

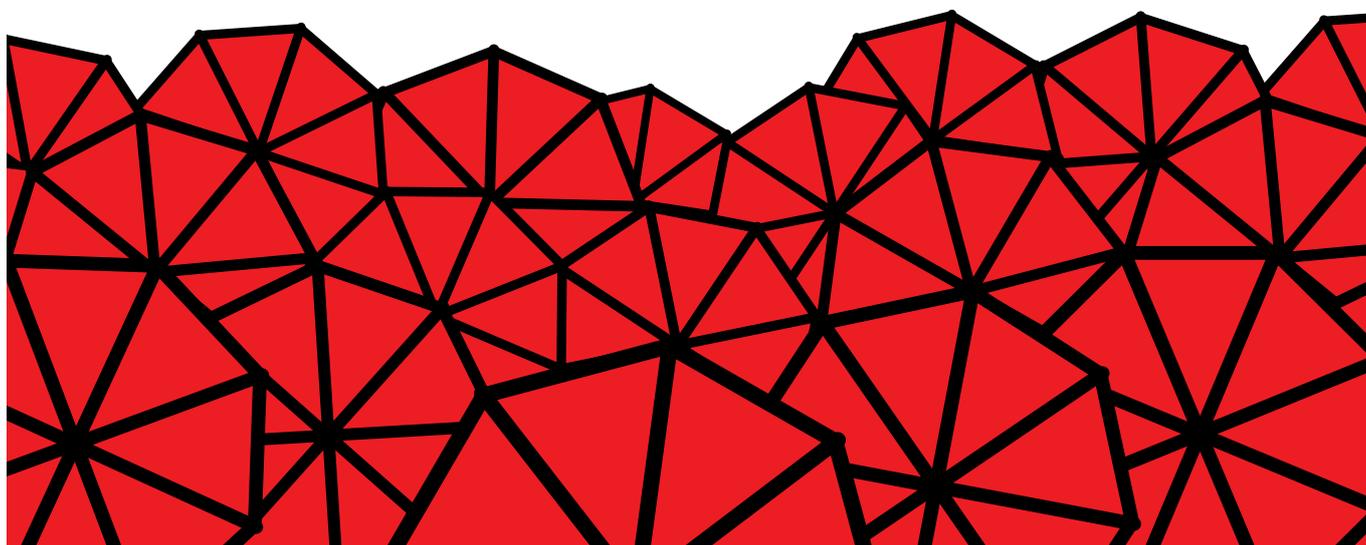


nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

**BRIEFING
PAPER**

**#03 Sex work is
not trafficking**



Sex work is not trafficking

How sex workers experience the current conflation of trafficking, sex work, migration and mobility and why it must be stopped

Introduction

Sex work is work

The Global Network of Sex Work Projects (NSWP) started in 1992 to advance the human rights and health of female, male and transgender sex workers. NSWP members are regional sex work networks and organisations based in over forty countries. Member organisations are from diverse cultures, have different organisational histories, and are sex worker-led. Despite the diversity, members share a common belief and experience that sex work is work and should be recognised as such. They are united in their conviction that

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no person should be trafficked or forced to do work that they have not chosen. The conflation of trafficking and migration with sex work, in law, policies and practice, presents serious challenges to NSWP as it negatively impacts on sex workers' work and lives.

This briefing paper attempts to explain and highlight the dangers of conflating trafficking with sex work. It aims to illuminate how this impacts upon sex

workers' lives and work, thus contributing to a growing body of knowledge which critiques the trafficking discourse.

The paper explores how international conventions, both past and present, have linked sex work to trafficking. It illustrates that conflating migration and trafficking with sex work violates sex workers' human rights as workers, and disempowers women in sex work. It briefly examines how the focus on trafficking into sex work has impacted on workers in other sectors. The paper concludes by discussing how the conflation affects sex work programming, the response of sex worker organisations and posits recommendations for future action.

How sex work has been conflated with trafficking

The conflation of sex work and trafficking, migration and mobility is no accident. It is not a misunderstanding of terminology but is a conscious attempt to abolish prostitution and prevent people, in particular women, from migrating for sex work.

