

## **Mandate of the Working Group on discrimination against women and girls**

### **Eliminating discrimination against sex workers and securing their human rights**

#### **1. Introduction**

Sex workers worldwide suffer widespread discrimination and violations of their human rights, including arbitrary arrest and detention, violence by State agents and private actors, lack of access to health and social services, impeded access to justice, interference with private and family life, and exclusion from civil, political, and cultural life.<sup>1</sup> While the sex workers rights movement has been growing, human rights jurisprudence on violations of sex workers' rights is limited. Barriers to sex workers' access to human rights accountability mechanisms and highly polarised views on the relationship between sex work, feminism and human rights have restricted any real progress in protecting the human rights of sex workers.

The Working Group on discrimination against women and girls (the Working Group) considers that it is high time for discrimination, marginalisation and stigmatisation of sex workers to be addressed by human rights bodies so that their human rights are protected. With this in mind, the present position paper, informed by the views of sex workers,<sup>2</sup> aims to raise the visibility of violations of their human rights under different policy regimes, to clarify and re-affirm international human rights standards and to make recommendations for States and other stakeholders, to further realise the human rights of sex workers. Our hope is also to contribute to building solidarity among movements and ensuring that 'no one is left behind'. Before analysing human rights standards and making recommendations, this paper gives an overview of the main feminist approaches to sex work as well as the main legislative and regulatory models.

#### **2. Different feminist perspectives**

Sex work<sup>3</sup> is a gendered phenomenon and arrangements within sex work sectors tend to follow existing patriarchal, racial, class and nationalistic hierarchies. In many sex work sectors, not only are most of those who sell sexual services women, and most of those who

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<sup>1</sup> OSF, Common human rights violations experienced by sex workers, available at <https://www.opensocietyfoundations.org/publications/common-human-rights-violations-experienced-sex-workers>.

<sup>2</sup> In May 2023 consultations were held with sex workers from different regions of the world. We are grateful to our interlocutors for their time and expertise. The main author of this paper, Dr. Ivana Radačić, has through her academic research over the years been in contact with many sex workers in different jurisdictions, which has also been useful in writing this paper. The paper has benefited from the reviews by Professor Alice Miller, Christina Zampas and Trajche Janushev, for which we express gratitude.

<sup>3</sup> The term sex work was coined by sex workers' rights activists to resist the dominant representation of sex work/prostitution as an illegal, immoral and dangerous activity and emphasise the labour aspect. Although a broader term, here we use it to refer to selling sexual services for money or other economic gain, as a term preferred by persons who sell sexual services, while we use the term prostitution when referencing specific legal provisions or using direct citations. See <https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>.

buy them men, but gender systems are one of the core regulatory frames for sexuality.<sup>4</sup> Hence, sex work has been at the centre of feminist considerations.

Despite the different identities and experiences of people involved in sex work (as affected by, inter alia, sex, sexual orientation, gender identity, race, citizenship, socio-economic background and sex work market, in their intersection), the topic has been predominantly discussed within two polarised ideological positions.<sup>5</sup> On one side, the abolitionist feminist position frames sex work as violence against women, sex workers as victims and argues for the criminalisation of clients.<sup>6</sup> On the other side, there is a feminist position which defines sex work as a matter of choice and sex workers as rational agents, and advocates for the full decriminalisation of voluntary adult sex work.<sup>7</sup> A third perspective, which challenges dichotomous thinking, recognising the agency of sex workers, as well as the social, economic and political constraints in which this agency is playing out and reflecting the realities of exploited work in all labour markets, has been gaining prominence.<sup>8</sup> Rather than discussing sex work policies in abstract, this third perspective looks at the human rights implications of different policies in practice. It advocates for full decriminalisation of adult sex work from a harm reduction perspective.

In recent decades, the movement advocating for the rights of sex workers, has grown significantly and has included different feminist and LGBTIQ allies.<sup>9</sup> It defines sex work as legitimate work which should benefit from labour and social protections and argues for full decriminalisation of sex work, and for involving sex workers in the development, implementation and evaluation of public policies.<sup>10</sup>

The Working Group finds that the dominant polarised discussions about sex work do not reflect its complexity and the different experiences of persons involved in sex work. These

<sup>4</sup> J. Outshoorn, 'The Political Debates on Prostitution and Trafficking of Women', *Social Politics: International Studies in Gender, State and Society* vol. 12, no. 1 (2005): 141–55.

