



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

BRIEFING NOTE:

Written submission for CEDAW discussion on the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

Introduction

“Sex workers are spied on, arrested, cut off from our families, had 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

NSWP is a global network of sex worker-led organisations, with over 260 members in 80 countries, that exists to uphold the voice of sex workers globally and connect regional networks advocating for the rights of female, male and transgender sex workers. It advocates for rights-based health and social services, freedom from abuse and discrimination, and self-determination for sex workers.

NSWP welcomes the opportunity to contribute to this consultation as the CEDAW Committee prepare to elaborate on the *General Recommendation on trafficking in women and girls in the context of global migration*. We are committed to supporting efforts to ensure full compliance with states’ obligations to respect, protect and fulfil the human rights of all women in the context of trafficking and global migration.

A rapid growth in global migration, gender inequality, economic insecurity, neoliberalism, the impact of climate change, increased conflict and the resultant displacement of millions of people globally all contribute women and girls’ vulnerability to human trafficking. A lack of safe migration routes, as well as a lack of robust employment legislation that protects migrant workers and effective measures to support victims of trafficking, often allows major networks of traffickers to operate with impunity. Strengthening anti-trafficking efforts will require a reinvigorated, coordinated willingness by States and other actors to see trafficking through this broader lens, as opposed to a narrow criminal justice approach that often focuses on the existence of individual groups of traffickers and perpetrators. Collectively, we all have a responsibility to identify human rights-based, gender-sensitive protection and assistance measures for victims of trafficking. It is imperative that we harmonise the efforts of the women’s rights, migrant rights, labour rights and sex workers’ rights movements in order to achieve a strengthening of effective anti-trafficking efforts.

Conflation of ‘sex work’ and ‘trafficking’ and the impact on sex workers’ rights

Exploitative work conditions exist within many work sectors, including in the sex industry. In the case of sex work these are fuelled by criminalisation or other forms of legal oppression, a lack of labour

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

protections, a lack of opportunity for safe migration, and by stigma, discrimination and marginalisation.

However, the conflation of sex work with exploitation and violence, and the conflation of exploitative work conditions in the sex industry with trafficking, is a **major** factor in perpetuating exploitation and precarious working conditions in sex work. This conflation has led to extremely harmful legislation that alienates sex workers from services and prevents them from organising for better work conditions or asserting their human and labour rights.

CEDAW Article 6 currently requires that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and *exploitation of prostitution of women*.” It is notable that the 1993 UN Declaration on the Elimination of Violence against Women, in defining violence against women to include “trafficking in women and **forced** prostitution”², recognised trafficking, forced ‘prostitution,’ and voluntary sex work as **distinct** phenomena.

While the term “exploitation of prostitution of women” avoids obligating states to suppress all sex work, it is not sufficiently defined. It therefore has habitually allowed for dangerously broad interpretations in terms of the implementation of anti-trafficking initiatives. This ambiguous language has led to widespread human rights abuses of sex workers.

It is also incredibly counterproductive, actively working **against** the claimed intentions of protecting women and girls, and resulting in significant harms both to sex workers and to victims of human trafficking. Multiple international organisations have opposed the conflation of sex work and trafficking, including the Global Commission on HIV and the Law³ and Amnesty International,⁴ 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) towards initiatives aimed primarily at suppressing sex work, rather than focussing on addressing trafficking in the sex industry;
- contributes to the harms sex workers face from law enforcement, potentially violent clients, and intermediaries who engage in exploitative practices and undermines efforts to engage with sex workers about HIV and other STIs.

