

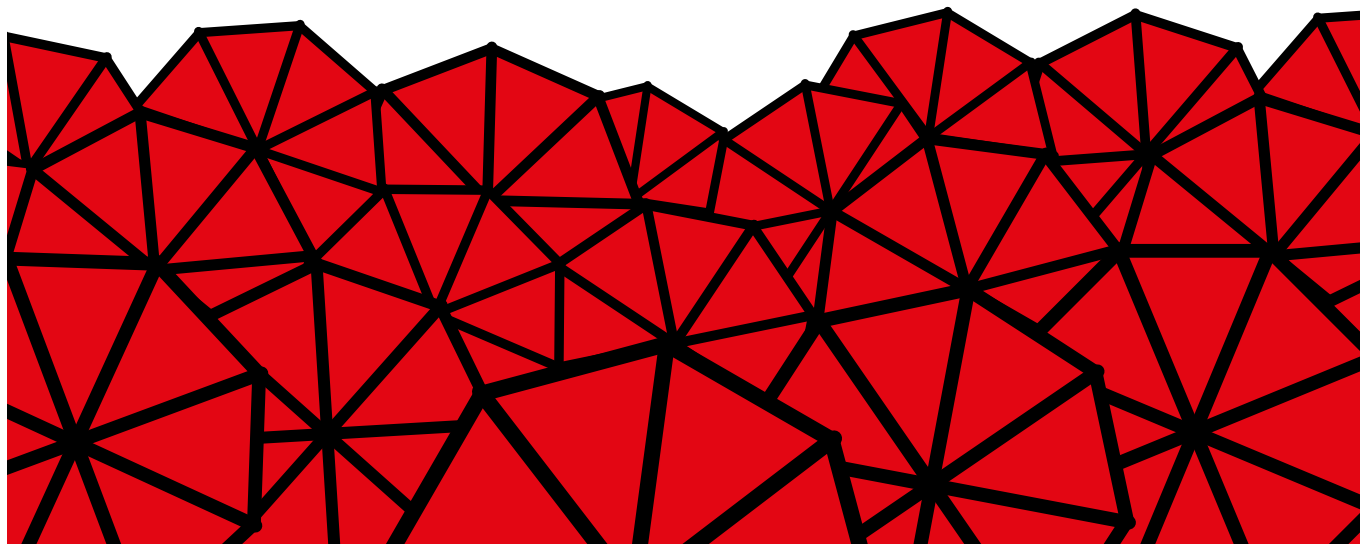


nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

POLICY BRIEF

The Impact of Anti-trafficking Legislation and Initiatives on Sex Workers



The Impact of Anti-trafficking Legislation and Initiatives on Sex Workers

Introduction

“Sex workers are spied on, arrested, cut off from our families, [have] our savings confiscated, interrogated, imprisoned and placed into the hands of the men with guns, in order for them to send us home... all in the name of ‘protection against trafficking’. It’s rubbing salt into the wound that this is called helping us.”¹

EMPOWER, THAILAND

Trafficking in persons has generated increasing global attention in recent decades, largely due to the development of international frameworks, pressure from fundamental feminist and abolitionist groups, and as a reaction to increased migration for labour. Trafficking refers to: the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of 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 the purpose of exploitation.

International policies on trafficking frequently contain vague or ambiguous language. Fundamental feminist and abolitionist groups, including religious and conservative groups, have taken advantage of this in their lobbying efforts, conflating sex work and trafficking in a way that promotes violation and reckless disregard of sex workers’ human rights.

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 alienates sex workers...

Working conditions in the sex industry exist on a spectrum, as in all industries. Where conditions are poor, criminalisation further exacerbates exploitation, which is compounded by a lack of labour protections and opportunities for safe migration, stigma, discrimination, and marginalisation. 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 alienates sex workers from material resources and prevents them from organising for better work conditions or asserting their labour rights.

This policy brief examines emerging trends in anti-trafficking legislation and initiatives that are harmful to sex workers, illustrating these harms through case studies. It begins with an overview of international policies on trafficking, followed by a review of regional policies and patterns in anti-trafficking legislation and initiatives. It then details the impact of conflating sex work and trafficking on sex workers’ health, safety, and ability to self-organise and makes some recommendations.

¹ Empower, 2012, “Hit and Run: Sex Workers Research on Anti-Trafficking in Thailand,” 6.

International Policies on Trafficking

The concept of trafficking entered public discourse at the end of the nineteenth century, focusing on ‘prostitution’; its implementation in law frequently appeared as an attempt to stifle the migration of women.