<sup>5</sup> There are, however, many feminist perspectives on prostitution, including liberal, radical, socialist, Marxist, existentialist, postmodern and postcolonial. See S. Bromberg, *Feminist Issues in Prostitution* (1997), available at [https://policeprostitutionandpolitics.net/pdfs\\_all/PDFS%20for%20Maxine%20Prop%2035/Judge%20Jack%20Camp%20arrest%20info/Prostitution%20and%20feminism/Feminist%20Issues%20in%20Prostitution.pdf](https://policeprostitutionandpolitics.net/pdfs_all/PDFS%20for%20Maxine%20Prop%2035/Judge%20Jack%20Camp%20arrest%20info/Prostitution%20and%20feminism/Feminist%20Issues%20in%20Prostitution.pdf). For a discussion of the perspectives of radical feminists, sex radicals and postmodern and postcolonial feminists, see J. Scoular, 'The 'subject' of prostitution: Interpreting the discursive, symbolic and material position of sex/work in feminist theory', *Feminist Theory* vol. 5, no. 3 (2004): 343–355.

<sup>6</sup> This is a position of radical feminists such as K. Barry *Prostitution of Sexuality* (1985); S. Jeffreyes, *The idea of prostitution* (1997); C. A. Mackinnon, 'Trafficking, Prostitution and Inequality', *Harvard Civil Rights – Civil Liberties Law Review* vol. 46, no. 2 (2011); Jeffreyes 2009; M. Farley, *Prostitution, Trafficking and Traumatic Stress* (2004).

<sup>7</sup> The so-called sex radicals and (some) sex workers' rights activists have even positioned sex workers as subverters of patriarchy. F. Delacoste & P. Alexander (eds) *Sex work: Writings by women in the sex industry* (1998).

<sup>8</sup> This perspective is situated mostly within postmodern and postcolonial theories and often reflects labour rights work. M. O'Neill, *Prostitution and Feminism: Towards a Politics of Feeling* (2001); J. O'Connell Davidson, *Prostitution, Power and Freedom* (1998); J. Scoular, *The Subject of Prostitution: Sex Work, Law and Social Theory* (2015); I. Radačić, M. Antić & M. Adamović, 'Sex workers' professional activities in the interplay of structure and agency', *Politička misao* (forthcoming).

<sup>9</sup> G. Gall, *Sex Worker Union Organising: An international study* (2006); Network of Sex Work Projects (NSWP), *History*, <https://nswp.org/history>; K. Kempadoo and J. Doezema (eds.) *Global Sex Workers: Rights, resistance, and redefinition* (1998).

<sup>10</sup> See e.g. *Sex workers in Europe manifesto*, available at [https://www.opensocietyfoundations.org/uploads/4519572c-ebb4-45c8-980c-d8b36da1f050/manifesto\\_2005.pdf](https://www.opensocietyfoundations.org/uploads/4519572c-ebb4-45c8-980c-d8b36da1f050/manifesto_2005.pdf); ESWRA, *Feminist for sex workers: Our manifesto*, available at [https://www.eswalliance.org/the\\_femifesto](https://www.eswalliance.org/the_femifesto); NSWP, *Consensus statement on sex work, human rights and the law*, available at <https://www.nswp.org/resource/nswp-publications/nswp-consensus-statement-sex-work-human-rights-and-the-law>.

divisive debates have not led to reducing discrimination, violence and other human rights abuses that sex workers face, and are counterproductive. The Working Group recognises that sex work is a way of earning money for some people and is concerned by the discrimination and human rights violations people who engage in this activity face.

In examining sex work from a human rights perspective, the Working Group focusses on the principles of equality and non-discrimination, agency, bodily autonomy, privacy and free decision-making while also stressing the need to ensure that sex workers' human rights, including the right to equality and the highest standards of health and freedom from violence, are fully respected. Taking this approach, based on self-determination, does not obscure the fact that deciding to practice sex work, like so much informal labour, is exercised in the context of gender-based and other forms of discrimination, including gender-based and anti-trans violence, racism, socio-economic marginalisation, exclusionary migration policies, and the severe disparities inflicted by neoliberal capitalism. For some women there are very limited opportunities to earn money. As one sex worker said at the consultations: "If I had had other opportunities, I would not have chosen sex work. But it was my choice, and it should be respected."

Moreover, this approach does not seek to conceal that even those who more affirmatively decide to engage in sex work are often subjected to exploitation and violence. Sex workers experience different human rights violations in their everyday lives. These violations have largely remained unchallenged in international human rights law. Before establishing standards and recommendations, the human rights implications of different legislative models will be discussed.