In the Caribbean this has led to increased ‘rescue raids,’ resulting in the arrest and deportation of migrant sex workers.⁵ In 2012, Mexico enacted 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”. The Global Alliance Against Traffic in Women (GAATW) attributed these impacts directly to the US annual Trafficking in Persons Report which forcefully conflates sex work with trafficking:

“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.”⁶

In Asia and the Pacific anti-trafficking laws are used to justify raids and suppress consensual adult sex work and “contribute to vulnerability, generate stigma and create barriers to HIV service delivery.”⁷

Amnesty International has documented human rights violations against sex workers resulting from the conflation of sex work with trafficking in Buenos Aires, Argentina:

² UN General Assembly, 1993, “[Declaration on the Elimination of Violence against Women](#),” 2

³ United Nations Development Programme, 2012, “[HIV and the Law: Rights, Risks, and Health](#),” 39-40.

⁴ Amnesty International, 2016, “[Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers](#),” 17.

⁵ Kempadoo, Kamala. “[The War on Humans: Anti-trafficking in the Caribbean](#),” Social and Economic Studies 65, no. 4 (2016): 5-151.

⁶ GAATW, 2018, “[Sex Workers Organising for Change: Self representation, community mobilization, and working conditions](#),” 281.

⁷ UNDP, 2012, “[Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work](#),” 24-25.

“[T]he 2012 amendment of the Federal Anti-Trafficking Law criminalised a broader range of conduct and the law now simply requires proof of ‘exploitation’, for which there is no clear definition in law. In the context of commercial sex, the authorities are interpreting this to simply require some form of involvement in the organisation of sex work. As many government officials deem sex work exploitative, current legislation allows human trafficking and sex work to be treated in practice as one and the same and there is little or no incentive to distinguish between the two.”⁸

This approach to trafficking and sex work creates an opening for governments to ignore human rights standards in their treatment of individuals who are harmed as a result of these laws and policies. This conflation has serious consequences for sex workers as it makes them vulnerable to prosecution as traffickers under trafficking laws if they work together to travel or sell sex, and such prosecutions in many cases carry extremely high penalties⁹. It also contributes to perpetuating impunity of law enforcement agencies, who under the pretext of ‘enforcing anti-trafficking laws’ carry out unlawful raid and rescue operations¹⁰ that have also been recognised by the CEDAW Committee to be an issue of grave concern¹¹. Most importantly, such conflation denies the agency and self-determination of sex workers, undermining their human rights, and impedes the HIV response.¹²

- **Any elaboration of the General Recommendation must distinguish clearly between trafficking, exploitation and sex work.**

The dangerous folly of ‘End Demand’ approaches

‘End demand’ legislation is often framed as a strategy to promote gender equality and combat trafficking through eradicating sex work, however the reality is that women sex workers are made more vulnerable to violence, discrimination and exploitation as a result of this legislation.¹³ That sex workers face harassment, persecution and arbitrary arrest by authorities as a direct result of such laws has been well researched¹⁴ and documented.¹⁵

The focus of ‘anti-trafficking’ laws on eradicating sex work is also detrimental to the identification of victims of human trafficking. For example, Amnesty International, in relation to Norway’s approach, found “alternative evidence demonstrating that victims of trafficking are often negatively impacted by police crackdowns on the sex work market” and “[t]he strategic deportation of many migrant women...also leads to failures in the detection of trafficking and identification of victims and leaves individuals at risk of re-trafficking. It also means that perpetrators in these cases are not brought to justice.” In their conclusion, Amnesty found that “the focus on deportations as a means to crack down on commercial sex is undermining the ability of the Norwegian authorities to identify victims of trafficking.”¹⁶

Although ‘end demand’ legislation is promoted as a measure to end the discriminatory criminalisation of women sex workers, in countries that have added the criminalisation of clients to the criminalisation of sex workers, the laws are disproportionately enforced in sex workers’ homes, neighbourhoods and workplaces. While in countries that that have adopted the ‘Nordic Model’ of criminalising clients and third parties and not sex workers, laws criminalising third parties continue to be used against sex workers if they work together for safety. As a result, women sex workers, **not** male clients, incur the majority of profiling, surveillance and policing, not only while working but also in their day-to-day lives.

⁸ Amnesty International, 2016, “[Argentina: What I’m doing is not a Crime](#)”, p.27.

