31 January 2024

Special Rapporteur on violence against women and girls

Per email address: hrc-sr-vaw@un.org

Dear Ms. Reem Alsalem

**Submission: Input into the report of the ‘Special Rapporteur on violence against women and girls’ to the Human Rights Council on prostitution and violence against women and girls**

## 1. Introduction**:**

We are a group of 46 researchers from academic institutions and civil society, and who have many decades’ worth of experience in research, programme implementation, and law and policy reform in the broad areas of gender, violence, public health, migration, mental health and trafficking.

We are responding to your office’s [*Call*](https://www.ohchr.org/en/calls-for-input/2024/call-input-report-special-rapporteur-violence-against-women-and-girls-human) for “input into the thematic report will be presented to the UN Human Rights Council at its 56th session in June 2024 and will examine the nexus between the global phenomenon of prostitution and violence against women and girls”.

As researchers and/or civil society representatives associated with various academic institutions and non-governmental associations, we have conducted research with sex workers and in collaboration with sex workers and sex worker-led organisations for many years. This has been primarily within the context of South Africa but also across Southern Africa and globally. Our publications with sex workers include academic articles, reports for international organisations and human-rights based organisations as well as visual and art-based work that showcases sex workers’ experiences and life stories. This work informs the content of our submission, and our recommendations.

## 2. Concern over the Call’s ideological positioning

We would like to express our concern over the *Call’s* framing and ideological positioning. Our research directly challenges the assumption that sex workers are inevitably and inherently victims with no agency – this assumption seems to inform the starting point of the Call and the themes it invites us to address.

We contest the automatic equation of sex work with trafficking and violence. Similarly, we are concerned about the *Call’s* introductory claim that “international law has recognized that prostitution is incompatible with the dignity and the worth of the human person” – neither CEDAW nor the Palermo Protocol cited in support of this statement , we believe, makes these explicit claims.

The *Call* uses terms such as a “prostitution”, "prostituted women and girls" "victims and survivors of prostitution" that we find problematic*.*  In this submission we use the terminology of “sex workers” and “sex work” – terms that UNAIDS recommends in their Terminology Guidance and that are employed by the World Health Organization (WHO), UNAIDS and other international bodies.[[1]](#footnote-1) [[2]](#endnote-1)

More importantly, we use ‘sex work’ as it is the terminology that sex workers[i] in South Africa recommend.[[3]](#footnote-2)

## 3. The (migrant) sex work context, the criminal law, and violence and exploitation

A recurring theme from all of all our work is that the criminal law and the sex work context – not sex work in and of itself - make sex workers vulnerable to multiple forms of violence. This includes (but is not limited to) gender-based violence, interpersonal violence, behavioural violence (exploitation by third parties such as so-called brothel owners and pimps, attacks from clients, and abuse by the police or members of the public), hate crimes, and structural violence (discrimination within and challenges accessing healthcare, legal support, education and other services) as well as stigma associated with the sex work industry.[[4]](#footnote-3)

In South Africa (as in many other contexts), the majority of sex workers are internal and cross-border migrants. South Africa is a country associated with high levels of population mobility - both within the country and across borders. Our research clearly shows that the criminalisation of sex work combined with the high levels of discrimination directed at migrants and, non-nationals particularly means that migrant sex workers experience a range of heightened structural and gendered vulnerabilities.[[5]](#footnote-4) These vulnerabilities are further exacerbated by the conflation of sex work and trafficking in which migrant sex workers are often assumed to be victims of trafficking.

