

Input to the report of the Special Rapporteur on violence against women and girls to the Human Rights Council on sex work and violence against women and girls by the UNAIDS Human Rights Reference Group

This submission to the Special Rapporteur on violence against women and girls next report presents the position on sex work and violence against women and girls of the UNAIDS Human Rights Reference Group.¹ This position follows the UNAIDS Guidance Note on HIV and Sex Work and the Recommendations for a public health approach to HIV among sex workers.² The submission also highlights key evidence-informed and rights-based HIV-related recommendations issued by independent bodies such as the Global Commission on HIV and the Law in the context of sex work.³

Global epidemiological evidence demonstrates that sex workers are 7 times more likely to live with HIV compared to adults who are not sex workers.⁴ However, the progress in reducing new infections among them and other key populations is alarmingly slow. Sex workers also experience greater difficulties in accessing and staying on treatment, compared to the general population. To achieve the target of Sustainable Development Goal 3 to end AIDS as a public health threat by 2030, it is critical to advance the health and human rights of sex workers. Our submission asserts the following: (1) that sex work should be clearly defined and differentiated from trafficking; (2) that sex workers should be free from criminalization, violence and other human rights violations; and (3) that social and structural barriers to health services should be removed for sex workers. It ends with a series of recommendations for the Special Rapporteur's consideration.

The Need to Clearly Define Sex Work and Distinguish It from Trafficking

Following the United Nations framework, the [UNAIDS Guidance Note on HIV and Sex Work](#) defines sex workers to include female, male and transgender adults, over the age of 18, who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not self-identify as sex workers.⁵ In terms of this definition, three elements are worth highlighting: a) sex work and sex workers involve adults only; b) sex work involves *consensual*

¹ The UNAIDS Reference Group on HIV and Human Rights was established in 2002 to advise the Joint United Nations Programme on HIV/AIDS (UNAIDS) on all matters relating to HIV and human rights. It was initiated by the UNAIDS Secretariat, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), which was granted permanent observer status. In 2006, UNDP, as lead UNAIDS Cosponsor on human rights, gender, law and governance under the UNAIDS technical support division of labour, joined the UNAIDS Secretariat in co-management of the Reference Group. The membership of the Reference Group brings together people from the HIV and human rights community, including advocates, jurists, ethicists, people living with HIV, people working in the NGO and community sector, people working in the government sector, people working with faith communities, and academics. The Global Fund and WHO have observer status. The Reference Group is an expert resource for UNAIDS at all levels.

² See UNAIDS, Guidance Note on HIV and sex work. Geneva, updated 2012; WHO, UNFPA, UNAIDS & NSWP, [Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries](#).

³ The Global Commission on HIV and the Law, Rights, Risk and Health: Final Report, 2012, supplemented 2018, www.hivlawcommission.org/report.

⁴ The Path that Ends AIDS: UNAIDS Global AIDS Update 2023. Geneva: Joint United Nations Programme on HIV/AIDS; 2023

⁵ See UNAIDS (note 2 above) p. 3.

acts between *adults*; c) acts involving deceit, fraud, coercion, force or violence do not fall under the definition of sex work.⁶

Sex work and trafficking are not the same and must be differentiated. [Annex 3 of the UNAIDS Guidance Note](#) focuses on differentiating sex work and trafficking in persons. The Annex also explains the need for this differentiation and summarises the harmful impact of conflation of sex work and trafficking – increasing harassment and confinement of sex workers and reducing their access to life-saving HIV and violence prevention interventions.

The Global Commission on HIV and the Law clarifies that a key distinction between sex work and trafficking is that the former is consensual whereas the latter is coercive. Trafficking in persons, as defined by international and local treaties, is “the recruitment, transportation, transfer, harbouring or receipt of persons, employing the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation”.⁷

Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work.⁸ In December 2023, the Human Rights Council Human Rights Council Working Group on discrimination against women and girls issued [a guidance document](#) on eliminating discrimination against sex workers and securing their human rights. The Working Group supports the full decriminalization of sex work, citing evidence of harm caused by criminalization. They emphasize that decriminalization is the most effective approach to address discrimination, violence, and violations of sex workers' rights, while also protecting against exploitation through other criminal laws. The group calls for an end to punitive provisions, access to justice and legal aid, guaranteeing human and labour rights for sex workers, tackling stigmatization and discrimination, involving sex workers in policy development, and increasing visibility of sex workers' rights in the international human rights arena.⁹

Criminalization, Violence and Other Human Rights Violations

Punitive laws, regulations, policies and practices that criminalise and penalize people, amongst other things, because of sex work or their engagement with sex workers, create barriers to their access to rights and services. International human rights bodies, regional and domestic courts and independent experts have found that such criminal laws violate a variety of human rights,

⁶ The 2015 UNAIDS terminology guidelines and the recommendations of the Global Commission on HIV and the Law advise against the use of the terms “prostitution” and “prostitute”, as they denote value judgement.

