

Mandate on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

**EUROPEAN COURT OF HUMAN RIGHTS
STRASBOURG, FRANCE**

Case No: **63664/19, 64450/19, 24387/20, 24391/20 et 24393/20**

In the matter between:

M.A and Others Applicant

and

FRANCE Respondent

**THE SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO
THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL
AND MENTAL HEALTH'S WRITTEN SUBMISSIONS***

30 SEPTEMBER 2021

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I. Introduction

1. This written submission is made by the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Article 36(2) of the European Convention on Human Rights ('the Convention') and Rule 44(3) of the Rules of the European Court of Human Rights ('the Court'), and the letter dated [insert date] which requested leave to intervene in the case of *M.A and Others v France Switzerland* (no: 63664/19, 64450/19, 24387/20, 24391/20 et 24393/20). The Court granted leave to intervene on 27 August 2021.
2. This submission will focus broadly on how laws, policies and practices that criminalize sex work, present obstacles to the enjoyment of the highest attainable standard of physical and mental health, and other human rights, for everyone and in particular sex workers. The Special Rapporteur will present global evidence on how the criminalisation of sex workers, and criminalisation of sex workers' clients impacts on sex workers' health and their access to services to the detriment of their enjoyment of the highest attainable standard of physical and mental health, including sexual and reproductive health.
3. In my years as a practising medical doctor, I have seen how many public health policy and programs view sex workers through a narrow lens that conjures gross stereotypes about sex work and sex workers. Public health does not need to be safeguarded from sex workers. Sex workers have health needs beyond HIV prevention or treatment such as screening of reproductive cancers, screening for other sexually transmitted infections, trauma counselling, contraceptives and safe abortion care needs. These services are crucial to the realisation of the right to life and physical integrity of sex workers as well as the right to private life including the freedom of self-determination.
4. Often times States ignore the nuanced histories and contexts of sex work and sex workers and thus continue to wrongfully offer blanket solutions and 'rescue' models which are rooting for partial decriminalization or continued criminalization. Criminalisation of sex workers and/or their forced detention as victims is not compatible with international human rights. Legislation penalising the purchase of sexual services between consenting adults but not sale has also been found to negatively impact sex workers' health, safety, and earnings, and compromising privacy.
5. Sex work is real work. Men, women, non-binary people and transgender people who sell sex are exercising their agency to make a realistic choice from the options available to them. The idea of purchasing intimacy and paying for the services can be affirmative for many people. I believe that the criminalisation of private, consensual sexual interaction between adults represents a significant impediment to the realisation of the right to health of all persons, particularly those against whom the law is directed.
6. Sex work should not be conflated with trafficking in persons for the purpose of sexual exploitation. Assuming that all sex workers are trafficked denies the autonomy and agency of people who sell sex. The Joint United Nations Programme on HIV/AIDS (UNAIDS Secretariat), the United Nations Development Programme (UNDP), and the United Nations Population Fund (UNFPA) presented the position of UNAIDS as a Joint Programme¹ in relation to the distinction between sex work and trafficking in women and girls, as provided under guidance documents issued by the UNAIDS

¹ 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.

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.²

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. 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.

II. *State obligations under international human rights law in relation to sex workers*

8. France is party to the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
9. Under the existing international human rights law framework, States have an obligation to respect, protect and fulfil the human rights of sex workers. Although human rights are “indivisible, interdependent, and interrelated” and should be guaranteed as such, certain rights are of particular relevance to the well-being of sex workers. Such rights are the right to privacy,³ to bodily integrity,⁴ to liberty and security of the person,⁵ the right to be free from torture, cruel, inhuman and degrading treatment,⁶ and the right to autonomy and freedom from unlawful interference.⁷ In addition, equally important to the welfare of sex workers are the rights to the enjoyment, without discrimination, of the rights to health, to gain one’s living from work, and to safe working conditions.⁸
10. Sex workers must be able to enjoy all human rights on the basis of equality and non-discrimination.⁹ Therefore, in order to achieve substantive equality, States have the obligation to combat discrimination and achieve substantive equality, and to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine sex workers’ rights.¹⁰ Furthermore, the content and application of criminal laws related to sex work should always be assessed against relevant human rights norms and standards.