Research shows that, in the context of high levels of poverty and unemployment, sex work remains a viable livelihood strategy for many individuals, including migrants.[[6]](#footnote-5) Studies conducted in South Africa indicate that sex workers with a primary school education are able to earn nearly six times more than the typical income earned in more formal employment (such as domestic work) and women selling sex are normally heads of households. supporting an average of four persons.[[7]](#footnote-6) However due to the criminalisation of sex work, sex workers are not recognised as legitimate workers nor can they access basic human rights, healthcare and social support, while being able to work safely - and this is where the risks and violence in sex work are particularly evident.[[8]](#footnote-7)

## 4. The harm of conflating sex work, migration and trafficking

Our research indicates that in South Africa and elsewhere, the conflation of sex work with human trafficking means that migrant/mobile sex workers are often framed as victims of trafficking and targeted through anti-trafficking raids.[[9]](#footnote-8) Busza describes the dangers in the following way:

“In the end, simplistic approaches that equate all migration for sex work with "trafficking" and exploitation only complicate efforts to provide appropriate health and social services to meet the immediate needs of sex workers. Increased efforts to abolish the sex industry can force it underground, making access to sex workers in need all the more difficult.”[[10]](#footnote-9)

The intersection of sex work and migration also means that baseless claims are made that the decriminalisation of sex work will increase levels of trafficking. Despite no credible evidence to support such claims they are often used to justify repressive immigration laws as well as drive raids and “rescues” of sex workers.[[11]](#footnote-10) In fact, studies show that sex workers themselves are often best positioned to help combat trafficking.[[12]](#footnote-11) Sex workers are usually at the forefront of the sex industry and thus better able to identify traffickers and those who have been trafficked and in contexts of decriminalization the improved relationship between the police and sex workers means that they can work together to fight trafficking.[[13]](#footnote-12)

## 5. Proposed model that distinguishes between sex work, exploitation and mobility

A useful model to understand the differences and overlap between sex work, exploitation and mobility was developed by Yingwana and colleagues.



Diagram 1: Visual representation of the Sex work, Exploitation and Migration/Mobility Model developed by (Yingwana, Walker, and Etchart 2019).[[14]](#footnote-13)

The model above is based on the ‘polymorphous paradigm’ approach to understanding sex workers’ lived experiences. Unlike the ‘oppression model’, the polymorphous paradigm is evidence-based, and recognises sex workers’ varied and nuanced experiences.

When applying the Sex work, Exploitation and Migration/Mobility Model, sex work, migration/mobility (movement), and exploitation (violence) can be imagined as three circles overlapping with each other to form a triangle. Where the overlapping circles meet, four distinct possible conditions exist.

1. Where sex work overlaps with some form of movement, we can describe such a situation as migrant/mobile sex work. In this instance, a sex worker might be selling sex away from their home, or while in transit, as in the case of sex workers operating long-distance truck routes.

2. Should the selling of sex overlap with violence or exploitation, we could be dealing with sexual and/or labour exploitation in sex work.

3. A possible scenario under these conditions could be a brothel manager extracting exuberant rent from their staff, or forcing them to service clients they are uncomfortable with.

4. Finally, when migration/mobility overlaps with exploitation or violence, we could be facing a case of human trafficking.

However, it is important to note that (based on the model), this form of trafficking currently sits outside of commercial sex. So only when all three circles intersect in the centre do we find a clear case of human trafficking for the purpose of sexual and labour exploitation.

## 5. Recommendations:

We believe that a critical step to addressing the root causes of trafficking and the staggering high levels of violence against sex workers and client is to remove all criminal laws on sex work.[[15]](#footnote-14) While not a panacea for the injustices faced by sex workers, decriminalisation is a necessary first to step to support efforts to end stigma, to increase sex workers’ safety and well-being and the affirm their human rights. Similarly, decriminalisation of sex work is necessary to help eliminate barriers to healthcare, challenge prejudicial health care worker attitudes, and to promote the safety and dignity of sex workers.

In summary, our recommendations are as follow:

1. To reduce violence against sex workers, clients and third parties in the sex work context as well as safeguarding the health and human rights of society as a whole, **decriminalise all aspects of sex work**.
2. Support the **expungement of all existing criminal records** related to the criminalisation of sex work
3. Develop clear **conceptual tools and guidelines** that separate adult, consensual sex work from trafficking.
4. Develop **evidence-based anti-trafficking programmes in consultation with sex workers** and that meaningfully and respectfully involve sex workers and others in the sex industry.

We wish to draw your attention to the useful guidance on legal tools and intersectionality in the so-called ‘8 March Principles’[[16]](#footnote-15) that underlie some of our recommendations.