Early 20th century trafficking policy drew on this agenda, restricting women’s sexual behaviour and movement. The 1904² and 1910³ *International Agreements for the Suppression of the White Slave Traffic* obliged governments to identify, detain in the custody of charities, and deport “women or girls of foreign nationality who are prostitutes”, and to identify and prosecute individuals who “caused them to leave their country” (third parties). The *International Convention for the Suppression of the Traffic in Women of Full Age* (1933) ambiguously defined trafficking as: “whoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes”⁴, conflating coercion and autonomous

sexual activity according to notions of immorality. These early conventions were consolidated within the UN’s 1949 *Convention for the Suppression of the Traffic in Persons*, which problematically defines prostitution as “incompatible with the dignity and worth of the human person”.⁵

By the 1970s, as moralist policy lost acceptance and recognition of women’s self-determination and agency increased, a proposal obligating states to “combat all forms of prostitution” was rejected during negotiations of Article 6 of the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*.⁶ The

1993 *Declaration on the Elimination of Violence against Women*, recognised trafficking, ‘forced prostitution’, and voluntary sex work as distinct phenomena by identifying only “trafficking in women and forced prostitution”⁷ as violence. While recent policies have expanded the concept of trafficking to encompass all genders and a variety of industry settings, international policy continues to be influenced by discourse that conflates sex work with trafficking. This includes the ambiguity of CEDAW, which requires parties to “take all appropriate measures...to suppress all forms of traffic in women and exploitation of prostitution of women.”⁸ While the phrase ‘exploitation of prostitution’ avoids mandating suppression of all sex work by states, ‘exploitation’ is not defined, allowing broad interpretations to be put forward by fundamental feminist and abolitionist groups.

In 2000, all but one UN body that engaged in negotiations on The United Nations’ 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (The Protocol)* argued it was imperative for The Protocol to focus on forced labour and clearly distinguish between forced and voluntary ‘prostitution’.⁹

The Protocol, an expansion of the *United Nations Convention against Transnational Organized Crime*, is the foundation of modern anti-trafficking legislation and policies; it breaks from earlier anti-trafficking policy that views sex work through a moral lens and conflates all facilitation of sex work with trafficking.

While recent policies have expanded the concept of trafficking to encompass all genders and a variety of industry settings, international policy continues to be influenced by discourse that conflates sex work with trafficking.

2 United Kingdom, German Empire, et al., 1904, “International Agreement for the Suppression of the “White Slave Traffic.”

3 United Kingdom, et al., 1910, “International Convention for the Suppression of the “White Slave Traffic.”

4 League of Nations, 1933, “International Convention for the Suppression of the Traffic in Women of Full Age,” Article 1.

5 United Nations, 1949, “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,” Preamble.

6 UN Special Rapporteur on violence against women, 2000, “Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44,” 28.

7 UN General Assembly, 1993, “Declaration on the Elimination of Violence against Women,” 2

8 United Nations, 1979, “Convention on the Elimination of all Forms of Discrimination against Women,” 6.

9 Gabrielle Simm, 2004, “Negotiating the United Nations Trafficking Protocol: Feminist Debates,” Australian Year Book of International Law.

Under The Protocol, trafficking in persons is defined as having three constituent elements:

- **Act:** recruitment, transportation, transfer, harbouring or receipt of a person.
- **Means:** threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.
- **Purpose:** exploitation.

Victims of trafficking are understood to be of all genders, and to be trafficked in a variety of industries.

Despite these advances, The Protocol's ambiguous language, gender focus, and criminal framework for addressing trafficking have allowed for anti-trafficking legislation and initiatives that continue to conflate sex work and trafficking, directly harming sex workers.

In defining 'purpose', The Protocol outlines that "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."¹⁰ 'Exploitation of the prostitution of others' is not clearly defined or explained; this ambiguity lays the groundwork for the continued conflation of sex work, exploitation, and trafficking.

The Protocol also requires member states to take measures "to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking," without

further definition. Rather than interpreting this provision as a call to action against the supply chains and consumer demand that foster demand for all forced labour, some governments have chosen to interpret it as specifically (or solely) referring to demand for sexual services.

Finally, The Protocol contextualises trafficking as a crime, focusing on arrest and prosecution, rather than addressing vulnerabilities, issues of empowerment and the protection of human rights. This criminal justice focus has informed global anti-trafficking strategy. While subsequent UN General Assembly resolutions additionally emphasise the importance of protecting human

rights and addressing "social, economic, cultural, political and other factors"¹¹ in preventing vulnerability to trafficking, the emphasis on arrest and prosecution remains.

Legally binding once ratified, The Protocol has been signed by 173 countries as of 2018. In a global environment of growing xenophobia and conservatism, as well as increasing pressure from fundamental feminist and abolitionist groups, the vague, ambiguous language of The Protocol, and its emphasis on arrest and prosecution, enable laws and policies that target sex workers, third parties¹², clients of sex workers¹³, and migrant communities generally in the name of ending trafficking.

...the vague, ambiguous language of The Protocol, and its emphasis on arrest and prosecution, enable laws and policies that target sex workers, third parties, clients of sex workers, and migrant communities generally in the name of ending trafficking.

¹⁰ United Nations, 2000, "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime."

¹¹ UN General Assembly, 2010, "United Nations Global Plan of Action to Combat Trafficking in Persons," I.12.

¹² The term 'third parties' includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.

¹³ NSWP, 2018, "Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers."

Many international organisations have opposed the conflation of sex work and trafficking, including the Global Commission on HIV and the Law¹⁴ and Amnesty International,¹⁵ finding that it:

- Undermines efforts to address trafficking in the sex industry by pushing sex work underground and criminalising sex worker-led efforts to improve work conditions;
- Diverts resources and attention from other industries where trafficking occurs (e.g. in domestic work, agriculture, fishing and factories);
- Increases sex workers' vulnerability to harm from law enforcement, potentially violent clients, and intermediaries who engage in exploitative practices; and
- Undermines efforts to engage with sex workers regarding HIV and STIs.

...GAATW highlights the harms caused by anti-trafficking frameworks that do not view sex workers as workers, and the important role of sex worker-led organising and community mobilisation...