⁷ Global Commission on HIV and the Law, Final Report.

⁸ Global Commission on HIV and the Law, HIV and the Law: Risks, Rights & Health – 2018 Supplement, <https://hivlawcommission.org/supplement/>

⁹ UNHRC, Working Group on discrimination against women and girls. "Eliminating discrimination against sex workers and securing their human rights: Guidance document of the Working Group on discrimination against women and girls." A/HRC/WG.11/39/1. Geneva, 15–19 January 2024.

including the rights to health, non-discrimination, privacy, autonomy, dignity, freedom of expression, freedom from arbitrary detention, and ultimately the right to life, among others.¹⁰

Sex workers face violence and discrimination due to stigma and societal norms, particularly in places where sex work is criminalized. This violence can be inflicted by various individuals, including clients, authorities, and even their intimate partners. Regional studies conducted by sex worker networks in Asia-Pacific¹¹, Latin America¹², Africa¹³, and Eastern Europe and Central Asia¹⁴ show that law enforcement and the state perpetrate most human rights violations against sex workers where sex work is criminalized.¹⁵ In some cases, sex workers are coerced into sexual acts with the police to avoid legal consequences. Such violence is intricately linked to unprotected sex and an increased risk of HIV transmission.

Partial decriminalisation—as is the case under “end-demand” or “asymmetrical criminalisation” legal regimes—is also inadequate. Decriminalising sex workers but leaving intact the criminalisation of their clients, work settings and “third parties” largely perpetuates the same harms, including to sex workers.¹⁶ Community and multisectoral research has shown that ‘End Demand’ models have not reduced sex work¹⁷ or trafficking.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.^{19,20}

To address this issue, together with decriminalization, it is essential to protect the rights of all sex workers and provide them with access to legal assistance and support. Collaborative efforts involving law enforcement agencies, the judiciary, healthcare services, and other governmental bodies, along with the active engagement of sex worker organizations and civil society groups, have proven effective in reducing violence against sex workers.²¹

This is supported by emerging evidence from 20 countries involved in the Global Fund’s Breaking Down Barriers Initiative²², which in particular strengthens comprehensive programs to remove human rights barriers to accessing HIV, tuberculosis and malaria services, including through

¹⁰ UNAIDS Reference Group on HIV and Human Rights (2023) Decriminalisation and the end of AIDS: keep the promise, follow the science, and fulfill human rights, Sexual and Reproductive Health Matters

¹¹ UNDP, UNFPA, APNSW, & SANGRAM, 2015, “[The Right\(s\) Evidence – Sex work, violence and HIV in Asia.](#)”

¹² RedTraSex, 2016, “[Trabajo sexual y violencia Institucional: Vulneración de derechos y abuso de poder hacia mujeres trabajadoras sexuales.](#)”

¹³ 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.](#)”

¹⁴ SWAN, 2008, “[Arrest the Violence.](#)”

¹⁵ NSWP, 2017, “The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence.”

¹⁶ See UNAIDS Reference Group on HIV and Human Rights (2023), note 9 above.

¹⁷ Jay Levy and Pia Jakobsson, “[Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers.](#)”

¹⁸ Susanne Dodillet and Petra Östergren, 2011, “[The Swedish Sex Purchase Act: Claimed success and documented effects.](#)”

¹⁹ NSWP, 2018, “[The Impact of ‘End Demand’ Legislation on Women Sex Workers.](#)”

²⁰ The Global Commission on HIV and the Law, “[Rights, Risk and Health: Final Report.](#)” 2012, supplemented 2018.

²¹ UNAIDS guidance note on HIV and sex work, 2012

²² The Global Fund [Breaking Down Barriers initiative. Breaking Down Barriers mid-term assessment summary report](#), 2022.

community-led responses. For example, in South Africa, strong sex worker-led paralegal networks, such as that coordinated by the Sex Workers Education and Advocacy Taskforce (SWEAT), show greater success at documenting and reporting human rights violations against sex workers, including violence, as well as linking them to legal and support services. Similarly, sex worker-led Legalife in Ukraine built a paralegal network of sex workers, and trains hundreds of sex workers annually to ensure that they know their rights and have access to justice. Wherever these community-led mechanisms exist, sex workers are more empowered to report human rights violations and to seek remedies, as well as access HIV services.

