



Submission to UN Women's Consultation on Sex Work

October 2016

Published by the
Canadian HIV/AIDS Legal Network
1240 Bay Street, Suite 600
Toronto, Ontario
Canada M5R 2A7

Telephone: +1 416 595-1666
Fax: +1 416 595 0094
www.aidslaw.ca

The submission is endorsed by Pivot Legal Society.



INTRODUCTION

The Canadian HIV/AIDS Legal Network (“Legal Network”) promotes the human rights of people living with and vulnerable to HIV and AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education, and community mobilization. We envision a world in which the human rights and dignity of people living with HIV and those affected by the disease are fully realized and in which laws and policies facilitate HIV prevention, care, treatment and support.

The Legal Network’s guiding values are rooted in a focus on the human rights of marginalized populations such as sex workers and their meaningful participation in policies and programs that affect them. We make this submission to UN Women to urge the agency to (1) **engage in a transparent and inclusive consultation with sex workers** in developing its policy on sex work and (2) **ensure its policy respects, protects and fulfils the human rights of sex workers** and recognizes their agency and self-determination.

A. CONCERNS WITH CONSULTATION PROCESS

In inviting submissions to its consultation, UN Women states it is particularly interested in the views of interested parties from the global south. However, as the Global Network of Sex Work Projects (NSWP) has indicated, UN Women’s e-consultation process will exclude many of those who are critical to the discussion, including the majority of sex workers in the global south who have limited access to the Internet, are not literate in UN languages and are not familiar with UN treaties and documents that guide the manner in which the consultation is framed. While UN Women suggests it is not necessary for participants to be familiar with the UN’s work, including the 2030 Agenda for Sustainable Development or the Sustainable Development Goals, two of the three questions posed refer to these UN texts.

Sex workers’ participation in legal, policy and programmatic processes in relation to sex work should be guaranteed. The Legal Network supports the NSWP in calling on UN Women to engage in a meaningful and inclusive consultation with sex workers to develop its policy on sex work. UN Women should support the participation of sex workers representing the full diversity of classes, races, sexes, genders, ethnicities, health statuses, ages, nationalities, citizenships, languages, education levels, disabilities and other factors in order to ensure that those most affected by UN Women’s approach to sex work are engaged in the process. This approach would be in line with the 2030 Agenda and UN Women’s responsibility to uphold principles of universality, human rights and “leaving nobody behind.” Failing to engage in such consultation will undermine UN Women’s commitment to the 2030 Agenda and invariably lead to a policy that does not account for the views of sex workers who are most directly affected by repressive laws and policies, thus hampering UN Women’s efforts to promote the empowerment of women, gender equality and women’s rights.

B. RESPONSES

1. The 2030 Agenda commits to universality, human rights and leaving nobody behind. How do you interpret these principles in relation to sex work/trade or prostitution?

Ensuring that sex workers are treated with dignity and enjoy the human rights guaranteed to all people, including their right to self-determination, affirms the principles of universality, human rights and “leaving nobody behind.” Accordingly, UN Women’s policy on sex work should uphold sex workers’ human rights, including their rights to work, life, liberty and security of the person, privacy, freedom of expression, movement and assembly, health, equality before the law and equal protection of the law, and protection against all forms of discrimination, including gender-based violence.

Criminal laws and other forms of repressive legislation governing sex work (e.g. anti-trafficking laws and immigration laws that lead to raids, detentions and deportations of sex workers in the name of protection; administrative offences penalizing sex work; vagrancy or loitering laws that target sex workers and/or their clients) prevent sex workers from working safely and free from state, police and other violence, as well as hinder their access to health and social supports and police protection. Criminalizing or otherwise penalizing sex work is thus a violation of sex workers’ rights to employment; health; life; security of the person; freedom from torture and cruel, inhumane and degrading treatment; work; privacy; equality; and non-discrimination.¹ In particular, criminalizing sex work disproportionately affects those most marginalized by society; in other words, sex workers who are most likely to be “left behind.”²

Decriminalizing sex work is in line with recommendations made by UN Special Procedures of the Human Rights Council and other UN agencies which have considered the human rights implications of criminalizing sex work. The UN Special Rapporteur on the right to health, for example, has described the negative ramifications of criminalizing the sex trade on sex workers’ right to health, and explicitly called for the decriminalization of sex work.³ In its *Guidance Note on HIV and Sex Work*, UNAIDS urges States to “move away from criminalizing sex work or activities associated with it. Decriminalization of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work.”⁴ The *International Guidelines on HIV/AIDS and Human Rights* call on States to review criminal laws concerning sex work, “with the aim of decriminalizing”.⁵ Moreover, the Global Commission on HIV and the Law,⁶ as well as international human rights organizations including Amnesty International⁷ and the Global Alliance Against Traffic in Women⁸ have recommended the decriminalization of sex work (including clients and third parties) and called for laws and policies to ensure safe working conditions for sex workers.