III. *The criminalization of sex work*

11. Available data suggests that sex work or some aspects of sex work is criminalized or otherwise punished through a variety of laws in hundreds of countries globally. These include laws which punish the sale of sex and or purchase and third parties who facilitate the sale of sex. The purchase of sex is criminalized in 74 countries, often with other aspects of sex work (selling, managing or organising sex work)¹¹. Of these, at least 7 countries have introduced explicit “End Demand

² [UNAIDS, Guidance Note on HIV and Sex Work, 2009](#)

³ ICCPR, art. 17; ECHR, art. 8

⁴ ICCPR, art. 9; ECHR, art. 5

⁵ ICCPR, art. 9; ECHR, art. 5

⁶ ICCPR, art. 7; ECHR, art. 3

⁷ ICCPR, art. 17.

⁸ ICESCR, art. 12; CEDAW, arts. 11(1)(f) and 12

⁹ ICCPR, arts.3 and 26; ECHR art.14; CESCR, general comment no. 14, para. 4

¹⁰ ICESCR, arts. 2.1 and 2.2.; CESCR, general comment no. 14, paras. 30 and 48

¹¹ NSWP, Global Mapping of Sex Works Law, 2021, available at: <https://www.nswp.org/sex-work-laws-map>

approaches” to criminalise clients and the purchase of sex, including, Canada, Israel, Republic of Ireland, France, Iceland, Norway, and Sweden.

12. Laws criminalizing sex work or aspects of sex work are often rooted or justified as “necessary for the preservation of certain societal moral”, or on the belief that sex work is inherently victimizing, a form of violence for those selling sex, or/and conflates with trafficking. Often times, the justification has also been the need to control the spread of sexually transmitted infections.
13. However, these types of laws only serve to “disempower sex workers and prevent them from taking reasonable steps to ensure their own safety,”¹² such as reporting abuses by clients and authorities, and seeking medical assistance with needed.

IV. Consequences of the criminalization of sex work on the enjoyment of human rights

14. The criminalization of sex work and related activities can result in violations of a wide range of human rights, such as the right to privacy, to security of the person, to freedom from torture and other cruel, inhuman and degrading treatment or punishment, equality and non-discrimination and the right to health.¹³ There is little (or no) evidence that criminalization is effective in protecting sex workers. On the contrary, research suggests that decriminalization of sex work is “the most effective way to protect sex worker’s rights”.¹⁴

The right to privacy¹⁵

15. Criminalization of sex work constitutes a direct violation of the right to privacy. The right to privacy protects against “arbitrary or unlawful interference with [one’s] privacy, family, home or correspondence.”¹⁶ As stated by the Human Rights Committee, adult consensual sexual activity in private is an issue which falls under the scope of the right to privacy.¹⁷ Privacy rights encompass decisions with whom, when, whether and how to have sex, marry, reproduce and live according to the gender identity with which one identifies, with clear particular ramifications for women, and LGBTI individuals. Where individuals are engaging in conduct that is mutually consensual, their right to privacy encompasses the right to realize their sexual and reproductive decisions, without State scrutiny or control.¹⁸

The right to life¹⁹

¹² Ann Jordan, *The Swedish Law to Criminalize Clients: A Failed Experience in Social Engineering*, American Univ.Wash.Coll.L., CTR, for Human Rights & Humanitarian L. 1, 2, 12 (2012), Available at [http://www.nswp.org/sites/nswp.org/files/Issue-Paper-4\[1\].pdf](http://www.nswp.org/sites/nswp.org/files/Issue-Paper-4[1].pdf)

¹³ Right to Equality and Non-discrimination ICCPR, Articles 3 and 26; ECHR, Article 14, Right to Security of Person ICCPR, Article 9; ECHR, Art. 5, Right to Privacy ICCPR, Article 17; ECHR, Article 8, Right to the Highest Attainable Standard of Health, ICESCR, Article 12; CEDAW, Article 12; ESC, Article 11, And the right to life, ICCPR, Article 6; ECHR, Article 2; Right to Freedom from Torture and Cruel, Inhuman, and degrading Treatment, ICCPR, Article 7; ECHR, Art. 3.

¹⁴ Rachel Marshall, *Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work*, 23 Wm. & Mary J. Women & L. 47 (2016). Available at <https://scholarship.law.wm.edu/wmjowl/vol23/iss1/5>, p. 60

¹⁵ Article 17 ICCPR; ECHR, Article 8,

¹⁶ Human Rights Committee, General comment 16 on the right to privacy (1988).