The Global Alliance Against Traffic in Women (GAATW) views trafficking as “an issue of migration for labour” and applies a “worker-centred approach to trafficking” in all industries.¹⁶ In their recent report *Sex Workers Organising for Change: Self-representation, community mobilization and working conditions* GAATW highlights the harms caused by anti-trafficking frameworks that do not view sex workers as workers, and the important role of sex worker-led organising and community mobilisation in addressing trafficking and exploitation.

US Trafficking in Persons Report

Since 2001, The United States' *Trafficking in Persons (TIP) Report*, has been central to promoting punitive anti-trafficking legislation and initiatives that conflate sex work and trafficking. The TIP report gives countries a “tier ranking” based on standards set by The US government. These standards require that countries act to “reduce demand for commercial sex and international sex tourism,” and that they enact and enforce anti-trafficking legislation, identify trafficking victims, and prosecute and convict traffickers.

Countries that do not meet these standards are subject to punitive sanctions including the termination of financial assistance and the withdrawal of financial support from institutions, including the International Monetary Fund and the World Bank, effectively coercing countries/organisations that rely on international development funding. TIP reports are frequently cited by non-governmental organisations (NGOs) and UN treaty monitoring bodies, increasing their reach and influence.

Since 2001, the TIP report has consistently recommended that governments enact anti-trafficking legislation, increase arrests and prosecutions, increase identification of victims, and introduce ‘end demand’ initiatives. In Asia, governments have adopted harmful legislation and initiatives (often lobbied for by feminist and abolitionist groups) to improve their TIP report rating.¹⁷

14 United Nations Development Programme, 2012, “HIV and the Law: Rights, Risks, and Health,” 39–40.

15 Amnesty International, 2016, “Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers,” 17.

16 Global Alliance Against Traffic in Women, 2018, “Sex Workers Organising for Change: Self representation, community mobilization, and working conditions,” 2.

17 Petersen, Carole J. “Sex work, migration, and the United States trafficking in persons report: Promoting rights or missing opportunities for advocacy.” *Ind. Int'l & Comp. L. Rev.* 25 (2015): 128–130.

The TIP report has consistently ignored harms to sex workers, including arrest and deportation of sex workers, abuse and violence during raids, increased vulnerability to violence, and increased stigma...

The TIP report has consistently ignored harms to sex workers, including arrest and deportation of sex workers, abuse and violence during raids, increased vulnerability to violence, and increased stigma and discrimination resulting from trafficking legislation and initiatives. In the Caribbean, the TIP report, despite wide criticism by governments, has led to increased 'rescue raids,' resulting in the arrest and deportation of migrant sex workers.¹⁸

CASE STUDY: Mexico

In 2012, Mexico responded to their ranking in the TIP report, as well as pressure from fundamental feminist and abolitionist groups, by enacting the "General Law to Prevent, Punish and Eradicate Crimes in the Field of Trafficking in Persons and for the Protection and Assistance to Victims of these Crimes" (2012). The law mirrors the vague language relating to 'exploitation of prostitution' within The Palermo Protocol and has been "used as a premise to initiate raids and prosecution of consensual sex work."¹⁹

GAATW attributes these impacts directly to the TIP report:

*"The pressure to show prosecutions and convictions that comes from the United States annual Trafficking in Persons Report, and an inefficient and corrupt legal system, has led to a number of irregularities, false accusations, and wrongful convictions of human trafficking [in Mexico] meted out mainly against sex workers and migrants."*²⁰

Conflation of Sex Work and Trafficking within Regional and National Anti-Trafficking Legislation

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, neglecting trafficking in other industries.

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."²¹ This, and similar legislation and treaties in Asia and the Pacific, are used to justify raids and suppress consensual adult sex work. This has been shown to "contribute to vulnerability, generate stigma and create barriers to HIV service delivery."²²

18 Kempadoo, Kamala. "The War on Humans: Anti-trafficking in the Caribbean." *Social and Economic Studies* 65, no. 4 (2016): 5–151.

19 APROASE A.C. and Tamaulipas Diversidad Trans., 2018, "Shadow Report to the CEDAW Committee on the situation of female sex workers in Mexico," 5.

20 Global Alliance Against Traffic in Women, 2018, "Sex Workers Organising for Change: Self representation, community mobilization, and working conditions," 281.

21 South Asian Association for Regional Cooperation, 2002, "SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution," Article 1.

22 United Nations Development Program, 2012, "Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work," 24–25.

In Latin America, ambiguous language in anti-trafficking legislation (adopted under pressure from TIP reports) justifies raids of sex worker establishments.²³

In Europe, regional anti-trafficking policy has increasingly emphasised criminalising clients. In 2014, the European Parliament passed the Honeyball resolution, a non-binding resolution that encourages member states to criminalise the purchase of sexual services. That same year, the Parliamentary Assembly of the Council of Europe adopted a resolution promoting the Nordic Model as an anti-trafficking measure. The International Committee on the Rights of Sex Workers in Europe argues that in practice these resolutions simply enable many governmental efforts to target and prosecute (migrant) sex workers under the guise of preventing human trafficking.²⁴

Increased Criminalisation of Sex Workers' Clients

“Sex workers and clients are best placed to identify and report trafficking...It’s always been sex workers and clients who have reported cases that we’ve followed up on. We have cases where clients want to come forward and report human rights violations and can’t because they’re criminalised.”