As a co-sponsor of UNAIDS, we urge UN Women to ensure that its policy on sex work aligns with UNAIDS and recommendations from the Global Commission on HIV and the Law

and the *International Guidelines on HIV/AIDS and Human Rights*, and includes a call to remove criminal laws and other punitive legislation governing sex work — including laws criminalizing clients and third parties — as crucial steps to upholding sex workers' human rights and ensuring that they are not singled out for state repression, violence and other forms of harm.

2. The Sustainable Development Goals (SDGs) set out to achieve gender equality and to empower all women and girls. The SDGs also include several targets pertinent to women's empowerment, such as

- a) reproductive rights**
- b) women's ownership of land and assets**
- c) building peaceful and inclusive societies**
- d) ending the trafficking of women**
- e) eliminating violence against women.**

How do you suggest that policies on sex work/trade/prostitution can promote such targets and objectives?

Ample research has demonstrated that criminalizing sex work, including clients and third parties, intensifies the stigma associated with sex work and increases sex workers' susceptibility to violence by hindering sex workers' ability to screen and negotiate clearly with clients, displacing sex workers into more remote locations, and forcing them to work in isolation without the assistance of third parties such as managers, security, receptionists and drivers.⁹ When sex workers themselves are criminalized, this can impede their access to services and housing, ability to migrate, and future employment opportunities, and restrict their rights of access to or custody of their children,¹⁰ thus negatively affecting sex workers' economic security and right to an adequate standard of living for themselves and their family. Criminalization of sex work also alienates sex workers from social and health services (including reproductive health services) and protective mechanisms such as the police, dissuading them from accessing the justice system when they are victims of crimes. As a result, sex workers in a wide variety of circumstances do not benefit from the criminal law protections afforded to others.

Additionally, the denial of sex work as a form of labour excludes many sex workers from the benefits that may be associated with formal employment, such as minimum employment standards, occupational health and safety protections, social security, special protection for parents in relation to childbirth and child-rearing, and the right to form and join a trade union. When sex workers' clients are criminalized, sex workers have no civil law recourse to enforce contracts when clients renege on agreements by refusing to pay. When sex work enterprises are criminalized, sex workers cannot access the aforementioned labour protections and have no mechanisms for redress in cases of unfair or discriminatory practices, unsafe work conditions or workplace injuries. Moreover, criminalizing third parties who work with, for, or employ sex workers forces sex workers to work in isolation, away from social support networks and without proven safety mechanisms.¹¹ Evidence has demonstrated the role of safer work environments and supportive housing which allow sex workers to work together in reducing violence and HIV risks among sex workers.¹²

At the same time, the conflation of sex work and trafficking has led to law enforcement targeting of women working in situations that are not exploitative and made it more difficult for courts to recognize actual cases of trafficking.¹³ Third parties — who in some cases are sex workers themselves — can be helpful resources for other sex workers, especially migrant sex workers who may have limited knowledge about the local sex work sector and local laws, fewer resources and face language barriers.¹⁴ Nevertheless, third parties are routinely described as exploitative ‘pimps’ or ‘traffickers’. A legal framework that subjects all third parties to criminal sanction without evidence of abuse has not resulted in more protection or safety for trafficked persons. Instead, migrant sex workers are under constant threat of detention and deportation, consequently deterring them from critical health and support services, as well as from police when they experience violence for fear of being labeled victims of trafficking or being charged with a prostitution-related offence.¹⁵ In some cases, this may lead predators to target migrant sex workers for abuse because they realize that those sex workers can be deported if they speak up.¹⁶ More broadly, the sex industry is driven underground where labour exploitation can flourish.¹⁷ As Amnesty International has noted, “coercive or overreaching interventions, such as raids or ‘rescues’ solely on the basis that commercial sex is conducted, have resulted in sex workers being driven away from established sex work collectives or forced to move from one place to another. This undermines the connections and social fabric that can help keep them safe” and “can impede trafficked persons from reaching out for legal protection and support.”¹⁸

Sex worker-led groups have consistently called for the repeal of criminal and other penal laws governing sex work (including those criminalizing sex workers, clients and third parties) and for recognition of sex workers’ labour as work as integral to respecting, protecting and fulfilling sex workers’ human rights, including rights relevant to the realization of the SDGs. Therefore, **we urge UN Women to include in its policy on sex work a recommendation to repeal all criminal and penal laws concerning sex work, and explicit recognition of sex work as a form of labour**, in alignment with the policy of the International Labour Organization (ILO).¹⁹ Correspondingly, UN Women should urge governments to take measures to enable sex workers to associate, organize and unionize in order to achieve full labour rights, as well as to support and fund greater programming and services for and led by sex workers.

3. The sex trade is gendered. How best can we protect women in the trade from harm, violence, stigma and discrimination?

As noted above, evidence demonstrates that laws that criminalize sex work endanger sex workers’ lives, health and safety by perpetuating violence, stigma and discrimination against women who sell or trade sex. In particular, laws which reflect the so-called ‘Nordic approach’ to prostitution (in which the purchase of sex is prohibited, while the sale of sex is technically not) and which purport to promote gender equality continue to criminalize women who sell or trade sex, as well as those who purchase sex and third parties involved in sex work.