⁹ GAATW, 2007, “[Collateral Damage: The impact of anti-trafficking measures on human rights around the world](#)”.

¹⁰ Amnesty International, 2016, “[Argentina: What I’m doing is not a Crime](#)”, p.27-31.

¹¹ CEDAW, 2017, “[Concluding observations on the combined sixth and seventh periodic reports of Thailand](#)”, CEDAW/C/THA/CO/6-7.

¹² IWRAP Asia Pacific & NSWP, 2018 “[Framework on Rights of Sex Workers & CEDAW](#)”.

¹³ NSWP, 2018, “[Policy Brief: The Impact of ‘End Demand’ Legislation on Women Sex Workers](#)”, 10.

¹⁴ NSWP, 2015, “[Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers](#)”.

¹⁵ NSWP, 2018, “[Policy Brief: The Impact of ‘End Demand’ Legislation on Women Sex Workers](#)”.

¹⁶ Amnesty International, 2016, “[The Human Cost of Crushing the Market](#)”, 11,82.



Enforcing 'end demand' legislation involves police raids of sex workers' workplaces, confiscation of their earnings by police as evidence against clients¹⁷ and frequently involve bringing media on raids, resulting in the public exposure of sex workers. Women sex workers in Canada, France and Sweden also report being threatened with criminal charges, detention, or physical violence, and harassed to act as witnesses against their clients. Migrant women sex workers are further threatened with deportation.

It has been asserted that the 'end demand' approach focuses only on increasing the stigma of individuals who purchase sex. However, it is impossible to increase the stigma of those purchasing sex without also increasing the stigma of those selling sexual services.

In Norway, police 'Operation Homeless' aimed to systematically evict sex workers' from their homes, more than 400 sex workers were evicted from their apartments between 2007-2014, primarily migrant women sex workers.¹⁸ In Sweden, police report sex workers to their landlords, threatening prosecution if they fail to evict, and sex workers found to be engaging in sex work in their own property lose their legal right to ownership facing eviction on failure to sell and vacate the property.

The criminalisation of the purchase of sex has led to clients changing their ways of contacting and meeting sex workers to avoid fines or arrest. Sex workers have had to accept these changes, at times jeopardising their safety and health. For outdoor sex workers, this includes working in more isolated areas and not having time to take basic safety measures, such as recording vehicle license plate numbers, assessing carefully before entering a clients' car, negotiating the price and services to be provided.

France criminalised sex workers' clients in 2016. In a study¹⁹ conducted by Médecins du Monde involving over 700 sex workers, the majority of sex workers reported that criminalisation of clients is more harmful than prior laws which criminalised both clients and sex workers for publicly soliciting. These harms include economic marginalisation, increased exposure to violence, and decreased ability to demand the use of condoms. The report further notes that there is a "clear discrepancy between the national policy of 'protection' of sex workers" and the fact that "sex workers are still more often criminalized than their clients".

Criminalising clients also has a negative impact upon the identification of victims of trafficking, deterring both clients and sex workers who are well-positioned to report exploitation and trafficking from doing so. Challenging the dominating narrative that portrays all clients of sex workers as abusive and exploitative men who have a lack of respect for women, in Turkey, where the purchase of sex is not criminalised, 74% of calls to a trafficking hotline came from clients who suspected trafficking.²⁰

Finally, and perhaps most importantly, GAATW published a report²¹ that shows there is no substantive evidence to support the claim that 'end demand' approaches actually reduce trafficking. The report also sets out serious concerns that such an approach ignores trafficking in other labour sectors, including other gendered-labour; relies more on ideology than sound evidence; increases stigma against sex workers; and is more focused on punishing men who pay for sexual services than on protecting women sex workers' rights.