¹⁷ See e.g., Human Rights Committee, *Toonen v. Australia*, Communication number 488/1992 (1994); *Mellet v. Ireland*, Communication number 2324/2013 (2016).

¹⁸ See generally Working Group on Discrimination Against Women in law and practice, *Position Paper on adultery* (2012), <https://www.ohchr.org/Documents/Issues/Women/WG/AdulteryasaCriminalOffenceViolatesWomenHR.pdf>; Human Rights Committee, *Toonen v. Australia*, Communication number 488/1992 (1994).

¹⁹ Article 6 ICCPR, Article 2 ECHR;

16. Criminalization of sex work has shown to heighten risks of rights violations for sex workers, including with regard to lack of protection from violence and abuse by clients and law enforcement. Criminalization of sex work has also been associated with perpetuating negative attitudes and stigma towards sex workers, which has a detrimental impact on their lives, impeding their access to basic social and health services and increasing their vulnerability to ill health, violence, sexual abuse and extortion.²⁰

Right to equality and non-discrimination²¹

17. Criminalizing sex work can create a permissive environment for discrimination, harassment and intimidation of sex workers, in violation of the right to equality and the principle of non-discrimination. As noted by the former Special Rapporteur on the Right to Health, criminalization of sex work is a breach of a state's duty to prevent discrimination.²²

18. Laws criminalising sex work tend to be disproportionately enforced against communities that face various and intersecting forms of oppression; including oppression based on race, gender, sexual orientation, gender identity, migrant status, and socioeconomic class.²³ Women constitute the majority of sex workers globally. The majority of these women are cisgender, followed by transgender women, who are involved in sex work in greater proportion compared to the proportion of cisgender women who are sex workers. Sex workers are overrepresented among those experiencing intersecting forms of discrimination based on gender, race, ethnicity, caste, Indigenous identity or migrant status or a combination of them, are often over-represented among individuals selling sex.

Right to be free from torture and non-discrimination²⁴

19. Criminalizing sex work can lead to violations of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment and other ill-treatment, including in health care settings. States are obliged as a matter of international law to take measures to prevent torture and other ill-treatment, to investigate and prosecute perpetrators and to provide adequate reparations for victims.²⁵ Further, criminalizing the buying or selling of adult consensual sex, or elements of these transactions, threatens the right to liberty where sex workers are arbitrarily detained.²⁶

20. The European Court on Human Rights has been particularly sensitive of relationships of 'superiority and inferiority' and control exercised by a perpetrator over the victim. Thus, a single slap inflicted by police or 'other similar authority' could be considered degrading because it is characterised by this imbalance of power. State control exercised through law enforcement agents on sex workers may similarly be characterised by such imbalance of power.

Right to health

²⁰ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/14/10 (2010), paras 22-23.

²¹ Right to Equality and Non-discrimination ICCPR, Articles 3 and 26; ECHR, Article 14

²² Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/HRC/14/20, para 25.

²³ ICCPR, Arts. 2 and 26; Working Group on the issue of discrimination against women in law and in practice, A/HRC/32/44 (2016), paras. 84-85; Special Rapporteur on extreme poverty and human rights, mission to Namibia A/HRC/23/36/Add.1 (2013).

²⁴ Right to Equality and Non-discrimination ICCPR, Articles 4 and 26; ECHR, Article 14

²⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53 (2013), para. 75.

²⁶ Working Group on Arbitrary Detention, A/HRC/30/69 (2015), para. 8.

21. The criminalisation of private, consensual sexual interaction between adults represents a significant impediment to the realisation of the right to health of all persons, particularly those against whom the law is directed²⁷ (See below paras 28-29, 31). As I have stated in my report to the United Nation’s General Assembly, the right to sexual and reproductive health is an integral part of the right to health. States have an obligation to respect, fulfil and protect the right to sexual and reproductive health care and this right is violated and hindered by criminalisation of consensual sexual activity between adults.²⁸
22. Where sex work is criminalized, sex workers access to health services, including sexual and reproductive health services is seriously impaired. Further, criminalization of sex work increases vulnerability to HIV and other sexually transmitted infections. UNAIDS has indicated that in 2019, female sex workers had a 30 times greater risk of acquiring HIV than the general female population.²⁹ On the other hand, research has shown that decriminalisation of sex work would have “the greatest effect on the course of HIV epidemics across all settings, averting 33-46% of HIV infections” within a decade because it would lead to increased access for sex workers to prevention and treatments.³⁰
23. Laws criminalizing sex work are inherently discriminatory because they create barriers for equal access to health services for all people. Notably, the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 22 on the right to sexual and reproductive health (Article 12), explicitly calls on states parties to “take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination.”
24. Additionally, the criminalization of sex work also results in infringements of the right to health through the failure to provide safe working conditions for sex workers. When sex workers are criminalized, they are not recognized by standard labor laws and therefore are not protected by safety regulations and not able to seek legal remedies.³¹