Legal frameworks

For many years, prostitution has been conflated with trafficking in international agreements and by the media. This has influenced popular opinion. The concept of consent and understandings of exploitation

in relation to sex work lie at the heart of this conflation.

At the beginning of the 20th century, international conventions established that the movement of women from one country to another for prostitution is tantamount to trafficking, irrespective of consent.¹ The preamble of the 1949 Convention on Suppression of all Forms of

Trafficking in Persons and the Exploitation of the Prostitution of Others declared that its purpose was to establish prostitution as a practice that is “incompatible with the dignity and worth of the human person.” This endorsed an interpretation of prostitution as an inherent form of exploitation.

Three decades later, Article 6 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),² reiterated the call to end exploitation of women by prostitution, again without defining exploitation. At the time of CEDAW’s formulation in 1979, the general interpretation of exploitation was influenced by radical feminist thought. This constructed prostitution as an institution of male oppression, viewing all women engaged in it as victims of patriarchy.

It took another two decades before a definition of exploitation emerged in international law related to trafficking in persons. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)³ defines trafficking as:

- ▶ **Activities:** recruitment, transportation, transfer, harbouring or receipt of a person.
- ▶ **Means:** force, deception, abduction, coercion, fraud, threats, abuse of power or a position of vulnerability.
- ▶ **Purpose:** exploitation, including forced labour, or removal of organs.

On paper, the Protocol is progressive because it includes trafficking for other forms of labour rather than emphasising only on prostitution. Unfortunately the potential of the new definition has been tempered by positioning the Protocol as a supplement to the UN Convention against Transnational Organized Crime. Trafficking was to be tackled as a crime, with the main focus on law enforcement and prosecution, not on the protection of human rights. National laws and policies have followed this model, developing anti-trafficking laws which seek to criminalise involved parties. In countries where sex work is illegal, enforcing the law to prevent trafficking has once again been conflated with enforcing laws to stop women selling sex.

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¹ Article 1 of the *International Convention for the Suppression of the Traffic of Women of Full Age (1933)* established a duty to prohibit, prevent and punish the trafficking of women from one country to another even with their consent.

² Article 6 of CEDAW states parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

³ The Protocol to *Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)* states that “Trafficking in persons shall mean 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. 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, or the removal of organs.

Demand for sex work conflated with trafficking

In 1999 Sweden enacted a bill to criminalise buying sex, the intention of which was to end the demand for commercial sex and thus supposedly to impede trafficking. The Minister of Integration and Gender Equality claimed that “prostitution and human trafficking for sexual purposes represent a serious obstacle to both social equality and gender equality.”⁴

Attacking the demand to buy sex as a method of tackling trafficking became known as the Swedish Model and which has been widely promoted by the Swedish government. In the US State Department’s *Trafficking in Persons* (TIP) report of 2011, governments which have the ‘best’ records (according to US terms) are called upon to tackle trafficking by attacking the demand for commercial sex. According to this report, “if nobody paid for sex, sex trafficking would not exist.”⁵

At the World Cup event held in Germany in 2006, unsubstantiated reports claimed that tens of thousands of women would be trafficked for the event, despite prostitution being legal in Germany. When the Berlin police raided over seventy brothels, no evidence of trafficking was found

The conflation of demand for sex work with trafficking has fuelled unfounded speculation. An increase in demand for sex workers during large public events is assumed to mean an increase in trafficking activities. At the World Cup event held in Germany in 2006, unsubstantiated reports claimed that tens of thousands of women would be trafficked for the event, despite prostitution being legal in Germany. When the Berlin police raided over seventy brothels, no evidence of trafficking was found. A similar hype was created around the 2010 World Cup in South Africa and currently another wave of speculation is underway around the forthcoming Olympics to be held in the UK.

The ‘end demand’ theory critiques the use of technology as a means to buy and sell sex. Claims are made that the use of internet and mobile phones has made the buying of sex more accessible but less visible. Without any evidence the assumption is that greater accessibility to sex workers leads to an increase in trafficking.

