. Where sex work is criminalised, sex workers’ rights to protection from the law and freedom from arbitrary detention are systematically violated by police and the judicial system. Sex workers around the world are frequently excluded from protection of employment legislation and labour dispute mechanisms and experience discrimination in civil courts.[[21]](#footnote-21)

Reports and responses[[22]](#footnote-22) to NSWP consultations with member organisation about violence against their community members indicated widespread abuse and violence primarily at the hands of law enforcement and other state institutions. The lack of access to justice that sex workers face occurs in a context of inequality caused by discriminatory laws, intersecting discrimination, and the failure of states to ensure that legal systems are accessible and equitable for all. The miscarriages of justice that sex workers face are severe human rights violations that leave them vulnerable to violence while excluding them from equal protection under the law.

**Impact of anti-trafficking**

We note that the 1949 Convention, framing this call has been rejected by previous mandate holders of the Special Rapporteur on Violence against Women and Girls on the basis that it does not take a human rights approach and does very little to protect women from and provide remedies for human rights violations committed in the course of trafficking. Furthermore, the 1949 Convention has been superceded by the 2000 Trafficking Protocol due to their incompatibility. The 1949 Convention deems all sex work to be a form of trafficking, whereas the later Protocol makes clear that trafficking can be in all labour sectors and that only ‘forced prostitution’ amounts to a form of trafficking under the Protocol.

Anti-trafficking laws and practices that seek to ‘rescue’ or rehabilitate sex workers are also a barrier to justice, especially for migrant sex workers.[[23]](#footnote-23) Anti-trafficking measures that conflate sex work and trafficking have proliferated at regional and national levels, resulting in a disproportionate focus on sex work. Consent is frequently described as irrelevant within definitions of ‘prostitution’, and trafficking often refers explicitly, if not solely, to trafficking in the sex industry.[[24]](#footnote-24) For example, a South Asian convention defines prostitution as “the sexual exploitation or abuse of persons for commercial purposes” and trafficking as “the moving, selling or buying of women and children for prostitution…with or without the consent of the person subjected to trafficking.”[[25]](#footnote-25) This, and similar legislation and treaties in Asia and the Pacific, are used to justify raids and supress consensual adult sex work. This has been shown to “contribute to vulnerability, generate stigma and create barriers to HIV service delivery.”[[26]](#footnote-26) Research done on the impact of New York’s Human Trafficking Intervention Courts (HTICs) in 2013 also revealed that courts do not respect the human rights of the people they process and distort the line between consent and coercion. This makes it more difficult for sex workers who face violence through clients, third parties, police, and courts to seek justice.[[27]](#footnote-27)

In her report following her visit to India in 2013, former Special Rapporteur on Violence Against Women, Rashida Manjoo, underscored the need to address the violence faced within sex work from state and non-state actors and the lack of avenues for legal redress. The report noted “a tendency to conflate sex work with trafficking in persons and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs” and recommended that the State “review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalises sex work and to ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.” [[28]](#footnote-28)

**Recommendations**

International best practice guidelines, supported by a substantial body of evidence, [[29]](#footnote-29),[[30]](#footnote-30),[[31]](#footnote-31), ,[[32]](#footnote-32),[[33]](#footnote-33),[[34]](#footnote-34),[[35]](#footnote-35),[[36]](#footnote-36) promote the full decriminalisation of sex work as the best means to reduce violence, address trafficking, improve health outcomes, and uphold the human rights of sex workers. Under the policy of decriminalisation, all criminal laws that prohibit sex work itself are removed and ideally, should encompass the removal of all legal oppression that disproportionately impacts sex workers, such as laws against vagrancy, public nuisance, obscenity, drug use, homosexuality, and crossdressing. Decriminalisation improves the safety of sex work by reducing stigma, discrimination, work-related violence, police violence, and by increasing access to justice, support services and health services. [[37]](#footnote-37),[[38]](#footnote-38) It also affords sex workers the same rights and social protections as other workers, improving their opportunities and economic empowerment. Under decriminalisation, sex workers no longer fear arrest, imprisonment, deportation, or having a criminal record because of their work. A 2008 report[[39]](#footnote-39) by the Prostitution Law Review Committee found that sex workers are more willing to report crime, the sex industry has not increased in size, and the health and safety of the majority of sex workers has improved due to the Prostitution Reform Act. The Working Group on Discrimination Against Women and Girls has emphasised in its [paper](https://www.ohchr.org/en/special-procedures/wg-women-and-girls/eliminating-discrimination-against-sex-workers-and-securing-their-human-rights) that decriminalisation does not impede states’ efforts to mitigate human trafficking, citing the 2020 [report](https://undocs.org/A/HRC/44/45) of the Special Rapporteur on trafficking in persons. NSWP contributed to the consultation process for this paper by ensuring that it was grounded in evidence-based research and informed by consultations conducted with diverse sex workers across all regions, including those living with HIV, those who have experienced violence, exploitation, and abuse first-hand.

In addition to decriminalisation, independent monitors and reporting mechanisms, developed in consultation with sex workers, must be made available to sex workers to report violence and violations against their rights, including trafficking cases. For this purpose, frontline organisations that are directly in contact with sex worker communities should be better supported and funded. Durbar Mahila Samanwaya Committee (DMSC) Self-Regulatory Board (SRB) model is an example of a successful community-led intervention to combat trafficking, helping to identify whether someone is involved in sex work by choice or coercion. The SRB model comprises members across the Department of Health, Labour and Social Welfare, medical practitioners, lawyers, social workers and sex workers.[[40]](#footnote-40)

Finally, programmes solely focussed on rehabilitating or forcing sex workers to exit sex work, without meaningfully consulting with sex workers and not factoring in the effects of entrenched stigma and discrimination, have proven to be unsuccessful.[[41]](#footnote-41) Instead, frontline organisations must be better funded to promote economic empowerment programmes offering tools to sex workers relating to social security, savings, economic planning, classes for strengthening skills, and, if so desired, structured plans for exiting the sex industry and moving to different sectors. All of these tools can help sex workers who want to find alternative or supplementary employment and empower those who choose sex work with more negotiating power, protecting them from abuse and violence.[[42]](#footnote-42)

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