V. *United Nations Human Rights Mechanisms views on the criminalization of sex work and related impact on the human rights of sex workers*

25. Over the years, human rights mechanisms have expressed concerns over the application of criminal law in areas related to consensual sex, including sex work and have called for decriminalization.
26. **The Committee on the Elimination of Discrimination against Women** has been expressing concern over the negative effects of criminalization of sex work and calling for decriminalization since 2010.³² The Committee has systematically reiterated that women should not be criminalized for being in a situation of prostitution.³³ In its General Comment 35 on Gender based violence, the

²⁷ Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/HRC/14/20, (27April 2010), paras. 36-50.

²⁸ A/76/172 para 22.

²⁹ https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf

³⁰ Dr. Kate Shannon, et al, Global Epidemiology of HIV among Female Sex Workers: Influence of Structural Determinants. The Lancet, HIV and Sex Workers, 385, 9962, pp 55-71. Available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60931-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60931-4/fulltext)

³¹ Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health A/HRC/14/20, (27April 2010), para 43.

³² CEDAW, Concluding Observations on Fiji (2010), [CEDAW/C/FJI/CO/4 \(CEDAW 2010\)](#), CEDAW, Concluding Observations on Togo (2012), para 25 (d [CEDAW/C/TGO/CO/6-7 \(CEDAW 2012 \)](#)), CEDAW, Concluding Observations on Kazakhstan, (2019) para 27 (e).

³³ [A/HRC/32/44/Add.2](#) para 22. Concluding observations on Moldova (2020) para 25 e), [CEDAW/C/MDA/CO/6 \(CEDAW 2020\)](#), Concluding observations on Cambodia (2019), para 2, [CEDAW/C/KHM/CO/6 \(CEDAW 2019\)](#) and Concluding observations on Lithuania, para 27, [CEDAW/C/LTU/CO/6 \(CEDAW 2019\)](#) and Concluding observations on Qatar para 29 (d) and30 (f) [CEDAW/C/QAT/CO/2 \(CEDAW 2019\)](#)

CEDAW Committee recommends States to repeal all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence, including provisions that criminalise women in prostitution.³⁴ For instance, the Committee has expressed concern that criminalization exposes sex workers/women in prostitution to violence and to vulnerability to torture from law enforcement. The Committee has also urged States to prevent discrimination against sex workers and to ensure legislation on their right to safe working conditions.³⁵ In its General recommendation 24 on the right to health, the CEDAW Committee has recommended that special attention be given to the health needs of women in prostitution due to their increased risk to contract HIV/AIDS and sexually transmitted diseases. In this connection, the Committee has also raised concerns over sex workers being disproportionately affected by HIV/AIDS and in a situation of vulnerability to contract and transmit HIV/AIDS.³⁶ Additionally, the Committee expressed concerns over mandatory health tests for sex workers and required compliance with the International Guidance on HIV/AIDS and Human Rights.³⁷

27. **The Human Rights Committee** has expressed concerns about reports of violence against sex workers,³⁸ widespread police abuse of women in prostitution,³⁹ and has called for States to “ensure that sex workers can report crimes without risking being prosecuted for their occupation.”⁴⁰ The Committee has also raised concerns about the absence of a comprehensive anti-discrimination legal framework, and the persistence of discrimination against sex workers/women engaged in prostitution.⁴¹ The Committee also emphasized need to step up interventions that address HIV/AIDS related needs of sex workers.⁴²

28. In its Concluding Observations to States, **the Committee on Economic, Social and Cultural Rights** has called for decriminalizing the sale of sex.⁴³ In its General Comment 22, the CESCR Committee has confirmed that criminalizing consensual adult sexual violates states’ obligation to respect the right to sexual and reproductive health, as it amounts to a legal barrier that impedes access to sexual and reproductive health services.⁴⁴ Further, the Committee has also clarified that States must refrain from directly or indirectly interfering with the exercise by individuals of the right to sexual and reproductive health,⁴⁵ which includes the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one’s body and sexual reproductive health.⁴⁶ Thus States must not interfere with one’s right and freedom to decide and consent to sexual relations free of coercion and violence, in the exercise of one’s autonomy.