We thank you for the opportunity to make this submission and will gladly forward any research articles or other materials upon request.

Yours sincerely

 

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40. Miss Thulisile Zikhali, Postdoc at the African Centre for Migration and Society (Wits University)
41. Ms Lucy Oconnell, Doctors Without Borders (MSF)
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43. *Organisational Endorsement:* Global Alliance Against Traffic in Women Canada
1. N Naidoo, “Report on the 1st African Sex Worker Conference: Building Solidarity and Strengthening Alliances. Johannesburg, South Africa: Sex Worker Education & Advocacy Taskforce,” (Johannesburg, South Africa: Sex Worker Education & Advocacy Taskforce, Reproductive Health & HIV Research Unit, 2009), https://www.sisonke.org.za/wp-content/uploads/2019/01/African-Sex-Worker-Conference\_Report2009.doc\_final.pdf. [↑](#footnote-ref-1)
2. The first African Sex Workers’ conference was held in Hillbrow, Johannesburg in February 2009. Sex work participants endorsed the terminology of sex work and defined themselves as follows:

“It is a job, we support our families, we are single parents, and we are breadwinners.”

“It is a career like any other, but in the eyes of society it is not and they call us names. So, we have to show them that we are something more than just sex workers, we are peer educators.”

“A sex worker is someone who is earning and selling for an exchange of money. We help those who are in need of sex. We are market sellers because we are marketing ourselves” [↑](#endnote-ref-1)
3. UNAIDS, “UNAIDS Terminology Guidelines,” 2015, https://www.unaids.org/sites/default/files/media\_asset/2015\_terminology\_guidelines\_en.pdf. [↑](#footnote-ref-2)
4. Marlise Richter, Zia Wasserman, and Ishtar Lakhani, “Targets of Hate, Shame or Exploitation?: The (Violent) Conundrum of Sex Work in Democratic South Africa,” *International Journal of Critical Diversity Studies* 3, no. 1 (2020), https://doi.org/10.13169/intecritdivestud.3.1.0009; Ilse Pauw and Loren Brener, “‘You Are Just Whores—You Can’t Be Raped’: Barriers to Safer Sex Practices among Women Street Sex Workers in Cape Town,” *Culture, Health & Sexuality* 5, no. 6 (2003): 465–81, https://doi.org/10.1080/136910501185198; Donna Evans and Rebecca Walker, “‘Even Though the Man Raped Me and Stole My Cell Phone, I Am More Frightened of the Police than I Am of That Man’ The Policing of Sex Work in South Africa. A Research Report on the Human Rights Challenges across Two South African Provinces” (Cape Town: Sonke Gender Justice and SWEAT, 2019), http://www.sweat.org.za/wp-content/uploads/2019/09/Policing-Report.pdf; Lynzi Armstrong, “Stigma, Decriminalisation, and Violence against Street-Based Sex Workers: Changing the Narrative,” *Sexualities* 22 (2018): 136346071878021, https://doi.org/10.1177/1363460718780216; Rachel Jewkes et al., “Sexual IPV and Non-Partner Rape of Female Sex Workers: Findings of a Cross-Sectional Community-Centric National Study in South Africa,” *Ssm - Mental Health* 1 (2021): None, https://doi.org/10.1016/j.ssmmh.2021.100012. [↑](#footnote-ref-3)
5. M Richter and Vearey, “Migration and Sex Work in South Africa: Key Concerns for Gender and Health,” in *Gender and Health Handbook*, ed. J Gideon (UK: Edward Elgar Publishing, 2016); Ntokozo Yingwana, Dr Rebecca Walker, and Alex Etchart, “Sex Work, Migration, and Human Trafficking in South Africa: From Polarised Arguments to Potential Partnerships,” *Anti-Trafficking Review* 0, no. 12 (April 2, 2019): 74–90, https://doi.org/10.14197/atr.201219125. [↑](#footnote-ref-4)
