



nswp Global Network of Sex Work Projects
Promoting Health and Human Rights

WRITTEN STATEMENT – HIGH LEVEL MEETING ON TRAFFICKING IN PERSONS:

Conflation of Sex Work and Trafficking

The conflation of sex work with trafficking and with ‘sexual exploitation’ is a major factor in perpetuating precarious working conditions in sex work. This conflation has led to extremely harmful legislation that limits sex workers’ access to justice and services, and prevents them from organising for better work conditions or asserting their human and labour rights.¹

Throughout history, anti-trafficking legislation and discourses have focused on ‘prostitution’ as a means to control women’s movement, migration, and sexual behaviour. Today, the conflation of sex work with trafficking remains one of the most prevalent forms of misinformation surrounding sex work, underpinned by fundamental feminist and abolitionist ideology which equates all sex work with violence and exploitation. This ideology, in turn, informs a range of policies and practices that harm sex workers around the world, including ‘End Demand’ and ‘raid and rescue’ models and coercive ‘rehabilitation’ and ‘exit’ services.

‘End Demand’ approaches claim to promote gender equality and protect sex workers and victims of trafficking, by reducing the prevalence of both sex work and trafficking, and yet a substantial body of evidence has demonstrated that the criminalisation of clients exacerbates sex workers’ vulnerability to violence, exploitation, and abuse, while hampering the identification of actual victims of trafficking.² Sex workers operating under this framework are also far less likely to report violence and abusive or coercive practices. It impedes access to health and social services and isolates sex workers from support networks. Moreover, there is no substantive evidence to suggest that ‘End Demand’ approaches have reduced the prevalence of sex work³ or trafficking.⁴

Part of the problem is that ‘exploitation’, and by implication ‘sexual exploitation’, have no agreed definition in international law. Unfortunately, this has led to misinterpretation of the term (wilful or otherwise) leading to harmful national laws, policies and practices, as well as national and international initiatives that impact negatively on sex workers’ human rights.

Exploitation, unsafe and unhealthy working conditions exist in many labour sectors. Work does not become something other than work in the presence of these conditions. Indeed, criminalisation creates the conditions in which violations of sex workers’ rights, including their labour rights, continue with impunity.

International instruments that conflate sex work with trafficking and ‘sexual exploitation’:

The Trafficking in Persons Protocol⁵ and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁶ are the clearest examples of international instruments that reference ‘sexual exploitation’, but fail to define it. Both documents use the phrase ‘exploitation of prostitution’.

CEDAW does not use the term ‘sexual exploitation’ in the Convention itself. However, the CEDAW Committee has regularly incorporated the language of the Protocol, including the use of ‘sexual exploitation’, into its General Recommendations and Concluding Observations. The impact of this ambiguity, given the significant

¹ NSWP, 2019, “[Policy Brief: The Impact of Anti-trafficking Legislation and Initiatives on Sex Workers](#)”.

² NSWP, 2018, “[The Impact of ‘End Demand’ Legislation on Women Sex Workers](#)”.

³ 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](#),” *Criminology and Criminal Justice* 14(5) (2014): 593-607.

⁴ Susanne Dodillet and Petra Östergren, 2011, “[The Swedish Sex Purchase Act: Claimed success and documented effects](#)”.

⁵ 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](#)”.

⁶ United Nations, 1979, “[Convention on the Elimination of all Forms of Discrimination against Women](#)”.

NSWP | The Matrix, 62 Newhaven Road | Edinburgh EH6 5QB | Scotland UK

secretariat@nswp.org | +44 (0)131 553 2555 | www.nswp.org

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influence of these two instruments, has been extremely problematic and has increased the vulnerability of sex workers, undermining their protection under human and labour rights law.

In their 2015 Issue Paper, The United Nations Office on Drugs and Crime (UNODC) reflected on the concept of ‘exploitation’ in the Trafficking in Person Protocol. This paper clearly acknowledges that sex work must not be conflated with human trafficking:

“It is important to note that the Protocol does not equate prostitution with trafficking. For prostitution involving adults to fall within the definition of trafficking all three definitional elements (act, means and purpose) [must be present].”⁷

Furthermore, the paper attempted to clarify that ‘sexual exploitation’ does not refer to all sex work:

“While the meaning of ‘sexual exploitation’ is not fixed, a contextual analysis reveals certain parameters. When used in the context of the Protocol, this term could not be applied to prostitution generally as States made clear that was not their intention.”⁸

In her 2018 report to the Human Rights Council, the UN Special Rapporteur on contemporary forms of slavery noted:

“Generally, more attention is paid to human trafficking for sexual exploitation than to exploitation for forced labour, including servitude in the domestic sphere. A victim-centred approach needs to be applied to all victims of contemporary forms of slavery to ensure equal treatment, regardless of the sector of prevalence.”⁹

In another 2018 report to the UN General Assembly, she noted that the conflation of sex work with trafficking and ‘sexual exploitation’ denies sex workers agency and treats them as victims.