### 3. Different policy approaches

Different feminist perspectives have in recent times informed sex work policy approaches.<sup>11</sup> For example, liberal feminist perspectives have influenced legislation in New Zealand and the Netherlands.<sup>12</sup> On the other hand, radical feminist perspectives have influenced the adoption of the client criminalisation model (also known as the 'End Demand') first in Sweden and then in other countries. In addition to these approaches, some jurisdictions (like the USA, excluding some counties in Nevada) have full criminalisation (of sex workers, clients and the third parties), while many criminalise organising, managing and facilitating prostitution and some countries (primarily former communist countries) in addition treat selling sex as an administrative/misdemeanour offence.<sup>13</sup> Even in jurisdictions which do not criminalise sex work, many provisions are used against sex workers, particularly those working on the streets.

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<sup>11</sup> Of course, feminist discourses are not the only or necessarily the most dominant discourses in regulating prostitution. Other frames include public order, public security, public health, anti-trafficking. Recently sex work discourse is becoming relevant in policy making as well.

<sup>12</sup> While the Netherlands introduced legalisation in 2000, in 2003 New Zealand adopted a softer model of full decriminalisation of sex work. These approaches will be discussed below in the text. J. Outshorn, 'Debating Prostitution in the Parliament: A Feminist Analysis', *Sociology, Gender Studies and Cultural Studies* 8, no.4 (2001): 472-490; A. Laurie, 'Several sides to this story: feminist views of prostitution reform'. In: G. Abel et al (eds). *Taking the Crime out of Sex Work* (2010).

<sup>13</sup> See NSWP, *Global mapping of sex work laws*, available at: <https://www.nswp.org/sex-work-laws-map>.

In practice, most regulatory frameworks have punitive elements towards sex workers, and all have human rights implications.<sup>14</sup>

In addition to the complexity of the systems, the regulation of sex work is characterised by large grey areas between legal and illegal spheres which creates a situation of legal uncertainty and often breaches international human rights standards. Further, the implementation of the diversity of sex work policies is characterised by wide and often arbitrary exercises of power by enforcement agencies, whether by the police, the council or social welfare, policies which target the most vulnerable sex workers – those working on the street.<sup>15</sup> Finally, discriminatory laws against LGBTIQ communities, restrictive migration policies, conflation of sex trafficking and sex work, impeded access to reproductive rights in many countries, together with widespread anti-migrant, racist and anti-LGBTIQ sentiments and socio-economic injustice, all contribute to the disadvantageous position of sex workers, particularly trans women, migrant sex workers, and members of racial and ethnic minorities, as was noted in the consultations. States are failing to guarantee that sex workers fully enjoy their human rights without discrimination.

### 3.1. *Different criminalisation models*

In jurisdictions which criminalise sex workers, violations of their rights are numerous, and range from arbitrary arrests (for simply standing on the street or for having condoms), lack of respect for the rights of defence, police abuses (extortion of money or sexual services, discrimination and degrading treatment), failure to protect sex workers from violence by private individuals and lack of access to adequate health-care.<sup>16</sup> Even in the jurisdictions where sex work itself is not criminalised, many related activities are, and this significantly harms sex workers.<sup>17</sup> For example, criminalisation of third party activities may lead to criminalisation of not only managers, organisers and facilitators, but also of the children and partners of sex workers (under ‘living from the avails of prostitution’ provisions, for example). Further, women who work together can be criminalised for pimping, even where there is no element of exploitation among women who work together.<sup>18</sup> Also, sex workers can be penalised under criminalisation of soliciting and advertising of prostitution.

In addition, sex workers – particularly those working outdoors – may be indirectly criminalised through the criminalisation of behaviours and activities adopted by marginalised

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<sup>14</sup> Research by NSWP has found that 193 countries and dependencies criminalise one or more aspect of sex work in some form. <https://www.nswp.org/sex-work-laws-map>.

<sup>15</sup> J. Scoular, ‘What’s Law Got to Do with it: How and Why Law Matters in the Regulation of Sex Work’, *Journal of Law and Society* 37, no 1. (2010): 12-39.

<sup>16</sup> SWAN, *Failures of Justice: State and Non-State Violence Against Sex Workers and the Search for Safety and Redress. A Community-Based Research Project of the Sex Workers’ Rights Advocacy Network in Central and Eastern Europe and Central Asia* (2015); S. Baros et al., *Law Above All and Court Practices Impact of the Criminalization of Sex Work on the Human Rights of Sex Workers and Trafficked Persons in Serbia* (2017); I. Radačić & M. Antić, ‘Criminalisation of Sex Workers: Rethinking the Public Order’, *The International Journal of Human Rights*, DOI: 10.1080/13642987.2021.2023132; J. Rangasami, T. Konstant, and S. Manoeck, *Police Abuse of Sex Workers: Data from Cases Reported to the Women’s Legal Centre between 2011 and 2015* (Cape Town: Women’s Legal Centre, 2016).