³⁴ CEDAW, General Comment 35, para 29 (c), (i).

³⁵ CEDAW, Concluding Observations on Hungary (2013), para 22-2 [CEDAW/C/HUN/CO/7-8 \(CEDAW 2013\)](#)

³⁶ CEDAW, Concluding Observations on CHAD, (2011) para 35, [CEDAW/C/TCD/CO/1-4 \(CEDAW 2011\)](#) Mauritius (2011), para 32, [CEDAW/C/MUS/CO/6-7 \(CEDAW 2011\)](#), Concluding observations on Belarus (2011) para c), [CEDAW/C/BLR/CO/7 \(CEDAW 2011\)](#)

³⁷ CEDAW, Concluding observations on Austria (2013), [CEDAW/C/AUT/CO/7-8 \(CEDAW 2013\)](#), Concluding observations on Malawi (2010), [CEDAW/C/MWI/CO/6 \(CEDAW 2010\)](#).

³⁸ Human Rights Committee, Concluding observations on Honduras, (2009) para c), [CCPR/C/HND/CO/2 \(CCPR 2017\)](#)

³⁹ CCPR, Concluding observations Ghana (2016) para 13. [CCPR/C/GHA/CO/1 \(CCPR 2016\)](#)

⁴⁰ Human Rights Committee, Concluding observations on Namibia (2021) para 22 c) [CCPR/C/NAM/CO/2 \(CCPR 2016\)](#).

⁴¹ Human Rights Committee, Concluding observations on Paraguay, (2019) para 15(b) [CCPR/C/PRY/CO/4 \(CCPR 2019\)](#)

⁴² Human Rights Committee, Concluding observations on El Salvador, (2018) para 9. [CCPR/C/SLV/CO/7 \(CCPR 2018\)](#)

⁴³ Human Rights Committee, Concluding observations on Swaziland, (2017), para 2. [CCPR/C/SWZ/CO/1 \(CCPR 2017\)](#)

⁴⁴ CESCR, Concluding observations on South Africa (2018), para 32-33, [E/C.12/ZAF/CO/1 \(CESCR 2018\)](#) and CESCR, Concluding observations on the Russian Federation (2017) para 53, [E/C.12/RUS/CO/6 \(CESCR 2017\)](#).

⁴⁵ CESCR, General Comment 22, para 57.

⁴⁶ Ibid, para 40.

⁴⁷ Ibid, para 5,

29. Under the human right to health framework, States have the obligation to reform laws that criminalize consensual sexual activities between adults,⁴⁷ and also have the core obligations to “repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information”.⁴⁸ There is sufficient evidence showing that decriminalization of sex work improves access of sex workers to health services. For instance, it results in increase condom access and rates of use by sex workers, reduces risk of HIV and sexually transmitted infections sex workers and unwanted pregnancies, and improves their overall health outreach.⁴⁹ The CESCR Committee has further called on States parties to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination and to ensure sex workers access to the full range of sexual and reproductive health-care services.⁵⁰ Additionally, it has raised concerns over sex workers’ lack of enjoyment of the human rights to work, to health and trade union rights and over the obstacles sex workers face to report physical and sexual violence against them and to access health-care services.⁵¹
30. The **Working Group on the issue of discrimination against women in law and in practice** considers “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.”⁵² The Working Group further notes that the Convention on the Elimination of All Forms of Discrimination against Women calls for prohibition of the exploitation of prostitution and not for punishment of the women in prostitution/sex work themselves and takes the position that women should not be criminalized for prostitution. In the report on its mission to the United States of America the Working Group noted that: “he criminalization of women in prostitution/sex workers in most of the country exposes them further to violence, places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights standards”⁵³. **The Special Rapporteur on Extreme Poverty and Human Rights** in his mission to Namibia identified the criminalization of sex work as the root cause for the stigma, discrimination and violence surrounding sex work, and how it creates a climate of impunity. He also raised particular concerns for the lack of access by sex workers to sexual and reproductive health services.⁵⁴
31. The **mandate of the Special Rapporteur on the right to the highest attainable standard of physical and mental health** has systematically called for the decriminalization of sex work.⁵⁵ Already in 2010 the then Special Rapporteur analysed the effects of criminalization on the right to health. In his report, the Special Rapporteur affirmed poor health outcomes and impediments to accessing health services for sex workers, as well as a reduced ability of sex workers (“bargaining power”) to negotiate condom use, to the detriment of their protection against HIV/AIDS and other sexually transmitted diseases.”⁵⁶ Criminalization also generates stigmatization, and violence towards sex workers, as they live in fear of police and clients and feel unable to report crimes