SWEAT, SOUTH AFRICA

Globally, sex workers' clients are increasingly criminalised in the name of anti-trafficking. Introduced in Sweden in 1999, national legislation criminalising the purchase of sexual services in all circumstances spread to Iceland, Lithuania, Nepal, Norway, South Africa and South

Korea by 2010 and to Canada, Ireland, Israel, Northern Ireland, France and Serbia by 2018.

While 'End Demand' legislation is often framed as a strategy to promote gender equality and combat trafficking through eradicating sex work, sex workers are made more vulnerable to violence, discrimination and exploitation as a result of this legislation.²⁵

...despite a national policy claiming to 'protect' sex workers, sex workers were in fact still more frequently criminalised than their clients...

CASE STUDY: France

In April 2016, France criminalised sex workers' clients and removed penalties for public solicitation by sex workers. In a study conducted by Médecins du Monde surveying over 700 sex workers, the majority reported that working conditions were worse under legislation that criminalised only their clients, compared to prior laws that criminalised both parties²⁶. The harms they reported include economic marginalisation, increased exposure to violence, and a decreased ability to demand the use of condoms.

The Médecins du Monde study further commented that despite a national policy claiming to 'protect' sex workers, sex workers were in fact still more frequently criminalised than their clients, due to local municipal and public order laws that penalise outdoor sex workers and migrant workers.

23 RedTraSex, 2016, “Sex work and working conditions: The impact of being clandestine.”

24 International Committee on the Rights of Sex Workers in Europe, 2016, “Surveilled. Exploited. Deported. Rights Violations Against Migrant Sex Workers in Europe and Central Asia,” 11–12.

25 NSWP, 2018, “Policy Brief: The Impact of ‘End Demand’ Legislation on Women Sex Workers,” 10.

26 Médecins du Monde, 2018, “Study on the impact of the law from 13 April 2016 against the “prostitution system” in France.”

Increased Criminalisation of Third Parties

Third parties are increasingly being criminalised due to the conflation of third party activities with trafficking;²⁷ in some countries, new legislation explicitly defines all third party activities as trafficking. For example, in Cambodia, the *Law on the Suppression of Human Trafficking and Sexual Exploitation (2008)* describes offences for the “solicitation, procurement of prostitution, the management of an establishment of prostitution,

Third party criminalisation frequently deters individuals from facilitating safe and healthy places of work for sex workers, increasing sex workers’ isolation and vulnerability to exploitation.

and provision of premises for prostitution”. In the USA, numerous states have passed anti-trafficking legislation that increases penalties for third parties and in the Philippines, it is an offence “to maintain or hire a person to engage in prostitution”.²⁸

Third party criminalisation frequently deters individuals from facilitating safe and healthy places of work for sex workers, increasing sex workers’ isolation and vulnerability to exploitation. It impedes recognition of sex workers’ right to organise and sex workers’ protection under labour

laws. Family members supported by sex workers, sex workers who work collectively, and banks, landlords, drivers, and websites that do business with sex workers are often criminalised under broad trafficking legislation.

CASE STUDY: USA

In April 2018, the US passed the *Stop Enabling Sex Traffickers Act (SESTA)* and *Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)*, legislation that criminalises online platforms used by sex workers for advertising, for information sharing, and for harm reduction and safety purposes. This legislation emerged from a decade of advocacy that draws on campaigns and flawed ‘research’ portraying the majority of sex workers who place advertisements as trafficking victims and the website platforms hosting the advertisements as ‘traffickers’.

Even before these bills were signed into law, online advertising sites were removed. FOSTA/SESTA has drastically reduced the ability of sex workers to advertise and employ screening methods for clients online, in turn creating economic insecurity, increased reliance on third parties, and increased outdoor sex work.

Even where anti-trafficking legislation does not directly conflate third party activities with trafficking, ambiguous or vague wording frequently facilitates too-broad interpretations. For example, in Latin America and the Caribbean, such laws have led to increased arrests and prosecution of sex workers who manage collective workspaces.

*“While ‘looking for locations where trafficked women are being exploited,’ security forces raid the spaces in which – often without procurers, as a cooperative – we women sex workers conduct our trade and disrupt our daily work. This leads to the woman sex worker who happened to open the door or has signed the rent contract to be considered the ‘exploiter’ or the accomplice of traffickers, and all the women who happened to be working there as ‘rescued women,’ when none of us was there against our will or exploiting somebody else in the first place.”*²⁹

REDTRASEX, LATIN AMERICA

27 NSWP, 2016, “Policy Brief: The Decriminalisation of Third Parties.”

28 United Nations Development Program, 2012, “Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work,” 117–118.

29 RedTraSex, 2015, “8 Reasons to Stop Confusing the Trafficking of Persons and Labor Exploitation with Sex Work,” 6.

Increased Regulation

Where sex work is legalised and over-regulated, anti-trafficking discourse has been used to promote increased state control of the sex industry and sex workers. These regulations include mandatory registration, onerous requirements for sex work establishments, civil legislation that relegates sex work to increasingly small industrial areas, and increased police surveillance of workplaces.

Rather than protecting sex workers, increased regulation marginalises sex workers, exposing registered sex workers to outing and discrimination, and further criminalising and isolating sex workers who are unable to, or choose not to work within increasingly restrictive legal frameworks.

