



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

**For the Attention of: Mr Felipe González Morales, UN Special Rapporteur on the Human Rights of Migrants**

**Subject: Submission to GA report: gender-responsive migration laws, policies and practices**

**Date: 24<sup>th</sup> May 2019**

**Introduction**

NSWP welcomes the opportunity to make a submission to the Special Rapporteur as he prepares his thematic report to the 74<sup>th</sup> session of the UN General Assembly, focussing on good practices and initiatives of gender-responsive migration legislation, policies and practices. We are committed to supporting efforts to ensure full compliance with states' obligations to respect, protect and fulfil the human rights of all migrants, including sex workers, in the context of global migration.

NSWP is a global network of sex worker-led organisations, with over 266 members in 80 countries, with the overwhelming majority of members being in the Global South. NSWP 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.

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 to the multiple forms of discrimination and violence against migrants, particularly women and girls. A lack of safe migration routes, as well as a lack of robust employment legislation that protects migrant workers, allows discrimination, abuses and violations at all stages of migration. 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 support the empowerment of migrants and the fulfilment of their human rights.

NSWP would like to set out some of the main challenges and obstacles faced by migrant sex workers in the context of the continued, and increasing, criminalisation of sex work globally.

**Migration and sex work**

Despite the global trend of increasing mobility, migrant workers are still stigmatised and silenced – in politics and media alike. Additionally, migrant sex workers are painted as victims or criminals in discourses that conflate sex work with human trafficking. Their human rights are often overlooked in favour of driving broader political agendas to restrict migration and criminalise sex work. As a result, migrant sex workers are rarely viewed as part of global labour migration flows.

The mobility of migrant sex workers is motivated by a shared set of factors, regardless of the point of origin or destination. Respondents to NSWP's global consultation<sup>1</sup> emphasised the need to escape gender inequality and regimes that criminalise them for their work, their gender identities, and their sexual orientation in favour of countries and cities that allow them to live and work with greater

<sup>1</sup> NSWP, 2018, "[Briefing Paper: Migrant Sex Workers](#)".

autonomy and dignity. At the same time, the limited civil, political, economic, social, and cultural rights that migrants have, even documented migrants, guarantees the marginalisation of migrant sex workers, as their labour is unrecognised, if not directly criminalised, in host countries. This not only harms migrant sex workers by violating their human rights and placing them at greater risk of exploitation, it also undermines their potential to participate in and enrich local and global economies.

### **Barriers to rights**

The human rights' abuses that migrant sex workers face include: denial of access to legal channels of migration; discriminatory visa schemes; increased reliance on third party agents to travel; and the ever-widening human trafficking frameworks that expose migrant sex workers to increased harassment, detention, and deportation. This prevents migrant sex workers from accessing other fundamental rights, and creates a universal lack of opportunity with regard to both movement and employment. Such punitive approaches to migration and sex work rely on and promote discrimination on the grounds of race, ethnicity, national origin, gender and gender identity, sexual orientation, health status (including HIV), class, physical mobility, and mental health.

### **Police violence and protection of the law**

When a host country does not recognise migrant sex workers as rights-bearers, they do not have the protection of the law. Globally, NSWP members report that migrant sex workers face higher levels of vulnerability to exploitation and violence as a result of this, especially from the authorities. They are often beaten, raped, and robbed by the police, and in some cases can only receive protection in exchange for sexual services. The police also frequently refuse to file their complaints simply because they are sex workers. In Togo, migrant sex workers even pay local gangs for protection, because they cannot rely on the authorities. In Suriname, sex workers reported that transgender women are forced to strip naked and are subjected to humiliation and torture at the hands of the police. Several African countries reported that male sex workers are mocked and beaten by police. Sex workers in Nicaragua stated that police violence was their greatest concern, and in Canada, migrant sex workers reported needing protection from law enforcement.

Migrant sex workers face greater vulnerability to harassment, abuse, and violence at the hands of police, third parties, and people posing as clients precisely because they are not recognised as rights-bearers, and do not have legal recourse. In the UK, a rise in reported murders of migrant sex workers from 0% during 2006–2013 to 82% of the women killed in 2013–2015 suggests that migrant women sex workers are being disproportionately targeted. In Singapore, migrant sex workers – especially undocumented sex workers, transgender sex workers, and male sex workers – rarely report violence, non-payment, or theft because of fear of arrest and deportation.