The impact on sex workers

The next section explores the impact that conflating sex work, migration and trafficking has on sex workers. The information in this section has been provided by members of the NSWP, this was sourced by a questionnaire, published information and through NSWP related websites.

Work interrupted

As a result of conflating sex work with trafficking, migrant sex workers are particularly targeted. Authorities target migrant sex workers ostensibly as victims of trafficking. However, many migrant sex workers report constant harassment and raids by officials because they are migrant workers. Globally, regardless of the legal and labour status of sex work in any given country, sex workers report more raids in workplaces and arrests of street-based sex workers carried out in the name of anti-trafficking. Raids on workplaces are often violent and result in injuries, detention and deportation. They undermine sex workers’ security and ability to control their lives. Migrant sex workers lose money, time and

⁴ M. Sabuni (2009), Introduction by the Minister of Integration and Gender Equality, in Ministry of Integration and Gender Equality, *Against Prostitution and Human Trafficking For Sexual Purposes*, Stockholm: Government Offices of Sweden.

⁵ See <http://www.state.gov/g/tip/rls/tiprpt/2011/164224.htm#4>

energy invested in migrating to support themselves and their families. Fear of raids leads migrant sex workers to work clandestinely, in less safe work environments, often isolated from mainstream society. This compromises their access to support and services.

Members of NSWP report that raids fuel the already hostile and intolerant climate towards sex workers. They legitimate aggression, violence and hate crimes against female, male, transvestite and transgender sex workers. Further, they add to the tense relations between sex workers and law enforcers, thus diminishing hopes for cooperation.

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All workers in the sex industry are affected by raids. The livelihoods of sex workers' colleagues, managers, maids, assistants, and drivers are disrupted by raids. These individuals, as well as service providers who attempt to assist undocumented sex workers, risk being accused and/or arrested as traffickers.

Security and protection

Sex workers' security and safety is threatened by raids. They not only disrupt work but also support systems. Without the support of co-workers (i.e. managers, maids etc.) and outreach workers, the working environment is less protected and more open to abuse.

The Swedish model of ending demand diminishes the safety of sex workers by criminalising clients. Previously many sex workers – in abusive or trafficked situations – would seek assistance from trusted clients in making plans to leave an abusive situation by alerting a sex worker support group or local authority. This is no longer an option for sex workers since clients now risk arrest. Street-based sex workers in particular have distanced themselves from support networks and experience more harassment by the police who are trying to identify victims.

Assumed complicity

In the name of investigating trafficking incidents, more raids on sex work venues are being carried out. However crime figures, whether for prosecutions of traffickers or justice for victims, are negligible. In the UK, in a national operation code-named 'Pentameter 2', police conducted raids on 822 brothels, flats and massage parlours. They claimed they were looking for 25,000 'sex slaves'. 351 women were located, all of whom "variously absconded from police, went home voluntarily, declined support, were removed by the UK Borders Agency or were prosecuted for various offences."⁶

Many raids could be avoided if consultations were held with sex workers. Continuing the practice of raiding sex work venues, despite the lack of success, suggests a mistrust of sex workers by the police. Indeed, the assumption appears to be that non-trafficked sex workers are complicit in the exploitation of trafficked sex workers. The dismissive attitude of the police is unfortunate, considering the commitment of many sex workers to stop trafficking. Sex workers have set up regulation committees to report brothels using child sex workers and trafficked persons.⁷ In fact, it is in the interest of sex workers to stop exploitation and close down venues known for abuse, because it is demoralising for all sex workers.

⁶ E. Bernstein (2007), *Temporarily yours: intimacy, authenticity, and the commerce of sex*, Chicago: University of Chicago Press.

⁷ Durbar Mahila Samanwaya Committee is an organisation in India with 65,000 sex workers members, organising self-regulatory boards. <http://www.facebook.com/pages/Durbar-Mahila-Samanwaya-Committee/144558602226243>

Victimised

Anti-traffickers often ascribe victim status to immigrants despite the fact they have made conscious and rational decisions to cross borders with the knowledge that they will be selling sex.⁸ Migrant sex workers who are detained in 'raid and rescue' operations, despite informing the authorities that they are not victims of trafficking, are liable to arrest and prosecution on two counts – as illegal immigrants and illegal sex workers. Their choices are limited to claiming the status of either victim or criminal. In this framework there is no space for women who choose to do sex work.

