

**Commentary on the Draft Protocol To Combat International Trafficking In Women
And Children Supplementary To The Draft Convention On Transnational
Organized Crime
(A/AC.254/4/add.3)**

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Background

The migration of labour is increasing due to economic globalization and the removal of political boundaries, most notably in Europe. While people of all genders are seeking economic opportunities abroad, women are increasingly involved in this trend. Employment in the sex industry is often a lucrative and attractive option to many people who are attempting to improve their lives and support their families through working in the international labour market. Some migrants are aware that they will be working in the sex industry; others are deceived about the nature of the work. It is important to emphasise that deception and exploitation are not limited to the recruitment process. Conditions vary greatly for people working in the sex industry. Some enjoy relatively 'good' conditions, with a great deal of control over their working situation. Others are subject to exploitation, and may even work in situations similar to slavery.

Historically, anti-trafficking measures have been more concerned with protecting women's 'purity' than with ensuring the human rights of those in the sex industry. This approach limits the protection afforded by these instruments to those who can prove that they did not consent to work in the sex industry. It also ignores the abusive conditions within the sex industry, often facilitated by national laws that place (migrant) sex workers outside of the range of rights granted to others as citizens and workers.

In many countries, workers in the sex industry are deprived of protection under national and international laws. The situation for migrant sex workers is particularly precarious. Many have immigrated illegally, and have no work permits or right to remain. Thus they are not only deprived of protection as sex workers, but they also are not provided with those legal protections available to nationals.

This lack of legal protection creates highly complex and oppressive situations for sex industry workers, particularly those from the developing world who face additional discrimination due to racist immigration policies in destination countries. Agents assisting people who wish to migrate for the purposes of working in the sex industries may take advantage of the illegality of sex work and migration and they may be able to exert an undue amount of power and control over those seeking economic security through work in other countries. The attitudes, laws and practices that condemn sex workers to live on the margins of society, are, therefore, the fundamental problem.

Primary Concerns

The Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the Draft Convention on Transnational Organized Crimes antithetical to efforts to protect the human rights of sex industry workers. The NSWP recommends that delegates vote against adoption of the Protocol.

The key objections to the Draft Protocol are as follows:

1. The protocol's focus on the category of 'women and children' does not realistically reflect current international labour concerns. Women, men and transgender persons are all potentially vulnerable to agents who might seek to exert an undue amount of power and control over those seeking economic security through work in other countries. Factors relating to age, gender, ethnicity, and sexual orientation may make individuals or groups more at risk.
2. Sex workers share the concern about the abuses in labour migration. However, the term 'trafficking' is a problematic term to describe these abuses. The term 'trafficking' has a history of being used against migrant prostitutes/sex workers. 'Trafficking' has many definitions and is often equated with (illegal) migration for sex work or with prostitution per se. Rather than protect women from violence and abuse, anti-trafficking measures are often used to police and punish female migrants and sex workers, and to restrict their freedom of movement, as described under 4 below.
3. The use of the term 'trafficking' in the Draft Protocol is an example of the problem described under 2 above. Though 'forced labour' is mentioned (Art. 1 and Art.2.b), the separate emphasis on 'prostitution' and 'sexual exploitation' reveal that the main concern of the document is the sex industry. Given the history of the use of anti-trafficking measures to punish, rather than protect, those in the sex industry, it is to be expected that adoption of this document will result in the further marginalisation of sex workers. Since the definitions of trafficking are contradictory and the use of the term is confusing and misleading, and potentially harmful to women, an effort is required to find alternatives to the term trafficking, and to develop new language to describe abuses in labour migration and abusive conditions in the sex industry separate from national interests in protecting borders.
4. Rather than developing measures which might reduce the risks faced by specific groups, the Draft Protocol proposes punitive, anti-immigration measures that confuse the 'perpetrators' and 'victims' of trafficking and focuses exclusively on illegal documentation instead of violence, deception and human rights abuses (article 5). The proposed enforcement measures will expose migrants, in particular female migrants, to seriously discriminatory treatment. Illustrative of the above effects is the fact that some countries explicitly exclude prostitutes from legal migration by arguing that, in doing so, they are combating 'trafficking in women'. The UK, for example, presents the identification of migrant women as 'possible prostitutes' at the border and the removal of prostitutes under immigration laws as a means to contain the problem of trafficking in women.
5. In that the document reinforces the link between 'trafficking' and the sex industry, it diverts attention from the true nature of the human rights abuses of sex workers. Prostitution is not inherently a human rights abuse or form of 'sexual exploitation' as suggested in the document (articles 1 and 2). International agreements, such as the Declaration against Violence Against Women and The Beijing Declaration and Platform for Action recognise this in that they condemn only forced prostitution, not prostitution as such. The ILO has recently called for sex work to be recognised as labour, and in countries such as the Netherlands and Australia, prostitution is considered a legitimate form of labour. Sexual exploitation is not clearly defined under this protocol i.e. article 2 (b).

Conditions of exploitation and abuse within the sex industry are not limited to the area commonly referred to as 'trafficking'. Sex workers who have never migrated to work are still subject to a range of human rights and labour abuses including arbitrary arrest and detention, restrictions on their freedom of movement, and unfair and exploitative working conditions. Protections against these abuses have been enshrined in international agreements, yet because of the stigma associated with sex work, these protections are not applied to sex workers. Systematic application of existing human rights and labour standards, rather than the adoption of potentially harmful new anti-trafficking instruments, would be the best way of ensuring the human rights and dignity of all sex workers.

The Network of Sex Work Projects (NSWP) recommends:

1. That States afford all sex workers, irrespective of how they entered the sex industry, the full range of protections under international labour and human rights standards. This follows the recent recommendation of International Labour Organization (ILO) that sex work be recognised and treated as labour. The application of international labour standards, such as those developed by the ILO for other industries, to the sex industry would ensure that other forms of service provision to the sex industry function effectively.
2. Restrictive immigration policies that contribute to the exploitation of migrants should be reviewed and sex workers should have the right to travel freely and obtain working visas regardless of their country of origin or ethnic background.
3. Destination countries should fund programs that provide support and information to immigrant sex workers and these workers should be supported to form their own groups to achieve greater autonomy. International networks of sex work projects should be facilitated in their goal to disseminate information about working conditions in other countries, legal structures and choices.
4. Sex workers who have experienced deception or violence in either recruitment or work itself should be offered support and services, alternative work opportunities in the destination country, and free transport to their place of origin if desired as per the 'Human Rights Standards for the Treatment of Trafficked Persons.'

The Network of Sex Work Projects

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