Numerous studies of the Nordic approach have concluded that banning the purchase of sexual services has contributed to violence against sex workers, who are forced to work in isolation and in clandestine locations and to rush negotiations with potential clients for fear of

police detection.²⁰ Research has also shown that the Nordic approach deters sex workers from reporting violence and exploitation to the police for fear of detention or deportation, in some cases preventing clients from helping to identify trafficked persons or from helping women to escape trafficked situations. In Canada, police targeting of clients (and third parties) rather than sex workers has not affected rates of violence against sex workers or enhanced sex workers' control over their sexual health and HIV prevention.²¹ By facilitating the removal of sex workers from public spaces, such tactics merely perpetuate labour conditions that render sex workers at increased risk for violence and poor health.²² Moreover, evidence from Sweden has shown that when social service provision is contingent upon sex workers exiting the sex industry, harm reduction activities are curtailed, undermining sex workers' access to information and safer sex supplies, and also resulted in increased stigma and isolation for sex workers who do not wish to transition out of sex work.²³

A critical element of protecting women who sell or trade sex from harm, violence, stigma and discrimination is to immediately repeal all sex work-specific criminal laws and other laws that penalize sex workers. **UN Women should also call on States to fund and support programs and services that are developed by people who have lived experience trading or selling sexual services, including sex worker-led outreach, ensuring that such measures are made available to everyone (not only to people who identify as “trafficked”). UN Women should call on States to also fund and support other concrete measures to improve the safety of sex workers and assist those who wish to transition out of the sex industry, including greater investments in income support, poverty alleviation, accessible education and training, affordable housing, affordable childcare, health promotion, harm reduction and substance use treatment programs.**

¹ M. Decker et al., “Human rights violations against sex workers: burden and effect on HIV,” *Lancet* 385, 9963 (2015): pp. 186–199.

² Amnesty International, *Explanatory Note on Amnesty International’s Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, May 26, 2016, p. 9.

³ UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, Report on the 14th session, UN General Assembly, Agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010.

⁴ Joint United Nations Programme on HIV/AIDS (UNAIDS), *UNAIDS Guidance Note on HIV and Sex Work*, 2012.

⁵ Office of the High Commissioner for Human Rights and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, 2006.

⁶ Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, July 2012, p. 43.

⁷ Amnesty International.

⁸ Global Alliance Against Traffic in Women, *Moving Beyond ‘Supply and Demand’ Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking*, 2011.

⁹ See, for example, Amnesty International and NSWP, *Sex Work and the Law: Understanding Legal Frameworks and the Struggle for Sex Work Law Reforms*, 2014.

¹⁰ NSWP, *ibid.*

¹¹ *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101, 2013 SCC 72 (Supreme Court of Canada).

¹² K. Shannon et al., “Global epidemiology of HIV among female sex workers: influence of structural determinants,” *Lancet* 385, 9962 (January 3, 2015): pp. 55–71.

¹³ A. Rose, “Punished for Strength: Sex Worker Activism and the Anti-Trafficking Movement,” *Atlantis* 37, 2 (2015): pp. 57-64; POWER (Prostitutes of Ottawa/Gatineau Work, Educate, and Resist), *Ottawa Area Sex Workers Targets of Intrusive Police Visits*, 2014.

¹⁴ See, for example, Canadian Alliance for Sex Work Law Reform (CASWLR), *Migrant Sex Workers and Sex Work-Related Laws*, 2015 and Butterfly (Asian and Migrant Sex Workers Support Network), *Stop the harm from anti-trafficking policies & campaigns: support sex workers’ rights, justice and dignity*, 2016.

¹⁵ Butterfly.

¹⁶ See CASWLR, *Migrant sex workers live under constant police threat, Part 5 of a series sex workers speak out*, September 23, 2016. Accessible at <https://ricochet.media/en/1421/migrant-sex-workers-live-under-constant-police-threat>.

¹⁷ CASWLR, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014.

¹⁸ Amnesty International, p. 42.

¹⁹ ILO, *Fifth item on the agenda: HIV/AIDS and the world of work. Report of the Committee on HIV/AIDS*, 2010.

²⁰ See, for example, J. Levy and P. Jakobsson, “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers,” *Criminology & Criminal Justice* 1–15 (March 31, 2014); P. Östergren and S. Dodillet, “The Swedish Sex Purchase Act: Claimed success and documented effects,” paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges, March 3-4, 2011, The Hague, Netherlands; and U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo, 2012.

²¹ A. Krüsi et al., “Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study,” *BMJ Open* 4 (2014); Sex Workers United Against Violence, Pivot Legal Society and Gender and Sexual Health Initiative, *My Work Should Not Cost Me My Life: The Case Against Criminalizing the Purchase of Sexual Services in Canada*, 2014.

²² A. Krüsi et al., “‘They Won’t Change It Back In Their Heads That We’re Trash’: The Intersection of Sex Work Related Stigma and Evolving Policing Strategies,” *Sociology of Health & Illness* (April 26, 2016).

²³ Levy and Jakobsson.