The majority of sex workers exercise choice and agency in making decisions about selling sex as a livelihood. It is untenable to make sweeping assumptions on behalf of a group of people under the guise of solving an 'undesirable social issue'. Furthermore, evidence demonstrates these strategies do not work and only harm sex workers and women and girls. Claims by some that a human rights-based approach has 'not worked' and that trafficking would 'cease to exist' if an eradication strategy is pursued are unconscionable and not supported by the evidence. Other forms of labour, such as domestic work and the garment industry are as gendered as sex work and all forms of trafficking

¹⁷ Asia Catalyst, 2014, "[The Condom Quandary: A Survey of the Impact of Law Enforcement Practices on Effective HIV Prevention among Male, Female, and Transgender Sex Workers in China](#)", 42-43, 51.

¹⁸ Amnesty International, 2016, "[The Human Cost of Crushing the Market](#)".

¹⁹ Médecins du Monde, 2018, "[Study on the impact of the law from 13 April 2016 against the "prostitution system" in France.](#)"

²⁰ "[Customers help stamp out Turkey's sex slaves](#)", The Independent, 28 December, 2005.

²¹ GAATW, 2011, "[Moving Beyond 'Supply and Demand' Catchphrases - Assessing the uses and limitations of demand-based approaches in anti-trafficking](#)".



require an enhanced human and labour rights approach; sex work must not be exceptionalised but treated on an equitable basis.

- **This damaging focus on ending demand for sex work using a punitive criminal justice approach is not compatible with a human rights approach that encompasses and protects all women and girls.**

Criminalisation of third parties

The criminalisation of third parties leads to unethical and unscrupulous people becoming involved in the sex industry, who use the covert nature of the sex industry to abuse and exploit sex workers.

Family members that sex workers support, sex workers who work collectively, and banks, landlords, drivers, and websites that do business with sex workers, are also being criminalised under inappropriate and broad trafficking legislation. In Germany, 'anti-trafficking' legislation makes it virtually impossible for sex workers to legally share a workspace or work collaboratively.

In 2018, the USA 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, information sharing, harm reduction and safety purposes. Even before these bills were signed into law, other online advertising sites had been removed. FOSTA/SESTA has drastically reduced the ability of sex workers to work independently; advertising and screening clients online and in turn, has created economic insecurity, increased reliance on third parties, and increased outdoor sex work.

'Rescue raids', forced 'rehabilitation' and discriminatory immigration laws

Globally, raids on sex worker establishments (which often involve entrapment and result in the detention and/or deportation of women sex workers) are the primary strategy used to identify victims of trafficking and enforce anti-trafficking legislation.

*"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."*²²

Raids of sex work establishments by immigration authorities, "under the guise of anti-trafficking mandates," have increased, resulting in the deportation of sex workers who do not identify as trafficking victims or who refuse to become witnesses in the criminal justice system.²³

Dangerous working conditions and increased violence

Anti-trafficking measures that broadly criminalise sex work and the resulting fear of arrests create barriers to sex workers working together, communicating for the purposes of safety, and hiring people such as drivers or bodyguards, which works to decrease safety, increase sex workers' vulnerability to violence, and against sex workers' ability to report suspected trafficking and violence they experience.

Trafficking statistics

Trafficking statistics are notoriously complex and difficult to estimate. As outlined in the Concept Note (para 11) the UNODC Global Report on Trafficking in Persons 2016 found that "women and girls together comprised 71% of all detected and reported trafficking victims between 2012-2014." The Concept Note takes this data from the UNODC Global Report on Trafficking in Persons, 2016.

²² GAATW, 2018, "[Sex Workers Organising for Change: Self representation, community mobilization, and working conditions](#)," 31.

²³ Butterfly: Asian and Migrant Sex Workers Support Network, 2018, "[Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers](#)," 32.

Importantly, that same report notes that:

“Although women still comprise a majority of detected victims, there has been an overall decrease in the share of female victims over the past decade, from 84 per cent in 2004 to 71 per cent in 2014. The trend for detections of men, in contrast, has been increasing over the same period, and more than 1 in 5 detected trafficking victims between 2012 and 2014 were men.”²⁴

In terms of forms of trafficking, the UNODC report finds, in the category of sexual exploitation, that:

“The trend for this form, however, is decreasing. Trafficking for forced labour now accounts for a larger share of the detected victims than in 2007.”²⁵

More recent statistics from the International Labour Organization confirm the earlier UNODC estimate that 71% of all those in modern slavery are women and girls.

