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## **Joint submission to CEDAW on trafficking in women and girls in the context of global migration**

# Submitted by the Secretariat to the Joint United Nations Programme on HIV/AIDS (UNAIDS Secretariat), the United Nations Development Programme (UNDP), and the United Nations Population Fund (UNFPA)

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In the 2016 Political Declaration on HIV and AIDS UN Member States, among other things, noted with concern that while global epidemiological evidence demonstrates that sex workers are at higher risk of HIV, the progress in reducing new infections among them and other key and vulnerable populations is alarmingly slow; the scale of combination prevention programmes is limited. The Political Declaration encouraged Member States to address HIV vulnerabilities and specific healthcare needs of migrants, mobile populations, refugees, and to take steps to reduce stigma, discrimination and violence. UN Member States pledged to promote tailored comprehensive HIV prevention services including for migrants and key populations and to commit to ending all forms of violence and discrimination, including trafficking in persons, and other forms of sexual violence, discriminatory laws and harmful social norms.[[1]](#footnote-1)

This joint submission presents the position of UNAIDS as a Joint Programme[[2]](#footnote-2) in relation to the distinction between sex work and trafficking in women and girls, as provided under guidance documents issued by the UNAIDS Secretariat and its co-sponsors, namely the Guidance Note on HIV and sex work and the Recommendations for a public health approach to HIV among sex workers.[[3]](#footnote-3) The submission also highlights key evidence-informed and rights-based HIV-related recommendations issued by independent bodies such as the Global Commission on HIV and the Law in the context of sex work.[[4]](#footnote-4) The Joint UN Programme on HIV/AIDS, its co-sponsors, as well as the Global Commission on HIV and the Law trafficking in persons, as well as sexual violence and exploitation, in all contexts, including migration – and support measures against these practices.

The UNAIDS Guidance Note on HIV and Sex Work defines sex workers to include female, male and transgender adults, over the age of 18, who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not self-identify as sex workers.[[5]](#footnote-5) In terms of this definition, three elements are worth highlighting: a) sex work and sex workers involve adults only; b) sex work involves *consensual* acts between adults; c) acts involving deceit, fraud, coercion, force or violence do not fall under the definition of sex work.5 [[6]](#footnote-6)

Sex work and trafficking are not the same. Annex 3 of the UNAIDS Guidance Note focuses on differentiating sex work and trafficking in persons. The Annex gives further rationale for the need for this differentiation and summarises the harmful impact of conflation of sex work and trafficking – increasing harassment and confinement of sex workers and reducing their access to life-saving HIV and violence prevention interventions.

The Global Commission on HIV and the Law explains that difference between sex work and trafficking is that the former is consensual whereas the latter is coercive. Trafficking in persons, as defined by international and local treaties, is “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”.[[7]](#footnote-7)

Given the consensual nature of sex work, anti-human-trafficking laws should be drafted in such a way that they do not allow for a broad interpretation that would include sex work and sex workers. The Commission notes that some governments deploy anti-human-trafficking laws so broadly as to conflate consensual adult sex work with the exploitative, coerced trafficking of people (primarily women and girls) for the purposes of sex. Anti-trafficking efforts should be carefully tailored and based on intelligence of actual trafficking situations. “Blind sweeps” – e.g. of “red-light” districts or ‘hot spots’ where all sex workers are rounded up and detained – should be replaced with “smart raids” – intelligence-based and focused interventions that target known cases of TiP.[[8]](#footnote-8) Where possible, these interventions should be carried out in consultation with sex workers and their communities and organisations.

Anti-trafficking efforts should not justify or result in criminal prosecution or other coercive measures against adults who engage in sex work on a consensual basis, either as sex workers or clients. Persons who are trafficked should not face criminal prosecution but should receive care and support, including access to comprehensive health services. If sex workers are caught up in anti-trafficking efforts, they should not be penalised or further detained.

To achieve the target of SDG 3 to end AIDS as a public health threat by 2030, it is critical to advance the health and human rights of sex workers, who are 13 times more likely to contract HIV compared to adults who are not sex workers.[[9]](#footnote-9) Abolishing punitive approaches and the adoption of enabling laws, policies and practices is especially important in the context of women and girls, as well as in the context of migration.

Any conflation of voluntary, adult sex work with trafficking in persons is an abuse of sex workers’ human rights, and greatly increases the risk of HIV and violence for both sex workers and trafficked women and girls, by driving it to be further hidden “underground”. It results in a *de facto* criminalisation (or further criminalisation) of sex work which can result in arbitrary arrests and incarceration, denial of freedom of movement, inability to carry condoms and negotiate their use and inability to support and creates an environment of fear and marginalisation. Modelling for the Lancet Special Series on HIV and Sex Workers estimated that decriminalisation of sex work would lead to between 33–46 per cent overall reduction of new HIV cases over the next decade, the single biggest factor in reducing HIV transmission.[[10]](#footnote-10) Punitive approaches to trafficking exacerbate HIV transmission when applied to sex work and are ultimately counterproductive. The sex worker community could be one of the biggest allies in the fight against trafficking in persons, if partnerships engaging this community are developed and accepted.