<sup>17</sup> NSWP, *Global Mapping of Sex Work Laws*, available at <https://www.nswp.org/sex-work-laws-map>.

<sup>18</sup> Baroš et al, *supra* note 16; Radačić & Antić, *supra* note 16.

and disadvantaged communities (of which sex workers are often part), such as the criminalisation of drug use and possession, the criminalisation of certain sexual orientations or gender identities, as well as homelessness.<sup>19</sup> Sex workers may be charged with offenses such as loitering, vagrancy, impeding the flow of traffic, congregating for the purposes of prostitution, public indecency, or disorderly behaviour, all of which have implications for the enjoyment of their human rights, including the right to private life.<sup>20</sup> By giving police powers to directly or indirectly target sex workers, criminalisation models facilitate systemic violence and undermine the sex workers' health and safety.<sup>21</sup> As stressed by sex workers at the consultations held, criminalisation of sex work furthers violence and fosters stigma, increases risk of HIV and other sexually transmitted infections (STIs) and impedes access to justice, thus undermining sex workers' human rights.

### 3.1.1. 'End demand' approach

The model of criminalisation of clients also has problematic human rights implications and has been widely criticised by sex workers, including in the context of the consultations held.<sup>22</sup> Its broad criminalisation of all sex work related activities of third parties (including renting an apartment to a sex worker) leads to the violations of the sex workers' right to private life, right to housing and the right to non-discrimination.<sup>23</sup> It has been shown that this model increases surveillance and harassment of sex workers by the police, leading to increases in arrest and detention, as well as deportation of migrant sex workers, while simultaneously undermining sex workers' access to justice.<sup>24</sup> By pushing sex work underground, it also furthers stigmatisation and discrimination of sex workers, who report impeded access to housing and financial institutions, as well refusal of services.<sup>25</sup> This model also has negative impact on sex workers' health and safety, which has been recognised by UNAIDS who have found that "the criminalization of the clients of sex workers ... negatively affects sex workers' safety and health, including reducing condom access and use, and increasing the rates of violence."<sup>26</sup> During consultations held by the Working Group, participants explained how, due to clients' fear of the police, sex work has been displaced to less safe places, and sex workers have less control over working conditions, including screening clients. Moreover, they described how the illegal status of sex work left them without any social protection during the time of COVID-19 crisis.

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<sup>19</sup> SWAN, supra note 16.

<sup>20</sup> SWIFA, *Impact of criminal law on the health, safety and human rights of sex workers* (2023), available at <http://opiniojuris.org/2023/06/21/impact-of-criminal-law-on-the-health-safety-and-human-rights-of-sex-workers/>; OSF, *Laws and Policies Affecting Sex Work* (2012), available at <https://www.opensocietyfoundations.org/publications/laws-and-policies-affecting-sex-work>.

<sup>21</sup> SWIFA, *ibid.*

<sup>22</sup> *Ibid.*; NSWSP, *The Impact of 'End Demand' Legislation on Women Sex Workers*, available at [https://www.nswsp.org/sites/default/files/pb\\_impact\\_of\\_end\\_demand\\_on\\_women\\_sws\\_nswsp\\_-\\_2018.pdf](https://www.nswsp.org/sites/default/files/pb_impact_of_end_demand_on_women_sws_nswsp_-_2018.pdf); [https://www.eswalliance.org/myth\\_busting\\_the\\_swedish\\_model](https://www.eswalliance.org/myth_busting_the_swedish_model).

<sup>23</sup> Amnesty International, *The human cost of 'crushing' the market: Criminalisation of sex work in Norway* (2016), available at <https://www.amnesty.org/en/documents/eur36/4034/2016/en/>.

<sup>24</sup> NSWSP, supra note 22.

<sup>25</sup> *Ibid.*

<sup>26</sup> *HIV and Sex work* (2021), available at [https://www.unaids.org/sites/default/files/media\\_asset/05-hiv-human-rights-factsheet-sex-work\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf).