CASE STUDY: Germany

Germany has a large migrant sex worker population, who fundamental feminist and abolitionist groups have consistently portrayed as victims of trafficking.

In 2016, the *Prostitutes Protection Act* was passed under the guise of identifying and providing support to victims of human trafficking. The Act subjects sex workers to mandatory registration and counselling, requires sex workers to carry their registration card, prohibits sex workers from living in sex work establishments, and creates restrictive requirements for sex work establishments (with more than one worker). Sex workers who fail to register are subject to fines of up to 1000 euros, and sex work establishments (which include informal, shared workspaces) to fines of up to 10,000 euros.

The Act creates a two-tier system of legal and illegal sex workers, pushes sex workers who do not register underground and exposes sex workers who do register to outing and violence. The Act also makes it virtually impossible for sex workers to legally share a workspace or work collaboratively.

Rescue Raids and Forced ‘Rehabilitation’

While most anti-trafficking legislation does not focus on increasing explicit penalties for individuals who sell sex, selling sex almost always remains criminalised or penalised. Globally, raids on sex worker establishments (which often involve entrapment and result in the detention and/or deportation of sex workers) are the primary strategy used to identify victims of trafficking and enforce anti-trafficking legislation. Sex workers report punitive anti-trafficking efforts that target their workplaces and clients, rather than traffickers, as the causes of the harms they face.

Sex workers report punitive anti-trafficking efforts that target their workplaces and clients, rather than traffickers, as the causes of the harms they face.

CASE STUDY: India

Sampada Grameen Mahila Sanstha (SANGRAM) conducted follow-up interviews with 243 women who experienced raids between 2005 and 2017 in Maharashtra. They found that 79% identified as voluntary sex workers and said they did not want to be ‘rescued’ at the time of the raid.³⁰ Of those who had been trafficked, 75% stated they wanted to remain in sex work. 42% of women interviewed were incarcerated for up to one month, and 48% of women interviewed were incarcerated for between six months and several years.

...79% identified as voluntary sex workers and said they did not want to be ‘rescued’ at the time of the raid. Of those who had been trafficked, 75% stated they wanted to remain in sex work.

Raids of sex workers’ workplaces and forced ‘rehabilitation’ of sex workers are not new or unique to contexts that conflate sex work and trafficking; for example, ‘sweep away’ anti-sex work campaigns and the detention of large numbers of sex workers in ‘re-education centres’ are long-standing features of China’s approach to sex work.³¹

However, the conflation of sex work and trafficking is being used to justify continuation of practices which have been broadly condemned as harmful human rights’ abuses.

Exclusion of Sex Workers from Services

Anti-trafficking organisations receive the bulk of funding to address trafficking and exploitation in the sex industry. However, even as these organisations portray all sex workers as victims of trafficking, they fail to ensure the most marginalised sex workers can access essential health and social services.

CASE STUDY: Canada

Butterfly, Canada conducts outreach and provides empowerment-based support to migrant sex workers. Butterfly experiences incredible difficulty accessing support for migrant sex workers in detention, despite significant funding for anti-trafficking and ‘exiting’ services.

“Butterfly sent 300 letters, emails, and phone messages to find social support for one of the women. Most of the social services organizations refused because she had not been officially identified as a trafficking victim and she was not a resident. Some service providers were also reluctant to offer support because they did not want to get involved in “organized crime” when they found out the migrant sex worker was connected with other migrant sex workers.”³²

BUTTERFLY, CANADA

30 Sampada Grameen Mahila Sanstha (SANGRAM), 2018, “RAIDED: How anti-trafficking strategies increase sex workers’ vulnerability to exploitative practices,” 53.

31 Human Rights Watch, 2013, “‘Swept Away’: Abuses Against Sex Workers in China.”

32 Butterfly: Asian and Migrant Sex Workers Support Network, 2018, “Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers,” 31.

Discriminatory Immigration Laws and Restrictions

“Why is the world so afraid to have young, working class, non-English speaking, and predominately non-white women moving around?”³³

EMPOWER, THAILAND

“Anti-trafficking policies have negatively impacted sex workers; they have been used to detect undocumented immigrants and to deport women. Migrant sex workers are counted in statistics as women at risk but all that is done with these women is to deport them.”³⁴

HETAIRA, SPAIN

Anti-trafficking legislation and initiatives largely target and punish migrant sex workers, rather than protect their labour and human rights.

After the 2004 TIP report cited migrant Filipino entertainers as a reason for Japan’s low ranking, the Japanese government introduced harsher visa requirements for migrant workers. In December 2013, Canadian immigration law was amended to explicitly prohibit migrants (including migrants on tourist, student, and temporary work visas) from working in the sex industry. Under the guise of anti-trafficking mandates, raids of sex work

establishments by immigration authorities have increased, resulting in the deportation of sex workers who do not identify as trafficking victims.

“Why is the world so afraid to have young, working class, non-English speaking, and predominately non-white women moving around?”

CASE STUDY: New Zealand

In New Zealand, the Prostitution Reform Act (PRA) (2003) decriminalised sex work. However, under the premise of preventing trafficking in the sex industry, Section 19 was added to prohibit most migrants from working in the sex industry.³⁵ This law has resulted in the deportation of several individuals in New Zealand on student visas.