“Laws, policies and services that are “gender-sensitive” have often been protectionist in nature, particularly in the anti-trafficking and sexual exploitation spheres. These instruments may reinforce harmful stereotypes about women as victims of slavery without any agency and also lead to the gender-specific causes of the many contemporary forms of slavery being overlooked.”¹⁰

Flawed Evidence

Conflation of sex work with trafficking has also led to the frequent misuse of data on human trafficking, forced labour, and ‘modern slavery’ to inform policies and positions on sex work. The difficulties of obtaining reliable, robust data on human trafficking and forced labour have long been acknowledged by researchers and academics,¹¹ as well as by the International Labour Organization (ILO)¹² and the US Department of State.¹³ The United Nations Office on Drugs and Crime (UNODC) has also noted the potential for statistical bias to skew measurements of ‘sexual exploitation,’ due to the fact that this form of exploitation is more visible and more frequently reported than others.¹⁴ The pervasive targeting of sex workers and their misidentification as assumed victims of trafficking within anti-trafficking interventions (such as ‘raid and rescue’ operations), combined with the underreporting of other forms of labour exploitation, further compromise these data, fostering an insidious, self-perpetuating cycle of flawed ‘evidence.’

Data and Digital Interventions

In recent years, the increasing focus on ‘cybercrime’ and technology-based anti-trafficking interventions has also vastly expanded the arena for cultivating misinformation on sex work and promoting harmful policies. In 2018, the U.S.A. passed the *Stop Enabling Sex Traffickers Act* (SESTA) and the *Allow States and Victims to Fight Online Sex Trafficking Act* (FOSTA), legislation which criminalises websites used by sex workers to advertise their services, screen clients, and share information, under the pretence that these platforms facilitate trafficking. Emerging from a decade of campaigning and flawed ‘research’ portraying the majority

⁷ UNODC, 2015, Issue Paper on “[The concept of ‘exploitation’ in the Trafficking in Persons Protocol](#),” 7.

⁸ UNODC, 2015, Issue Paper on “[The concept of ‘exploitation’ in the Trafficking in Persons Protocol](#),” 8.

⁹ UN General Assembly, Human Rights Council, Thirty-ninth session, 10-28 September 2018, “[Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences](#),” A/HRC/39/52.

¹⁰ UN General Assembly, 10th July 2018, “[Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences](#),” A/73/139.

¹¹ Elzbieta Gozdiak and Micah N. Bump, “[Data and Research on Human Trafficking: Bibliography of research-based literature](#),” (Washington, D.C.: Georgetown University, 2008).

¹² International Labour Organization, 2012, “[ILO Global Estimate of Forced Labour: Results and methodology](#).”

¹³ U.S. Department of State, 2016, “[Trafficking in Persons Report](#),” p. 10.

¹⁴ United Nations Office on Drugs and Crime, 2009, “[Global Report on Trafficking in Persons](#),” p. 6.



of sex workers who advertise their services online as victims of trafficking, FOSTA-SESTA has significantly reduced sex workers' ability to work independently and safely.¹⁵ Contrary to its aims, this legislation has also hampered efforts to investigate and prosecute traffickers, who have moved their activities further underground to avoid detection.¹⁶

Nonetheless, the myth persists that online platforms used by sex workers drive trafficking. Some stakeholders, including UN Women and OSCE in their July 2020 report, have also baselessly claimed that the COVID-19 pandemic has exacerbated vulnerability to online-facilitated trafficking, in order to reassert an existing policy agenda which is neither rights- nor evidence-based.

The growing focus on digital anti-trafficking interventions has also driven the development of new data collection and surveillance tools, which simultaneously violate sex workers' human rights and contribute to an already deeply flawed 'evidence base.' The Spotlight tool, developed by the anti-trafficking group Thorn to identify underage trafficking victims, has admitted to collecting data from *millions* of online sex worker's advertisements, sharing this information with law enforcement¹⁷ based on the assumption that "somewhere in that pile of data are children."¹⁸ This brazen form of mass surveillance exposes sex workers to breaches in privacy and legal prosecution, while reinforcing dangerous misconceptions surrounding sex work in digital spaces.

Recommendations:

- **Promote clear distinctions between human trafficking, sexual exploitation, and sex work:** The conflation of these distinct phenomena fosters harmful policies and practices which exacerbate precarious working conditions, violate sex workers' human rights and hinder anti-trafficking efforts.
- **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. lack of labour protections, lack of access to justice, services, and social protection, stigma and discrimination, poverty, isolation, criminalisation and fear of arrest) that create vulnerability to trafficking.

Ruth Morgan Thomas, Global Coordinator

on behalf of NSWP membership consisting of 306 sex worker led organisations in 99 countries.

¹⁵ Danielle Blunt and Ariel Wolf, "[Erased: The impact of FOSTA-SESTA and the removal of Backpage on sex workers](#)," *Anti-Trafficking Review* 13 (2020): 117-121.

¹⁶ Lura Chamberlain, "[FOSTA: A Hostile Law with a Human Cost](#)," *Fordham Law Review* 87 (2019).

¹⁷ Violet Blue, "[Sex, lies, and surveillance: Something's wrong with the war on sex trafficking](#)," *Engadget*, 31 May 2019.

¹⁸ "[Spotlight](#)," Thorn.