The Global Commission on HIV and the Law points to evidence that where sex workers’ communities are empowered, supported and consulted, they can be strong allies for anti-trafficking efforts, providing critical information about trafficked and underage people. The DMSC sex worker “self-regulating boards” in India provide compelling evidence of reduction of trafficking and under-age sale of sex, through active involvement of sex worker communities, and self-regulation.[[11]](#footnote-11),[[12]](#footnote-12) For this to be effective, sex worker communities have to be engaged as formal partners with state anti-trafficking agencies, operatives and policy makers, and harassment by law enforcement officers and criminalisation of sex work have to be rescinded, to enable sex workers to operate freely without fear of arrest. The sex worker community stands against trafficking in persons as a human rights abuse. The Global Network of Sex Work Projects (NSWP)[[13]](#footnote-13) calls for greater dialogue and partnership with the sex worker community, to simultaneously reduce TiP and address sex workers’ human rights concerns. To this end, NSWP has sought to further engage with the Interagency Coalition Against Trafficking in Persons (ICAT).

In the 2018 Supplement, the Global Commission on HIV and the Law pointed out that 258 million migrants, including 28.5 million refugees and asylum seekers, are now in search of safety and hope. With uncertain access to food, water and health services, they are vulnerable to illness and violence, including gender-based and sexual violence. Massive displacements, which should trigger solidarity and aid instead receive insufficient attention and often result in punitive measures. Adolescent girls and young women are particularly affected, and they are also uniquely endangered by HIV. The global response to their vulnerability has been insufficient, largely because of punitive and stigmatizing approaches including a pervasive lack of access to HIV prevention.

The Commission recommends that governments provide migrants, including asylum seekers or refugee applicants, access to the full range of health services including for HIV, TB and viral hepatitis regardless of immigration status. Governments must provide this standard of care in detention and confinement settings. The Commission also recommends that enforcement of laws against human trafficking is carefully targeted to punish those who use force, dishonesty or coercion to procure people into sex, or who abuse migrant sex workers through debt bondage, violence or deprivation of liberty. Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work.[[14]](#footnote-14) Avoiding the misguided application of punitive norms, even if well-intended, and the promotion of enabling legislation, policies and practices are important preconditions for effective and efficient access to services for key HIV populations, such as sex workers, as well as to extremely vulnerable populations like migrants. They are instrumental for delivering on the Agenda 2030 with regard to ending AIDS as public health threat and leaving no one behind.

1. Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. Resolution adopted by the General Assembly on 8 June 2016. <http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf> [↑](#footnote-ref-1)
2. UNAIDS was established pursuant to UN Economic and Social Council Resolution 1994/24 with a mandate to coordinate the global response to HIV, including through the creation of enabling legal and policy environments at national level. See UN Economic and Social Council Resolution 1992/24, available at <http://data.unaids.org/pub/externaldocument/1994/ecosoc_resolutions_establishing_unaids_en.pdf>. [↑](#footnote-ref-2)
3. See UNAIDS, *Guidance note on HIV and sex work*. Geneva, 2009, updated 2012, available at

[www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\_UNAIDS-guidance-note-](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf) [HIV-sex-work\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf) ; WHO, UNFPA, UNAIDS & NSWP, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries:* [↑](#footnote-ref-3)
4. The Global Commission on HIV and the Law was composed of world leaders and advocates in the areas of HIV,

public health, law and development. It issued its final report in July 2012 and supplemented it in 2018 with additional recommendations. The report is the result of 18 months of extensive research, consultation, analysis and deliberation. It is based on evidence derived from the testimony of more than 700 people most affected by HIV-related legal environments from 140 countries, expert submissions and the large body of scholarship on HIV, health and the law. The Commission’s report and full documentation of the consultative process are available at [www.hivlawcommission.org/report](http://www.hivlawcommission.org/report%20) . [↑](#footnote-ref-4)
5. See UNAIDS (note 2 above) p 3 [↑](#footnote-ref-5)
6. The 2015 UNAIDS terminology guidelines and the recommendations of the Global Commission on HIV and the Law advise against the use of the terms “prostitution” and “prostitute”, as they denote value judgement. [↑](#footnote-ref-6)
7. See: Global Commission on HIV and the Law, Final Report. [↑](#footnote-ref-7)
8. US Department of State (2010): “Blind sweeps and smart raids” in: The 2010 Trafficking in persons report (p40). <https://www.state.gov/j/tip/rls/tiprpt/2010/> [↑](#footnote-ref-8)
9. UNAIDS, Miles to go—closing gaps, breaking barriers, righting injustices (2018) <http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf>, at 14. [↑](#footnote-ref-9)
10. Shannon et al. The Global Response and unmet actions for HIV and Sex Workers. The Lancet (2018) [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31439-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2818%2931439-9/fulltext) . See also: Shannon et al. Global Epidemiology of HIV Among Female Sex Workers: Influence of Structural Determinants. The Lancet (2015) [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60931-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2814%2960931-4/fulltext) [↑](#footnote-ref-10)
11. Durbar Mahila Samanwaya Committee, Anti-trafficking: Durbar is building a Chinese wall <https://durbar.org/html/anti_trafficking.html> . [↑](#footnote-ref-11)
12. DMSC, UNFPA (2019) “An innovative model anti-trafficking program with the inclusion of survivors of trafficking” Submission to the 2019 Thematic Report of OHCHR UN Special Rapporteur on TiP, on innovative and transformative models of social inclusion for victims of trafficking. [↑](#footnote-ref-12)
13. See: Global Network of Sex Work Projects (NSWP),<https://www.nswp.org/>

<https://www.nswp.org/resource/sex-work-not-trafficking>

<https://www.nswp.org/resource/policy-brief-the-impact-anti-trafficking-legislation-and-initiatives-sex-workers> [↑](#footnote-ref-13)
14. Global Commission on HIV and the Law, HIV and the Law: Risks, Rights & Health – 2018 Supplement, <https://hivlawcommission.org/supplement/> [↑](#footnote-ref-14)