### 3.2. *Legalisation*

Legalisation as a regulatory approach aimed at controlling sex work, has many problematic aspects that lead to violations of the rights of sex workers. There are many restrictions as to who, where and how sex work can be practised, which leaves many sex workers outside the scope of legality. In certain jurisdictions, sex workers have to register with the police, in others, there is mandatory STI testing, while in yet others, restrictions are placed with regard to who can work as a sex worker in terms of sex, age and citizenship.<sup>27</sup> Non-EU migrants in Europe and undocumented migrants throughout the world, which in many legalised jurisdictions make up the majority of sex workers, cannot legally work as sex workers, and street work is often criminalised.

Hence, the stringent regulations leave a wide (and more vulnerable) section of the sexual services industry criminalised. This means that the legislation model has similar elements to the models of criminalisation and is hence also opposed by the sex workers movement.

### 3.3. *Full decriminalisation*

This approach, implemented in New Zealand, the Australian state of New South Wales, and recently in Belgium, is a model widely advocated by the sex workers rights movement.<sup>28</sup> Unlike the legalisation model which implies adoption of sex work-specific laws, decriminalisation removes all sex-work specific provisions. However, it does not entail an absence of any regulation. Instead, regulations are put in place that aim to respect and protect sex workers' human and labour rights, including occupational health and safety standards, in accordance with the existing regulations that are applied to other similar businesses.

While certain problems, such as stigma and societal discrimination persist even in decriminalised contexts, evidence from New Zealand shows that decriminalisation has improved the working conditions and rights of sex workers, and has resulted in improved relationships with the police.<sup>29</sup>

## 4. **International standards on sex work**

In the last few decades, much progress has been made on sex workers rights, largely as a result of the advocacy of sex workers. A number of UN bodies, including special procedure mandate holders, have recognised the negative impacts of punitive approaches to sex work on the health and human rights of sex workers and have called for the removal of any punitive

<sup>27</sup> In Austria, sex workers have to register with the police, while in Hungary and Turkey there are mandatory STI testing. Only cis unmarried women can work as sex workers in Turkey and Greece, and only in brothels. Brothels are the sole form of registered sex work also in Ecuador, who also implements mandatory testing for STIs. Senegal allows only women nationals to practice sex work. NSWP, *Global Mapping of Sex Work Laws*, available at <https://www.nswp.org/sex-work-laws-map>.

<sup>28</sup> NSWP, *Sex Workers in Belgium Celebrate Historic Vote for Decriminalisation in Parliament* (2022), available at <https://www.nswp.org/news/sex-workers-belgium-celebrate-historic-vote-decriminalisation-parliament>.

<sup>29</sup> G. Abel, L. Fitzgerald & C. Brunton, *The Impact of the Prostitution Reform Act on Health and Safety Practices of Sex Workers* (2007), available at [https://www.otago.ac.nz/data/assets/pdf\\_file/0027/248760/pdf-811-kb-018607.pdf](https://www.otago.ac.nz/data/assets/pdf_file/0027/248760/pdf-811-kb-018607.pdf); L. Armstrong 'From Law Enforcement to Protection? Interactions Between Sex Workers and Police in a Decriminalized Street-based Sex Industry' *British Journal of Criminology* vol. 57, no. 3 (2017): 570-588.

provisions on sex work. Recently, the European Court on human rights has accepted to hear a case concerning criminalisation of clients in France.<sup>30</sup> In addition, in some jurisdictions criminalisation of sex work has been challenged by the highest national courts.<sup>31</sup>

#### 4.1. *The Working Group on discrimination against women and girls*

The Working Group first addressed the topic in its 2016 report on eliminating discrimination against women with regard to health and safety, where it demonstrated that the criminalisation of sex work is one example of a discriminatory use of criminal law.<sup>32</sup> It held that enforcement of punitive provisions to regulate women's control over their own bodies generates stigma and discrimination and violates women's human rights, infringing women's dignity and bodily integrity by restricting their autonomy to make decisions about their own lives and health.<sup>33</sup> It also noted that criminal laws and other punitive regulations had imposed custodial sentences on women involved in sex work in a manner that had been shown to harm rather than protect them and considered that "the criminalization of women in prostitution/sex work places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights law."<sup>34</sup> Recalling international human rights standards, the Working Group called on States to ensure that women involved in sex work enjoy the right to access sexual health services, are free from violence or discrimination, and have access to equal protection of the law.<sup>35</sup> It recommended States decriminalise 'sex work/prostitution'.<sup>36</sup>