The exclusion of migrant sex workers from decriminalisation has contributed to (not prevented) their exploitation as brothel keepers and clients are aware that migrants have little recourse under circumstances of exploitation or violence.

“Some brothel operators take money from migrant sex workers, or force them to do jobs they do not want to do, telling the migrant sex workers that they will tell Immigration if they complain about money being taken from them or complain about coercion. Migrant sex workers believe they cannot complain to authorities about this as they fear being deported if those authorities go to Immigration and report them.”

NEW ZEALAND PROSTITUTES COLLECTIVE, NEW ZEALAND

³³ Empower Foundation, 2012, “Hit & Run: Sex Worker’s Research on Anti trafficking in Thailand,” ii.

³⁴ Global Alliance Against Traffic in Women, 2018, “Sex Workers Organising for Change: Self representation, community mobilization, and working conditions,” 31.

³⁵ New Zealand Legislation, 2003, “Prostitution Reform Act 2003.”

Even when restrictive anti-migration legislation is not introduced as part of anti-trafficking policy, anti-trafficking discourse often results in increased targeting of migrant sex workers under existing legislation. In many contexts, such as Thailand, migrant sex workers and victims of trafficking are detained in rehabilitation centres and then deported. In Spain, presumed victims of trafficking are offered protection from the state in exchange for meeting specific conditions, including collaboration with law enforcement and providing a consistent statement. These conditions can be difficult to comply with and are subject to interpretation, which gives police and justice officials the discretionary power to deport sex workers/victims if they refuse to testify.

Dangerous Working Conditions and Increased Violence Against Sex Workers

“The Gag Law, the Immigration Law and the municipal ordinances push outdoor sex workers, especially, to the most unprotected and least travelled places, thereby increasing their vulnerability. Others...discard the clubs that are often subject to racist raids and leave the security of said space to work in the street. The criminalisation of [outdoor sex workers] means that they are exposed to marathon work days, not being able to choose the types of services they are willing to offer, not being able to report labour abuses, etc.”

E-CONSULTATION RESPONDENT, SPAIN

Globally, as a result of anti-trafficking measures that conflate sex work and trafficking, sex workers' working conditions have deteriorated and violence against sex workers has increased. In the case studies presented throughout this policy brief, as well as in previous policy

Globally, as a result of anti-trafficking measures that conflate sex work and trafficking, sex workers' working conditions have deteriorated and violence against sex workers has increased.

documents, NSWP has outlined the harms of policies that are often promoted as anti-trafficking measures: the criminalisation of sex workers' clients and third parties, raids, rehabilitation, services that conflate sex work and trafficking³⁶, and discriminatory immigration policies that criminalise migrant sex workers³⁷.

Anti-trafficking measures that broadly criminalise sex work and the resulting fear of arrest creates barriers to sex workers working together – communicating for the purposes of safety and hiring people such as drivers or protectors. This decreases safety, increases sex workers' vulnerability to violence, and reduces sex workers' ability to report suspected trafficking or any violence they experience. Anti-trafficking measures have displaced sex workers, increased economic insecurity, reduced sex workers' bargaining power, and increased their vulnerability to violence and HIV. Punitive and discriminatory immigration restrictions not only result in arbitrary detention and deportation, but also increase reluctance to report violence or exploitation.

36 NSWP, 2014, “Briefing Paper: Overcoming Practices that Limit Sex Worker Agency in the Asia Pacific Region.”

37 NSWP, 2018, “Briefing Paper: Migrant Sex Workers,” 6–7.

Impact of Anti-trafficking Legislation and Initiatives on Sex Worker Organising

Anti-trafficking legislation that criminalises sex work has also impeded sex workers' right to communicate and organise. In Mexico, the 2012 Anti-Trafficking Law resulted in the arrest and conviction of sex workers' rights activist Alejandra Gil and the defunding of APROASE A.C., a sex worker-led organisation that offered sliding-scale health services to outdoor sex workers. In the USA, broad anti-trafficking laws led the Young Women's Empowerment Project and Different Avenues to pre-emptively close in order to avoid exposing young peer educators to criminal charges for providing harm reduction and empowerment services to other young people who sell sex. In 2018 in Spain, sex worker unions were deemed to be illegal after fundamental feminist and abolitionist groups filed a lawsuit against a newly registered sex worker

union. The court cited the criminalisation of third parties and the conflation of sex work and trafficking in justifying their ruling.

Anti-trafficking discourse has further excluded sex worker-led organisations from women's rights and anti-trafficking movement spaces; in Spain, Hetaira applied to join the Spanish anti-trafficking network twice, and was rejected both times, despite meeting all criteria. In South Africa, anti-trafficking discourse has impeded SWEAT's

ability to engage with anti-trafficking organisations, with fundamental feminist and abolitionist organisations attempting to delegitimise SWEAT, labelling them 'pimps and traffickers.' In the USA, the rise of the anti-trafficking movement has eroded historically strong relationships between sex worker-led organisations and local government agencies.