### **Conflation of 'sex work' and 'trafficking' and the impact on sex workers' rights**

The conflation of human trafficking with migrant sex work compounds these issues, as it results in the disproportionate policing of racial and gender minorities. In Norway, police legitimise raids and immigration checks by claiming that they are combatting trafficking. In Canada, purported 'rescue' strategies and enforcement all too often become punishment. Police are reportedly abusing their power by demanding sexual favours and even stealing money. In Singapore, police frequently raid brothels looking for undocumented migrants, seizing condoms as evidence. In the European Union, most member states use anti-trafficking efforts to limit sex work and migration, rather than creating safe and supportive environments for sex workers. Dismantling the sex industry disrupts sex workers' lives and work, and pushes them into illegality and isolation.

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.

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 Law<sup>2</sup> and Amnesty International,<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup>*

#### **‘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.”<sup>6</sup>*

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.<sup>7</sup>

#### **The dangers 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 and women sex workers are made

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<sup>2</sup> United Nations Development Programme, 2012, “[HIV and the Law: Rights, Risks, and Health](#),” 39-40.

<sup>3</sup> Amnesty International, 2016, “[Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers](#),” 17.

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

<sup>5</sup> GAATW, 2018, “[Sex Workers Organising for Change: Self representation, community mobilization, and working conditions](#),” 281.

<sup>6</sup> GAATW, 2018, “[Sex Workers Organising for Change: Self representation, community mobilization, and working conditions](#),” 31.

<sup>7</sup> Butterfly: Asian and Migrant Sex Workers Support Network, 2018, “[Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers](#),” 32.

more vulnerable to violence, discrimination and exploitation as a result of this legislation.<sup>8</sup> That sex workers face harassment, persecution and arbitrary arrest by authorities as a direct result of such laws has been well researched<sup>9</sup> and documented.<sup>10</sup>

Enforcing 'end demand' legislation involves police raids of sex workers' workplaces, confiscation of their earnings by police as evidence against clients<sup>11</sup> 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.

### **Criminalisation of third parties**

The isolation of migrant sex workers is exacerbated by stigma and laws that criminalise third parties. Migrant sex workers around the world reported having no one to confide in or rely on except other migrant sex workers from their country of origin. They are often rejected by their ethnic communities for engaging in sex work, and are sometimes ostracised or even attacked by local sex workers over client and territory disputes. Yet third party laws essentially criminalise peer networks. In Latin America and Canada, sex workers are arrested for trafficking when they assist their peers in finding housing or work. Globally, third party laws are used to evict sex workers and prevent them from working together, thereby disrupting sex worker-organising, which is often the only support migrant sex workers have.

### **Limited access to services**

Migrant sex workers face substantial barriers in accessing prevention, treatment, and care services largely due to stigma, discrimination, and criminalisation. Police use condoms as evidence, which severely hinders the safety and autonomy of migrant sex workers. Mandatory sexual health testing and examinations remain a problematic issue in a number of countries.

Finding reliable service providers poses a significant challenge for migrant sex workers, as they are faced with judgemental treatment and breaches of confidentiality. In Africa, sex workers report active exclusion from healthcare, while in Ukraine, healthcare and social workers often demand extra payment for their services. In Canada, the human trafficking narrative has become so pervasive in certain healthcare circles that migrant sex workers are often assumed to be trafficked and are referred instead to the police or border services. In Norway, while migrants are entitled to emergency care, a sex worker reporting rape may be immediately deported after receiving treatment. As a result, systems claiming to protect victims of crime ultimately serve to punish them.

### **Conclusion**

The factors outlined in this submission serve to undermine the human rights and autonomy of migrant sex workers, rather than empowering them. Legal and policy reform is urgently needed to change this. These reforms should include:

- The full decriminalisation of sex work – including sex workers, clients and third parties' laws and the repeal of 'end demand' approaches
- Ensure safe migration channels, including rolling back restrictive and discriminatory migration laws
- Ensure 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

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<sup>8</sup> NSWP, 2018, "[Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers](#)," 10.

<sup>9</sup> NSWP, 2015, "[Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers](#)".

<sup>10</sup> NSWP, 2018, "[Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers](#)".

<sup>11</sup> 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.

- Remove laws that explicitly prohibit the participation of migrants in the sex industry, as these effectively guarantee their reliance on third parties and render them extremely vulnerable due to the threat of deportation. Enable migrants to apply for the right to work and reside on the grounds of their sex work
- Respect for the agency and bodily autonomy of sex workers
- Responses to trafficking must not be used to impose border control and regulate the migration of sex workers. The police and other law enforcement should be sensitised to stop the surveillance, harassment, arrest, and abuse of migrant sex workers, especially racial and gender minorities
- Ensure firewalled access to social and healthcare services, as well as to the authorities to report abuses, especially for undocumented migrants. Migrant sex workers are often unable to access services even when they know of them because they fear deportation. It is crucial that all migrant sex workers have access to services and to justice without fear of deportation or reprisal.