In its 2019 report on women deprived of liberty, the Working Group emphasised that female sex workers are likely to face deprivation of liberty because of laws and social attitudes that seek to control women's morality and sexuality, noting that women sex workers are disproportionately affected and targeted by law enforcement agents, including where sex work itself is not a criminal offence, in which case provisions on loitering, indecency or migration-related offences are applied.<sup>37</sup> The Working Group also noted that in addition to incarceration, sex workers can be confined for 're-education' or subjected to curing of 'deviant behaviour'.<sup>38</sup> It again recommended that States ban laws and practices policing, targeting, punishing or confining women in relation to sex work/prostitution.<sup>39</sup>

In its 2020 report on women's human rights in the changing world of work, the Working Group noted how the criminalisation of women sex workers increases their vulnerability to violence and compounds their exclusion from essential services.<sup>40</sup> Finally, in its 2023 report

<sup>30</sup> The UN Special Rapporteur on the right to health has acted as amicus curiae, available at <https://www.ohchr.org/en/press-releases/2023/09/un-expert-welcomes-european-court-decision-hear-appeal-against-french-anti>

<sup>31</sup> <https://www.nswp.org/news/sex-workers-portugal-welcome-new-constitutional-court-ruling>; <https://www.openglobalrights.org/india-supreme-court-rules-to-protect-sex-workers-amid-covid-pandemic/>.

<sup>32</sup> Report to the Human Rights Council, A/HRC/32/44.

<sup>33</sup> Ibid, para 76.

<sup>34</sup> Ibid, para 84.

<sup>35</sup> Ibid, para 85.

<sup>36</sup> Ibid, para. 106 e.

<sup>37</sup> Report to the Human Rights Council, A/HRC/41/33, para 36.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, para. 80 c.

<sup>40</sup> Report to the Human Rights Council, A/HRC/44/51, para. 43.

on gendered inequalities of poverty: feminist and human rights-based approaches, it noted that criminalisation of sex workers is often linked to socio-economic status and marginalisation.<sup>41</sup>

In addition, the Working Group, together with the Working Group on Arbitrary Detention, issued in 2020 an amicus curiae brief in the case before the Federal Court of Nigeria concerning arbitrary arrest, detention and abuse of women suspected of sex work, exposing the discriminatory impact of punitive laws.<sup>42</sup> Most recently, in 2023, together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Special Rapporteur on the right to health), the Working Group issued a communication in support of the criminal law amendments aimed at the decriminalisation of sex work in South Africa.<sup>43</sup>

#### 4.2. Other international UN human rights bodies

As has the Working Group, the Committee on Elimination of All Forms of Discrimination against Women (the CEDAW Committee) has also defined criminalisation of sex workers as a form of gender-based discrimination. Already in 1992, noting the vulnerability of sex workers to violence and exploitation, as well as the role of poverty and armed conflict in pushing some women into prostitution, the CEDAW Committee held that law often facilitates marginalisation and violence (including by State agents) and it asked States to take punitive, preventive and rehabilitative measures to protect sex workers.<sup>44</sup> In its General Recommendation no. 35, the CEDAW Committee concluded that laws criminalising sex workers are “discriminatory against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them” and called on States to repeal provisions criminalising ‘women in prostitution’.<sup>45</sup> This was also expressed in a number of the Committee’s Concluding Observations, in which it requested State parties to review the laws that penalise sex workers, repeal provisions on administrative offences, suspend the imposition of fines and decriminalise women in prostitution. In some Concluding Observations to States, the CEDAW Committee has expressed concern over the lack of safe working conditions for sex workers, but this has not been done consistently.<sup>46</sup>

In addition to the Working Group and the CEDAW Committee, other Special Procedures mandate holders have also addressed sex work. For example, the Special Rapporteur on the right to health, in his 2010 report to the Human Rights Council, noted negative consequences of criminalisation for sex workers’ health and safety.<sup>47</sup> Recalling how “basic rights afforded to other workers are [also] denied to sex workers because of criminalization, as illegal work does not afford the protections that legal work requires, such as occupational health and safety

<sup>41</sup> Report to the Human Rights Council, A/HRC/53/39, para 32.

<sup>42</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Amicus\\_Brief\\_1\\_Nigeria.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Amicus_Brief_1_Nigeria.pdf).

<sup>43</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27841>.

<sup>44</sup> CEDAW Committee, General Recommendation no 19. (1992), paras 14-16.

<sup>45</sup> CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017), CEDAW/C/GC/35, para. 29 (c) (i).

<sup>46</sup> CEDAW Committee, *Concluding Observations on the combined seventh and eighth periodic reports of Hungary adopted by the Committee at its fifty fourth session* (2013), CEDAW/C/HUN/CO/7-8, p. 6.