One of the best-known examples of a sex worker-led response to human rights violations, including trafficking, is the Self-Regulatory Board (SRB) model led by Durbar Mahila Samanwaya Committee (DMSC) in India. This model is a successful community-led intervention to combat trafficking through the leadership of sex workers themselves, in collaboration with the Department of Health, Labour and Social Welfare, medical practitioners, lawyers, social workers and members of the sex worker community.²³

Sex Workers and HIV and Health Programming

In the [2021 Political Declaration on HIV and AIDS](#), UN Member States agreed that HIV combination prevention approaches need to meet the diverse needs of key populations, including among sex workers. They also stated that all should consider removing structural barriers and spousal consent requirements for sexual and reproductive healthcare services and HIV prevention, testing and treatment services.²⁴

In 2023, 168 countries criminalize some aspect of sex work.²⁵ Sex workers who live in countries where sex work is considered a criminal act have a seven times greater chance of living with HIV than in countries where sex work is legalized.²⁶ The criminalization of the clients of sex workers has also been repeatedly shown to negatively affect sex workers' safety and health, including reducing condom access and use, and increasing the rates of violence. The criminalization of any aspect of sex work has similar negative public health, violence and well-being outcomes.²⁷

Intersecting forms of structural and societal stigma and discrimination, including punitive laws, policies and practices, create significant inequalities and prevent sex workers from being able to protect their health, safety and well-being.²⁸ Research has shown that repressive policing of sex

²³ Durbar Mahila Samanwaya Committee (DMSC), "[Innovative Approaches to Combat Trafficking of Women in Sex Trade by Durbar Mahila Samanwaya Committee \(Kolkata\)](#)."

²⁴ 2021 Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030

²⁵ The path that ends AIDS: UNAIDS Global AIDS Update 2023. Geneva: Joint United Nations Programme on HIV/AIDS; 2023

²⁶ Ibid.

²⁷ Global Commission on HIV and the Law. Risks, rights & health, 2012 and 2018 supplement.

²⁸ UNAIDS. Seizing the moment: tackling entrenched inequalities to end epidemics – global AIDS update. Geneva: UNAIDS; 2020.

workers almost doubled their risk of HIV or other sexually transmitted infections.²⁹ Supportive legal and policy changes can reduce some of these barriers, as can interventions that protect sex workers against violence and promote safer behaviours among their clients. Community-led or -based interventions among female sex workers have been shown to increase access to and use of services, including HIV testing and use of antiretroviral therapy, and to reduce HIV infection rates.³⁰

A modelling study from 2015 reported that the decriminalization of sex work could avert 33–46% of new HIV infections over the course of a decade. Rapid elimination of violence by police, clients and strangers could avert 17–20% of new infections among female sex workers and their clients in those countries within a decade.³¹

The World Health Organization recommends enabling interventions when it comes to sex work, including its decriminalization, “namely, removing all offences that criminalize sex workers, clients and third parties.”³² This would have a positive impact on HIV, STIs and viral hepatitis prevention and treatment, as well as ensure sex worker’s human rights. OHCHR and UNAIDS, in the International Guidelines on HIV and Human Rights, published in 2006, also recommends that “criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work.”³³

Recommendations

Considering the evidence presented above and following the [Sex Workers HIV Implementation Tool \(SWIT\)](#) guidance, there are some recommendations that the report of the Special Rapporteurs could make when it comes to sex workers and HIV programming:

1. “Sex work” is the correct terminology to use when referring to adults over the age of 18, who receive money or goods in exchange for sexual services, either regularly or occasionally. Sex work must not be used interchangeably with “enforced prostitution” nor “trafficking” as acts involving deceit, fraud, coercion, force or violence do not fall under the definition of sex work. The term “prostitute”, even if featured in older international instruments, is demeaning, and must not be used.
2. All countries should work towards decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.

²⁹ Platt L, Grenfell P, Meiksin R, et al. Associations between sex work laws and sex workers’ health: a systematic review and meta-analysis of quantitative and qualitative studies. PLoS Med. 2018.

³⁰ World Health Organization, United Nations Population Fund, Joint United Nations Programme on HIV/AIDS, Global Network of Sex Work Projects, The World Bank. Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions. Geneva, World Health Organization, 2013.

³¹ Shannon K, Strathdee SA, Goldenberg SM, et al. Global epidemiology of HIV among female sex workers: influence of structural determinants. Lancet. 2015

³² Consolidated guidelines on HIV, viral hepatitis and STI prevention, diagnosis, treatment and care for key populations. Geneva: World Health Organization; 2022.

³³ UNAIDS, OHCHR. International Guidelines on HIV/AIDS and Human Rights. 2006.

3. Violence against sex workers must be prevented and addressed in partnership with sex workers and sex worker-led organizations.
4. Governments should establish antidiscrimination and other rights-respecting laws to protect sex workers against discrimination and violence to realize their human rights, including social protection, and reduce their vulnerability to HIV and other health risks.
5. Health services, including HIV prevention, should be made available, accessible and acceptable to sex workers based on the principles of avoidance of stigma, non-discrimination and enjoying the right to health.
6. Meaningful participation of sex workers and their organizations must be ensured in the creation, implementation, and evaluation of all laws, policies and programs that affect them, as a fundamental principle of human rights.