Finally, anti-trafficking measures have reduced sex worker-led organisations' access to funding. In Europe, from 2012–2016, TAMPEP noted "an increase in funding initiatives from the EU and other donors to anti-trafficking and abolitionist efforts, yet rarely to sex worker-led groups or rights-based service providers."³⁸ The USA passed legislation in 2003 stipulating that "[n]o funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking."³⁹ This legislation later informed USAID contracts that NGOs are required to sign in order to receive funding. Contracts describe 'prostitution' as "inherently harmful and dehumanizing", require that the "awardee / subawardee agrees that it is opposed to the practices or prostitution" and that the recipient "states it does not promote, support, or advocate the legalization or practice of prostitution."⁴⁰ This has become known as the 'Anti-Prostitution Pledge' and effectively prevents organisations that support sex workers' rights from accessing development funds (including for anti-trafficking initiatives) from the USA. Similarly, the mainstreaming of fundamental feminist and abolitionist approaches to trafficking in national legislation has resulted in the exclusion of sex workers' rights organisations from women's and human rights funding.

Anti-trafficking discourse has further excluded sex worker-led organisations from women's rights and anti-trafficking movement spaces...

38 TAMPEP, 2015, "TAMPEP on the situation of national and migrant sex workers in Europe today," 3.

39 U.S. Government, 2003, "United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003", (108 U.S.C. §§ 25) 733–734.

40 USAID, 2018, "Standard Provisions for US Nongovernmental Organizations Mandatory Reference for ADS 303" RAA16.

Sex Worker Responses to Harmful Anti-Trafficking Legislation and Initiatives

Despite barriers created by harmful anti-trafficking legislation and initiatives, the sex workers' rights movement continues to grow, responding in different ways to the threat of anti-trafficking legislation and policies to their work while also addressing exploitation and labour rights abuses within the sex industry.

Sex worker-led organisations educate sex workers on their rights based on the legislation currently in force; they address labour abuses in the sex industry by unionising, organising, and setting-up legal clinics, and they provide sensitisation training to social service providers, police and other stakeholders.

Since the emergence of damaging anti-trafficking movements and discourse, many sex worker-led organisations have adapted their strategies. Some sex worker-led organisations have joined anti-trafficking networks, alongside fundamental and abolitionist feminists, in order to reduce harm. Others work with anti-trafficking organisations focused on trafficking in other industries to develop a worker-centred, human rights-based counter-approach to trafficking, while others partner with migrant organisations to promote a workers' rights-based approach to migration that will reduce vulnerability of all migrants to trafficking.

Some sex worker-led organisations work with state agencies not only to educate them regarding the differences between sex work and trafficking, but also to address exploitation and trafficking. For instance, Veshya Anyay Mukti Parishad (VAMP), India has developed a comprehensive system of committees monitored by sex workers,

to combat trafficking and uphold sex workers' labour rights. VAMP works with the police and refers suspected victims of trafficking to them. VAMP and the police work together in combatting both the conflation of sex work and trafficking and the promotion of raid and rescue approaches.

Where the impact of harmful anti-trafficking legislation has not yet been felt, sex workers' rights organisations say that sex workers play a key role in addressing exploitation in the sex industry. For example, in Côte d'Ivoire, ONG-COVIE report that their community peer educators, rather than law enforcement, work to document abuses and violence against

sex workers, and they find that individuals who have experienced exploitative work conditions reach out to them directly because they promote the rights of sex workers.

...community peer educators, rather than law enforcement, work to document abuses and violence against sex workers, and they find that individuals who have experienced exploitative work conditions reach out to them directly...

Conclusion

The conflation of sex work and trafficking – at international, regional, and national levels – continues due to pressure from fundamental feminist and abolitionist groups that define all sex work as inherently exploitative. Conservative and anti-immigration ideologies, combined with the stigmatisation of sex workers, promote the view that all sex work is inherently exploitative and that trafficking in the sex industry is omnipresent and invisible. This dominant discourse is led by organisations in the global north, while women in or from the global south are perpetually victimised and made vulnerable by this ideology.

As a result of the conflation of sex work and trafficking, anti-trafficking legislation increases criminalisation of sex workers' clients and third parties. 'Rescue' initiatives often result in arrests of sex workers and forced 'rehabilitation', deportation or imprisonment. Regulations that invade sex workers' privacy and reduce their agency and autonomy are introduced, and services that conflate sex work and trafficking are tailored to imagined victims and exclude sex workers. Discriminatory immigration laws and visa conditions increase the vulnerability of migrants who decide to engage in sex work.

These consequences result in dangerous working conditions, increased stigma and discrimination and violence against sex workers, and significant impediment to the ability of sex worker-led organisations to organise for better work conditions.

Anti-trafficking policy must clearly delineate between sex work and trafficking, and sex workers, migrants, and sex worker and migrant organisations, as well as victims of trafficking, must be meaningfully involved in the development of anti-trafficking policy, legislation and initiatives. Anti-trafficking legislation and initiatives must have a human rights framework and must recognise sex work as labour. Rather than focusing primarily on broad law enforcement sweeps to

identify victims and perpetrators, often at the expense of sex workers and migrant workers, they must promote a broad range of human rights, and focus on addressing the structural barriers that create vulnerability to trafficking.

Anti-trafficking strategies that aim to suppress sex work through criminalisation and the closing of regular channels for migration, rather than reducing exploitation and trafficking in the sex industry, actually increase the vulnerability of migrant sex workers to exploitation and trafficking. Only anti-trafficking strategies that frame sex work as work, increase sex workers' protection under labour laws, increase sex workers' empowerment through self-organising, increase sex workers' access to justice and

social protection through decriminalisation, destigmatisation and the establishment of regular labour migration channels, can effectively address exploitative working conditions and reduce vulnerability to trafficking.