⁴⁷ Ibid, para 34 and 40.

⁴⁸ Ibid para 49 (a).

⁴⁹ Ibid, para 31

⁵⁰ Ibid, para 32.

⁵¹ CESCR, Concluding observations on South Africa (2018), para 32-33, [E/C.12/ZAF/CO/1 \(CESCR 2018\)](#)

⁵² Report of the Working Group on discrimination against Women, A/HRC/32/44, (2016) paras 84-85.

⁵³ Report of the Working Group on the issue of discrimination against Women, Mission to United States A/HRC/32/44/Add.2 (2016), paras 82 (a) and Recommendations (a)

⁵⁴ Report of the Special Rapporteur on Extreme Poverty, Mission to Namibia, A/HRC/23/36/Add.1 (2013), paras 50-2.

⁵⁵ Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/HRC/14/20, (2010), paras 46-50

⁵⁶ Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/HRC/14/20 (2010) para 36-37.

against them due to fear of arrest or other penalties.⁵⁷ The Special Rapporteur also stated that criminalization of “the sex-work sector results in infringements of the right to health, through the failure to provide safe working conditions, and a lack of recourse to legal remedies for occupational health issues.”⁵⁸

32. During the **Universal Periodic Review (UPR)**, multiple States have made recommendations for the decriminalization of sex work.⁵⁹ In the UPR review of Thailand, the Working Group recommended that the State Party increase its efforts to guarantee the right to highest attainable standard of health also to sex workers by ensuring that they receive access to health care and services.⁶⁰ Likewise, in the UPR review of Honduras, the Working Groups called for legislation regulation sex work in order to limit or prevent the ill-treatment of and discrimination against sex workers.⁶¹

VI. Impact of criminalisation on the right to health: comparative examples

33. This section will focus on how criminalisation in various countries has impacted the health outcome of sex workers, providing on statistical evidence to show that criminalisation has a negative impact on the rights of sex workers.

a) South Africa

34. In South Africa health statistics suggest that decriminalisation is urgent: HIV prevalence rates amongst female sex workers are estimated to be between 40 percent and 88 percent, compared to 14.4 percent among women who do not identify as sex workers⁶². HIV prevalence is as high as 71.8 percent among female sex workers in Johannesburg, one of the highest rates in the world.⁶³

b) Canada

35. Sex workers experience a disproportionate burden of HIV both in Canada and globally due to structural factors (criminalization, violence, stigma, poor working conditions) that limit sex workers’ ability to engage in HIV prevention including the consistent and correct use of condoms.⁶⁴

c) China.

36. In a report by Human Rights Watch, sex workers in China stated that they faced mistreatment by public health workers. They described practices that violate their rights to health and privacy such disclosure their HIV status to third parties, refusing the access to their personal medical records

⁵⁷ Ibid para 39-42.

⁵⁸ Ibid A/HRC/14/20, (2010), summary and para 27.

⁵⁹ [A/HRC/46/12 \(UPR 2020\)](#), [A/HRC/33/16 \(UPR 2016\)](#); [A/HRC/19/8 \(UPR 2011\)](#)

⁶⁰ A/HRC/33/16 Report of the Working Group on the Universal Periodic Review Thailand. Available at <https://uhri.ohchr.org/en/document/ffbce086-451c-454e-8e5c-85be2ffe8c8>.

⁶¹ A/HRC/46/12 Report of the Working Group on the Universal Periodic Review: Honduras. Available at <https://uhri.ohchr.org/en/document/912b15d7-1bbe-4172-a751-718a06d1dba1>

⁶² South African National AIDS Council (SANAC), “South African National Sex Worker HIV Plan, 2016-2019,” 2016, <https://southafrica.unfpa.org/sites/default/files/pubpdf/South%20African%20National%20Sex%20Worker%20HIV%20Plan%202016%20%202019%20FINAL%20Launch%20Copy...%20%282%29%20%281%29.pdf> (accessed July 5, 2018), p. 13.