<sup>47</sup> Report to the Human Rights Council, A/HRC/14/20.



standards”,<sup>48</sup> he discussed in detail the consequences of criminalisation on poor health outcomes, stigmatisation, violence and harassment, and working conditions, and he also criticised the conflation of sex work and trafficking.<sup>49</sup> He concluded that the “decriminalization or legalization of sex work with appropriate regulation forms a necessary part of a right-to-health approach to sex work.”<sup>50</sup> He recommended that States “repeal all laws criminalizing sex work and practices around it, and to establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled’ .... and ‘implement programmes and educational initiatives to allow sex workers access to appropriate, quality health services.”<sup>51</sup> In 2022, the Special Rapporteur on the right to health again referred to sex work in her report on structural violence, holding how criminalisation of sex work enables abuse and exploitation: “sex workers are exposed to conditions that include exposure to sexually transmitted infections but also to violence, extortion and intimidation by clients and policy”.<sup>52</sup>

The Special Rapporteur on trafficking in persons, especially women and children (the Special Rapporteur on trafficking in persons), in her 2020 report to the General Assembly, raised the issue of sex work in connection to anti-trafficking laws, noting how in many countries, anti-trafficking laws have been used to repress sex work and have resulted in further violations of women’s rights, including restrictions on their freedom of movement and migration.<sup>53</sup> She also explained how victims of trafficking could also be criminalised for engaging in sex work in criminalised jurisdictions and has called for decriminalisation of sexual services and related behaviour not amounting to exploitation.<sup>54</sup>

The Special Rapporteur on contemporary forms of slavery, in his 2022 report to the General Assembly on contemporary forms of slavery in the informal economy, identified sex work as a form of informal employment at risk of such practices.<sup>55</sup> He explained how improper regulation means that many sex workers are not entitled to social protection in times of need and how under criminalised regimes sex workers often fall under the influence of criminals, and he recognised the heightened vulnerability of persons who are migrants or members of minorities or lower castes.<sup>56</sup>

### 4.3. *Other UN bodies*

The Secretary-General has addressed the criminalisation of sex work in his 2016 report on a fast track to ending HIV epidemics. He defined criminalisation of sex work as a human rights violation, expressed a view that „decriminalization of sex work can reduce violence,

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<sup>48</sup> Ibid, para. 27.

<sup>49</sup> Ibid, paras 36-45.

<sup>50</sup> Ibid, para 46.

<sup>51</sup> Ibid, para. 76 (b).

<sup>52</sup> Report to the Human Rights Council, A/HRC/50/28, para. 71.

<sup>53</sup> Report to the General Assembly, A/75/169.

<sup>54</sup> Ibid, para 41.

<sup>55</sup> Report to the General Assembly, A/77/163, para 46.

<sup>56</sup> Ibid.

harassment and HIV risk<sup>57</sup>, and called on the States to remove punitive laws, policies and practices that violate human rights, including the criminalisation of sex work.<sup>58</sup>

A number of UN entities, including UNAIDS, UNFPA, WHO, UNDP as well as the World Bank, have called for the full decriminalisation of voluntary adult sex work.<sup>59</sup> The Global Commission on HIV and the Law, set up by the UNDP and UNAIDS, in its 2012 report on HIV and the Law concluded that States should “repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against ‘immoral earnings’, ‘living of the earnings of prostitution’ or brothel keeping”.<sup>60</sup> WHO similarly concluded that criminalisation of sex work is one of structural factors enhancing the risk of transmission of HIV and called for the decriminalisation of sex work and elimination of unjust application of non-criminal law against the sex workers.<sup>61</sup> Twelve UN entities, including UN Women, UNICEF, OHCHR and ILO, recommended that States should review and repeal laws that criminalise or otherwise prohibit adult consensual sex work.<sup>62</sup>

#### 4.4 International NGOs

Most recently, in 2023, the International Commission of Jurists issued the 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty (known as Principles on human rights and decriminalisation).<sup>63</sup> In relation to sex work, the provision (Principle 17) reads:

The exchange of sexual services between consenting adults for money, goods or services and communication with another about, advertising an offer for, or sharing premises with another for the purpose of exchanging sexual services between consenting adults for money, goods or services, whether in a public or private place, may not be criminalized, absent coercion, force, abuse of authority or fraud.

Criminal law may not proscribe the conduct of third parties who, directly or indirectly, for receipt of a financial or material benefit, under fair conditions – without coercion, force, abuse of authority or fraud – facilitate, manage, organize, communicate with another, advertise, provide information about, provide or rent premises for the purpose of the exchange of sexual services between consenting adults for money, goods or services.