Anti-trafficking strategies that aim to suppress sex work through criminalisation and the closing of regular channels for migration, rather than reducing exploitation and trafficking in the sex industry, actually increase the vulnerability of migrant sex workers to exploitation and trafficking.

Recommendations

1 **Immediately end rescue raids and forced ‘rehabilitation’**

programmes: Indiscriminate raids on sex workers’ workplaces do not effectively identify victims of trafficking, waste resources, and subject both sex workers and victims of trafficking to outing, police

violence and harassment, arbitrary detention, and deportation. Forced rehabilitation and re-education programmes outside the context of sex work have long been recognised as a human rights violation; such programmes must be replaced with voluntary, person-centred services that address the diverse economic, legal and health needs of sex workers, including sex workers who wish to find alternative employment and those who wish to continue sex work.

Forced rehabilitation and re-education programmes outside the context of sex work have long been recognised as a human rights violation...

2 End prohibition of sex work advertising: New information technology has enabled sex workers to work independently, increasing their autonomy and economic security. Prohibition of sex work advertising increases sex workers’ reliance on third parties to find clients and disrupts sex worker screening practices, increasing sex workers’ vulnerability to exploitation, violence, and HIV.

3 **Take a worker-centred and human rights-based approach to preventing trafficking and exploitation in the sex industry:**

Anti-trafficking frameworks based on criminalisation not only foster and promote human rights abuses; they fail to address structural barriers (e.g. criminalisation, lack of labour protections, lack of access to justice and social protection, stigma and discrimination, poverty, isolation, and fear of arrest) that create vulnerability to trafficking.

4 Recognise trafficking and sex work, and trafficking and migration as distinct phenomena: The conflation of trafficking and sex work, and trafficking and migration produce anti-trafficking measures that further stigmatise, criminalise, and isolate sex workers and migrants.

5 Decriminalise all aspects of sex work: Whether some aspects or all aspects of sex work are criminalised, criminalisation creates structural barriers and promotes marginalisation that increases vulnerability to exploitative work conditions.

6 Meaningfully involve sex workers, including migrant and mobile sex workers, in the development of anti-trafficking policy, legislation, and initiatives: While workers in other industries, including victims of trafficking, are increasingly included in the shaping of anti-trafficking policy, sex workers continue to be systematically excluded.

7 Fund sex worker-led organisations to develop and expand their work to address trafficking and exploitation in sex work: Such programmes would include labour organising, economic empowerment, social protection, legal services, and psychological support.

- 8 Increase sex workers' access to safe, legal, and equitable channels for work-related migration:** Discriminatory immigration laws often make regular migration impossible for sex workers. Increased costs and exclusion of migrant sex workers from benefits and protections afforded to regular migrants (including labour laws, social protection, health services, and access to justice) prevent safe, legal and equitable migration.
- 9 Promote non-discriminatory access for sex workers to credit, loans, savings, and other financial and employment opportunities:** The discrimination sex workers face from financial institutions and mainstream employers contribute to many sex workers' economic marginalisation, and in turn increases sex workers' vulnerability to exploitative loan and work conditions, including debt bondage. Increased access to financial institutions would increase sex workers' ability to obtain funds to migrate safely, change workplaces, or establish their own workplace.
- 10 Develop an alternative to the US TIP report for evaluating government action against trafficking:** This framework must be based on *The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children*, and equally consider broader

Violation of the human rights of sex workers [...] must not be viewed as acceptable collateral damage in the course of anti-trafficking work.

UN human rights obligations when evaluating anti-trafficking measures. Violation of the human rights of sex workers, including their right to associate and organise, to be protected by the law, free from violence and discrimination, to privacy and freedom from arbitrary interference, to health, to move, migrate and work, with free choice of employment, **must not be viewed as acceptable collateral damage in the course of anti-trafficking work.**

The Global Network of Sex Work Projects uses a methodology that ensures the grassroots voices of sex workers and sex worker-led organisations are heard. The Policy briefs are the result of desk research and a global e-consultation with NSWP member organisations, including gathering in-depth information from some members.

The term 'sex workers' reflects the immense diversity within the sex worker community including but not limited to: female, male and transgender sex workers; lesbian, gay and bi-sexual sex workers; male sex workers who identify as heterosexual; sex workers living with HIV and other diseases; sex workers who use drugs; young adult sex workers (between the ages of 18 and 29 years old); documented and undocumented migrant sex workers, as well as and displaced persons and refugees; sex workers living in both urban and rural areas; disabled sex workers; and sex workers who have been detained or incarcerated.



Global Network of Sex Work Projects

Promoting Health and Human Rights

The Matrix, 62 Newhaven Road
Edinburgh, Scotland, UK, EH6 5QB
+44 131 553 2555
secretariat@nswp.org
www.nswp.org

NSWP is a private not-for-profit limited company.
Company No. SC349355

PROJECT SUPPORTED BY:



NSWP is an alliance partner of Bridging the Gaps – health and rights for key populations. This unique programme addresses the common challenges faced by sex workers, people who use drugs and lesbian, gay, bisexual and transgender people in terms of human rights violations and accessing much-needed HIV and health services. Go to: www.hivgaps.org for more information.