However, this report²⁶ also found that **11.9%** of all victims of modern slavery fell into the category of forced sexual exploitation / CSE of children. This compares to **38.2%** in the category of forced marriage - 84% of whom were women and girls. Most significantly, overall **49.9%** of people in modern slavery were enslaved in **other** forms of forced labour (both state-imposed and in the private economy.) It should also be noted, for example, that New Zealand, which decriminalised sex work in 2003, has not recorded any cases of human trafficking into the sex industry.²⁷

The UK Government’s official statistics also show that referrals of “potential victims of trafficking” to the UK’s National Referral Mechanism categorised as ‘sexual exploitation’ has been decreasing. This category ceased to be the most common known type of exploitation in 2015. Other forms of labour exploitation form the majority (49%) of referrals in the second quarter of 2018.

- **It would therefore be a great dereliction of duty to women and girls globally, and a missed opportunity on behalf of CEDAW, if the General Recommendation was narrowly focused on forced sexual exploitation rather than the predominant categories of trafficking and slavery that impact on women and girls globally.**

Sex worker-led responses to trafficking and exploitation

Despite the substantial barriers created by harmful anti-trafficking legislation and initiatives, the sex workers’ rights movement continues to respond and address exploitation and labour rights abuses within the sex industry. Sex worker-led organisations educate sex workers on their rights; address labour abuses in the sex industry by unionising, organising, and setting-up legal clinics.

For instance, Veshya Anyay Mukti Parishad (VAMP), India has developed a comprehensive system of committees organised and monitored by sex workers themselves, to combat trafficking and uphold sex workers’ labour rights. The system ensures that no underage or trafficked individuals are working within the community. The committees also address disputes such as low payment by brothel owners, withholding of payments, dealing with local thugs who may try to harass sex workers, clients who are drunk, and fights between brothel owners and clients. VAMP refers individuals who are suspected to be victims of trafficking to the police. By working with police, VAMP has developed alliances and support from police in combatting the conflation of sex work and trafficking and raid and rescue approaches.²⁸

Taking a rights-based response to trafficking²⁹

²⁴ UNODC, 2016, “[Global Report on Trafficking in Persons 2016](#)”, p. 23.

²⁵ UNODC, 2016, “[Global Report on Trafficking in Persons 2016](#)”, p. 28.

²⁶ ILO / Walk Free Foundation, 2017, “[Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#)”

²⁷ L Armstrong, Women’s Studies Journal, December 2017, “[Commentary – Decriminalisation and the rights of migrant sex workers in Aotearoa/New Zealand: Making a case for change](#)”, Volume 31 Number 2, 73.

²⁸ NSWP, 2017, “[Policy Brief: Sex Work as Work](#),” 8-9.

²⁹ NSWP, 2019, “[Policy Brief: The Impact of Anti-trafficking Legislation and Initiatives on Sex Workers](#)”



CEDAW has a unique opportunity to lead, inform and influence the agenda in its elaboration of the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration. The focus must be one of human, labour and migrant rights to improve the circumstances and life chances of victims of trafficking, migrants, women and girls – **including** sex workers.

In order to prevent trafficking within the sex industry CEDAW must call for a systematic, rights-based approach, as opposed to creeping criminalisation of all aspect of sex work. This should include incorporating within the General Recommendation:

- A clear, unambiguous distinction between trafficking, exploitation and sex work as distinct phenomena
- A call for the full decriminalisation of sex work – including the repeal of ‘end demand’ approaches
- Ensuring sex workers are afforded labour rights in line with the four components of decent work as defined by ILO: employment, social protection, workers’ rights and social dialogue
- Respect for the agency and bodily autonomy of sex workers
- Ensuring access to justice for victims of trafficking
- Ensuring safe migration channels