The paradigm of victimhood is detrimental to people who have been trafficked. Once labelled a victim, they are denied agency to make decisions about their future. Post-rescue, they are returned home. They are not consulted about what they want to do. While neither sex workers nor trafficked persons benefit from the victim label, there are others who

The victim image sells well. While sensationalist and evocative, it obscures the details of lives, the tough decisions made, and the thin line between survival and exploitation for the vast majority of workers, including sex workers

do. A booming anti-trafficking industry thrives on this construct. Filmmakers, writers, events management companies, researchers, journalists and development consultants have all cashed in on this. The victim image sells well. While sensationalist and evocative, it obscures the details of lives, the tough decisions made, and the thin line between survival and exploitation for the vast majority of workers, including sex workers.

The trafficking 'story' lends to other constructions and, not least, a satisfying role for rescuers. This role, often assumed by white men in positions of power, is offset by its binary, the helpless female victim. She is often constructed as a 'good' woman

forced into a 'bad' job, delivered to safety in the arms of self-styled, anti-trafficking 'supermen'. These traditional images push women's rights back several decades.

Rarely does mainstream representation of anti-trafficking measures show the individuals who refuse rescue or who escape from anti-trafficking shelters. Anti-trafficking organisations intentionally do not document evidence of complaints by sex workers about loss of income, sexual assault and the humiliation endured while in shelters. These are the stories that NSWP hears.

Restrictions on freedom to travel

Anti-trafficking measures worldwide have included enforcing stricter border controls and rigorous visa application processes. These do not apply universally but discriminate against people from non-white countries, women, the economically disadvantaged and manual workers, including male, female and transgender sex workers. As these restrictions make it increasingly difficult to travel, sex workers need the assistance of third party agents to facilitate travel abroad. Dependency on brokers increases the cost of migration and exposes sex workers to possible fraud and extortion. Sex workers thus are highly vulnerable to exploitation when they attempt to travel.

⁸ See for example Dr Laura Agustín's blog, *The Naked Anthropologist* at <http://www.lauraagustin.com>

Women could previously get an entertainment visa to Japan, but now find these have been restricted. Consequently, women migrating to Japan now use marriage as a means to migrate. Being married gives them the scope to do sex work. Although it provides a safe cover, acquiring this kind of visa creates a dependency on brokers and on the named spouse. This arrangement is expensive and sex workers usually have to work to pay back debts incurred in the process.

Restrictions on travel are increasingly being imposed within countries as well as across borders. Local residents are being called upon to report potential trafficking rackets. This gives more credence and scope to local anti-immigration vigilante groups.⁹ The impact of this surveillance on sex workers' freedom of movement is immense. To avoid being harassed by government and non-government agencies, sex workers are compelled to stay in one place.

Discrimination

The conflation of trafficking and sex work fuels racial profiling. While immigration authorities deny any racism in the implementation of anti-trafficking work, the consequences of their actions discriminate against sex workers based on their racial appearance.

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In Australia 'compliance' visits are made by immigration authorities and police to brothels where sex workers of Asian appearance work, ostensibly to seek out victims of trafficking. As a result of the increasing discrimination and persecution of Australian citizens who are 'Culturally and Linguistically Diverse' (CALD), sex workers who speak English as a second language and are of Asian origin are particularly targeted.

The normalisation of racism is evident in a recent court case in Tokyo. A man who had held foreign sex workers hostage, as he emptied their bank accounts and stole their belongings, defended himself in court by saying, "foreign sex workers are working here illegally, so I thought no matter what I do to them, they won't be able to take any recourse".

Impact on other workers

According to the International Labour Organisation (ILO) 32% of trafficked persons are victims of economic exploitation in the fishing industry, construction, agriculture and domestic work.¹⁰ Until recently, because of the focus on sex workers, many governments did not recognise these workers as potential victims of trafficking. Consequently they could not access legal protection.