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<sup>57</sup> Report of the Secretary-General on the fast track to ending the AIDS epidemic, A/70/811, para 53.

<sup>58</sup> Ibid, para 75. (f).

<sup>59</sup> SWIFA. Supra note 20.

<sup>60</sup> UNDP, *HIV and the law: Risks, Rights and Health*, available at <https://www.undp.org/publications/hiv-and-law-risks-rights-health>.

<sup>61</sup> WHO, *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*, available at <https://www.who.int/publications/i/item/9789241511124>, p. 87.

<sup>62</sup> UNAIDS, UNHCR, UNICEF, WFP, UNDP, UNFPA, UN Women, ILO, UNESCO, WHO, OHCHR, IOM, *Joint United Nations Statement on Ending Discrimination in Healthcare Settings*, available at <https://www.unaids.org/en/resources/documents/2017/ending-discrimination-in-health-care-settings>, p.3.

<sup>63</sup> ICJ, *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty* available at: [https://icj2.wpenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report\\_final\\_print-version.pdf](https://icj2.wpenginepowered.com/wp-content/uploads/2023/03/8-March-Principles-Report_final_print-version.pdf); The Working Group has also been involved in its development as the then chair of the Working Group, Dr. Radačić, was a member of the expert group.

Decriminalisation is also advocated by a number of human rights organisations, including Amnesty International, Human Rights Watch, Open Society Foundation, Community of women Living with HIV, International Women’s Health Coalition, AWID, the Global Alliance against Trafficking in Women, the Global Fund for Women.<sup>64</sup>

## 5. The approach of the Working Group

The Working Group considers that there is now sufficient evidence on the harms of any forms of criminalisation of sex work, including criminalisation of clients and ‘third parties’ related activities. It notes the growing consensus by international human rights and other international bodies on full decriminalisation of adult voluntary sex work, as well as the advocacy of sex workers rights movements for this approach. Whilst not finding it necessary to define sex work and noting the different experiences of diverse women and persons, it proposes full decriminalisation of adult voluntary sex work from a human rights perspective, as it holds the greatest promise to address systemic discrimination and violence and the impunity for the violations of sex workers’ rights. It also constitutes the approach best suited to enhancing their rights to health and other socio-economic rights, freedom from torture, inhuman or degrading treatment, right to private life, and freedom from discrimination. Further, a decriminalised framework is most conducive to the protection of their rights to participate in public and political life.

Decriminalisation would not jeopardise the protective functions of the State in relation to combatting exploitation, as other criminal law provisions would be used in the case of violence, compulsion or exploitation, including anti-trafficking laws. However, anti-trafficking measures should not be implemented in a way that infringes sex workers’ rights, as recognised by the Special Rapporteur on trafficking in persons and the Special Rapporteur on the right to health.

In addition to removing any criminal law provisions relating to sex work, the Working Group calls for ending the practice of arbitrary application of other punitive provisions against sex workers, including vagrancy, public decency, public order provisions, and forms of ‘re-education’, as well as ending the practice of criminalisation of poverty.<sup>65</sup>

In addition, any obstacles to access to justice, including judicial stereotyping should be addressed, and sex workers should have effective access to quality legal aid, to seek recourse in individual cases and to engage in strategic litigation as a class of individuals who face systemic discrimination and exclusion.

Sex workers should be guaranteed all human and labour rights, including in relation to occupational health and safety, to ensure safe and non-exploitative work environments. They should have social protection and equal access to the full range of social, economic and health rights.

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<sup>64</sup> See: SWIFA, *supra* note 20.

<sup>65</sup> On the last point see the Working Group’s 2023 report on gendered inequalities of poverty, *supra* note 41.

Stigmatisation and discrimination also need to be tackled through sustained and comprehensive strategies elaborated with all concerned national stakeholders, and appropriate measures should be taken to eliminate all forms of gender-based discrimination, violence and exploitation. It is also important to ensure that sex workers have access to information and education on their human rights.

Sex workers should be consulted and provided every opportunity to be directly involved in the development and implementation of legal frameworks and public policy on sex work, as well as allowed to fully exercise their right to form associations, including trade unions. The prevalence of harmful sex- and gender-stereotyping and systems of oppression and inequality as well as the underlying sexism and misogyny and other systems of oppression and inequality should be also taken into account in the elaboration of any new law or policy.

Finally, greater visibility should be given to sex workers' rights in the international human rights arena, which will require intentionally increasing sex workers' access to international mechanisms and bodies. Solidarity between movements should be strengthened to ensure that no one is left behind.