6. Elsa Oliveira, “‘I Am More than Just a Sex Worker but You Have to Also Know That I Sell Sex and It’s Okay’: Lived Experiences of Migrant Sex Workers in Inner-City Johannesburg, South Africa,” *Urban Forum* 28, no. 1 (March 1, 2017): 43–57, https://doi.org/10.1007/s12132-016-9281-0; Elsa Oliveira, “‘You Might Not Think so but I Value Me Because I Provide for My Family’: Reflections of a Zimbabwean Sex Worker,” *ITCH - The Creative Journal*, 2015, https://www.itch.co.za/writing/you-might-not-think-so-but-i-value-me-because-i-provide-for-my-family-reflections-of-a-zimbabwean-sex-worker; Rebecca Walker, “Selling Sex, Mothering and ‘Keeping Well’ in the City: Reflecting on the Everyday Experiences of Cross-Border Migrant Women Who Sell Sex in Johannesburg | SpringerLink,” *Urban Forum*, no. 28 (2017): 59–73. [↑](#footnote-ref-5)
7. M Richter et al., “Migration Status, Work Conditions and Health Utilization of Female Sex Workers in Three South African Cities,” *Journal of Immigrant and Minority Health* 16 (2014), https://www.ncbi.nlm.nih.gov/pubmed/23238581. [↑](#footnote-ref-6)
8. Evans and Walker, “‘Even Though the Man Raped Me and Stole My Cell Phone, I Am More Frightened of the Police than I Am of That Man’ The Policing of Sex Work in South Africa. A Research Report on the Human Rights Challenges across Two South African Provinces”; Rebecca Walker and Treasa Galvin, “Labels, Victims, and Insecurity: An Exploration of the Lived Realities of Migrant Women Who Sell Sex in South Africa,” *Third World Thematics: A TWQ Journal* 3, no. 2 (March 4, 2018): 277–92, https://doi.org/10.1080/23802014.2018.1477526. [↑](#footnote-ref-7)
9. Ingrid Palmary and Thea de Gruchy, “The Globalisation of Trafficking and Its Impact on the South African Counter-Trafficking Legislation,” *Critical Social Policy*, March 1, 2019, 0261018319829640, https://doi.org/10.1177/0261018319829640; Yingwana, Walker, and Etchart, “Sex Work, Migration, and Human Trafficking in South Africa: From Polarised Arguments to Potential Partnerships.” [↑](#footnote-ref-8)
10. Joanna Busza, “Sex Work and Migration: The Dangers of Oversimplification: A Case Study of Vietnamese Women in Cambodia,” *Health and Human Rights*, Sexuality, Human Rights, and Health, 7, no. 2 (2004). [↑](#footnote-ref-9)
11. Yingwana, Walker, and Etchart, “Sex Work, Migration, and Human Trafficking in South Africa: From Polarised Arguments to Potential Partnerships.” [↑](#footnote-ref-10)
12. Richard Steen et al., “Trafficking, Sex Work, and HIV: Efforts to Resolve Conflicts,” *The Lancet* 385, no. 9963 (n.d.): 94–96, https://doi.org/10.1016/S0140-6736(14)60966-1. [↑](#footnote-ref-11)
13. GAATW, “Sex Workers Organising for Change: Self-Representation, Community Mobilisation, and Working Conditions,” 2018, https://www.gaatw.org/resources/publications/941-sex-workers-organising-for-change. [↑](#footnote-ref-12)
14. Yingwana, Walker, and Etchart, “Sex Work, Migration, and Human Trafficking in South Africa: From Polarised Arguments to Potential Partnerships.” [↑](#footnote-ref-13)
15. Sally Shackleton et al., “Decriminalising Sex Work Is the Only Rational Choice To...,” *The Daily Maverick*, 2019, https://www.dailymaverick.co.za/article/2019-04-29-decriminalising-sex-work-is-the-only-rational-choice-to-end-stigma-discrimination-and-violence-against-sex-workers/. [↑](#footnote-ref-14)
16. International Commission of Jurists, “The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty” (Geneva: International Commission of Jurists, 2023). [↑](#footnote-ref-15)