As countries have begun to recognise these workers a shift has occurred in the treatment of trafficked victims. Such workers who have been rescued are more respected than sex workers. Arbitrary investigations of premises employing Asian migrant workers are not carried out in any industry except sex work.¹¹ While other workers are listened to and believed, sex workers are, by default, suspected of lying, particularly about age, and are often subjected to humiliating procedures to ascertain age. Raids on workplace usually occur after the police have

⁹ For example, the Immigration Bureau Neighbourhood Watch Campaign in Japan and RELA in Malaysia.

¹⁰ International Labour Organization (2008), *Forced Labour and Human Trafficking*. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf

¹¹ Scarlet Alliance

been contacted by an NGO or concerned individual. For other types of work, NGOs generally request raiding an establishment as a last resort, preferring to try other strategies such as activating labour laws. For sex work establishments, however, raids are often implemented without *prima facie* evidence of any kind of worker exploitation. In addition, media reportage of trafficking of other workers is less biased.

In Thailand, male survivors of trafficking in the fishing industry are allowed to seek permission to work while awaiting trial. This allows them to earn and to keep their dignity. This right is encompassed in the Anti-Trafficking Act. However, sex workers, who are mostly women, are not permitted the same right. Anti-trafficking NGOs are lobbying to ensure that trafficking cases are supplemented by a labour suit so that compensation under forced labour can be claimed.¹² This route is denied to women who have been trafficked for sex work because of the perception that sex work is not work.

Impact on programming of sex worker organisations

Outreach

Sex workers organisations and collectives are increasingly challenged by the impact of anti-trafficking activities. Raids generate fear

and distrust, and migrant sex workers are particularly suspicious about national sex worker organisations which they feel may be informants for immigration, or masquerading as ‘rescuers’. Organisations have to spend more time and resources in building trust and understanding with migrant sex workers. Sometimes the fear is so deep that migrant sex workers are left without support systems.

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Funding

The conflation between trafficking and sex work has resulted in sex workers having to compete against anti-trafficking groups for funding. Enormous amounts of funding are allotted to anti-trafficking groups. This is mainly spent on law enforcement, and creating awareness about the dangers of trafficking. Limited funding is available for rights-based protection programmes. Rarely is funding allotted to programmes that promote the rights of women to migrate and labour rights in the sex work industry. The overall reduction in funding for human rights-based protection programmes has meant sex worker organisations have had to cut back on their services. In turn, lack of funds impacts on sex workers’ access to prevention and care, essential services and networking opportunities.

Fighting anti-trafficking groups

Sex worker organisations have to spend valuable resources, including time, defending their work and challenging the anti-trafficking framework. These are resources that could be much better spent on advocating for the human rights of sex workers and providing crucial services for sex workers.

¹² In 2010 the MAP Foundation, Thailand, provided legal assistance for nine fishermen who had been trafficked onto fishing boats to take a labour case for compensation of their unpaid wages. The fishermen were each awarded US\$1,000 for 2 years forced labour on the seas. See www.mapfoundationcm.org

Sex workers' contributions to ending exploitative workplace practices

Sadly missing in the anti-trafficking discourse is the acknowledgement of sex workers' contribution to ending exploitative workplace practices, promoting safer working conditions and access to justice for sex workers. Some examples of this work are given below.

Scarlett Alliance Migration Project in Australia works to improve peer education resources and support for migrant sex workers. It has made a significant contribution to the trafficking policy debates in Australia and has designed appropriate language resources on laws, visas, rights and responsibilities that can help migrant sex workers when dealing with government agencies.

Empower Foundation has drop-in centres across Thailand for all sex workers regardless of their nationality, language or immigration status. It works to promote the rights of sex workers and, in collaboration with Scarlett Alliance, provides information to, and advocates for, Thai sex workers living in Australia.

New Zealand Prostitutes Collective (NZPC) has developed literature in Chinese, Korean, and Japanese to help migrant sex workers identify whether they are being exploited in the workplace.

The network empowers sex workers to make changes, from within individual establishments up to national policy

All NSWP member organisations are open and sensitive to the needs of migrant sex workers. NSWP takes guidance from these sex workers regarding the kind of advocacy, research or services required by them. The network empowers sex workers to make changes, from within individual establishments up to national policy.

Conclusion

“Sex workers do not get their rights as workers, and our migrant colleagues get deported, and very few true victims of trafficking get proper help and assistance.” (SIO, Denmark)

The conflation of trafficking and sex work provides both the anti-prostitution and anti-immigration lobbies with the necessary ammunition to carry out their respective agendas. Anti-prostitution groups utilise anti-trafficking rhetoric to end prostitution. They conveniently emphasise trafficking for sex work to prove that the latter is harmful to women. As a result migrant sex workers are treated as trafficked victims rather than as sex workers who elect to migrate for work.

Meanwhile, the anti-immigration lobby uses the ‘sex work as violence’ and anti-trafficking discourse to influence the stepping up of immigration restrictions. They emphasise sex workers' vulnerability during migration to justify placing restrictions on their mobility. While anti-immigration groups face opposition from powerful employers' associations when they attempt to ban workers from entering the country, sex workers lack such associations and hence are an easy target for anti-immigration groups.

When sex work is conflated with trafficking, popular opinion is influenced to perceive all sex work as exploitation and suffering. When sex workers are denied worker status, they are excluded from the body of workers whose mobility is appreciated as contributing to economic development and social cohesion.

Where sex workers, including migrant sex workers, have worked hard to improve working conditions towards gaining autonomy and respect, the conflation of trafficking and sex work has reinforced the old paradigm of dependence.

While powerful anti-trafficking groups continue to lobby governments to withhold recognition of sex work as work, sex workers are denied the protection and benefits that other workers have under the law

While powerful anti-trafficking groups continue to lobby governments to withhold recognition of sex work as work, sex workers are denied the protection and benefits that other workers have under the law. This impedes the movement to institute safeguards for workers in the sex industry, sentencing future generations of sex workers into working in unsafe and unfair conditions.

Some positive developments are taking place at the international level. Protecting the rights of workers is progressively being recognised as an effective

way of reducing the occurrence of trafficking. Some international bodies are making moves to remove the restrictions on women's cross border mobility and provide them legal protection at work.¹³

The greatest intervention has been by sex workers. Through persistence and dedication, they have found a united voice in NSWP and other regional networks. They have formed alliances with other civil society groups, migrant networks, LGBTQI networks and PLWHA networks. They have succeeded in securing law reform in some countries, decriminalising sex work in some, and lessening sentences in others.¹⁴ They have achieved much in unravelling the dangerous and demeaning conflation of trafficking and sex work.

¹³ Article 26 of CEDAW General Recommendation no. 26 on women migrant workers calls on countries to lift restrictions on immigration which discriminate against women and to ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws.

¹⁴ The New Zealand Prostitution Reform Act (2003).

Recommendations

To NSWP

- 1 Step up campaigns to decriminalise sex work and provide comprehensive labour protections for sex workers.

To policy makers

- 1 Discontinue targeting migrant sex workers in raid and rescue missions.
- 2 Create expert working groups – consisting of people in the sex work, construction and fishing industries and domestic workers – to carry out an in-depth analysis of the trafficking situation, and develop possible solutions which move beyond short-term law enforcement initiatives.
- 3 Acknowledge and respond to different situations nationally, regionally, and locally.

To donors

- 1 Provide resources to sex workers' groups to improve labour conditions within sex work and to organise and unionise workers.
- 2 Ensure that resources channelled to migrant workers' groups are shared with migrant sex workers' groups, and that research projects on migration include examining the phenomena of migration for sex work.

To civil society

- 1 Support sex workers' actions to end abusive workplace conditions.
- 2 Strengthen alliances between sex workers' networks and other networks.
- 3 Provide spaces for sex workers and other workers to share their experiences of anti-trafficking laws, policies and activities.

Recommended materials

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