⁶³ Ibid., p. 8.

⁶⁴ World Health Organization. *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries*. Geneva; 2012. Available from: http://www.who.int/hiv/pub/guidelines/sex_worker/en/index.html see hannan K, Strathdee SA, Goldenberg SM, et al. Global epidemiology of HIV among female sex workers: Influence of structural determinants. *Lancet*. 2015;385(9962), 55–71.

and mistreating sex workers⁶⁵. As a result of these abuses, sex workers do not easily access public health agencies.

d) Papua New Guinea

37. Criminalisation meant that not all sex workers, transgender people and men who have sex with men felt comfortable to access health services or disclosing their status. Moreover, one study has shown that 45 per cent of a sample of sex workers operating in a setting that has criminalised sex work had negative mental health scores⁶⁶.

e) Namibia

38. The Special Rapporteur on extreme poverty and human rights on her finding and recommendations regarding the protection of the rights of people living poverty and social exclusion in Namibia are as follows.
39. The Special Rapporteur found that criminalization of sex work in Namibia lies at the foundation of a climate of stigma, discrimination and violence surrounding sex work. The Special Rapporteur found that stigma, discrimination and violence often discourage sex workers from accessing public services, particularly health care, thereby violating their rights as well as hampering efforts to reduce the spread of HIV/AIDS. Particularly concerning is lack of by sex workers to comprehensive sexual and reproductive health services, including access to safe and legal abortion.⁶⁷

VII. Positive impact on the right to health as a result of decriminalisation

40. This section deals with the protection of the right to health freedoms and entitlements that yield positive outcomes of sex workers in a country that has decriminalised sex work.

f) New Zealand

41. In 2003 the Prostitution Reform Act (PRA) was passed in New Zealand which decriminalised all activities associated with sex work. Prior to this, although sex work itself was not criminalised, all activities associated with it were.
42. A study carried out in Christchurch in 1999 prior to decriminalisation found that only 12 of the 302 sex worker respondents did not go for sexual health checks. General practitioners (GPs) were the most used medical provider for sex workers accessing sexual health services. Of the 251 (83%) women who reported having their own GP, 135 (54%) reported going to that GP for sexual health checks. However, only 84 (62%) of these 135 workers disclosed that they were sex workers to their GP.
43. Post decriminalisation, it is recorded that most participants indicated that they accessed their General Practitioners for their general health needs (91.8%) as well as their sexual health needs (41.3%). A local Sexual Health Centre was the second most utilised facility for sexual health check-ups with one-quarter of participants indicating that this was their preferred option, particularly for managed and private sex workers.

VIII. Conclusion

⁶⁵ Human Rights Watch, "Swept Away": Abuses against Sex Workers in China, 14 May 2013, ISBN: 978-1-62313-0091, available at: <https://www.refworld.org/docid/519b1ee74.html> [accessed 23 August 2021 at 39].

⁶⁶ Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/HRC/14/20, (27 April 2010), para 38.

⁶⁷ Report, Special Rapporteur on extreme poverty and human rights: Mission to Namibia, paras, 50 -51. Available <https://uhri.ohchr.org/en/document/40557237-3572-4047-b412-f33c7e1e6343>.

44. The Special Rapporteur has focused broadly on how laws, policies and practices present obstacles to the enjoyment of the highest attainable standard of physical and mental health for everyone, including sex workers.
45. Criminalisation of sex workers is a form of systemic violence enabled and perpetrated by States, with impunity, and contributes to the high levels of stigma, discrimination, violence, degradation and negative health outcomes
46. Evidence, not morality, should guide law reforms and policy for full sex work decriminalisation.
47. According to research, the effects of criminalization are detrimental.
 - Laws criminalizing sex work worsen health outcomes for sex workers. It has particularly dire consequences for HIV prevention because it stops sex workers – and sometimes their clients – from taking the necessary precautions to lower the risk of transmission. There is clear evidence that sex workers are over-represented among those with HIV/AIDS.
 - Criminal laws pertaining to sex work also heighten the risk of violence and abuse against sex workers, including by the police.
48. In order to leave no one behind, decriminalisation of sex work, sex workers and clients of sex workers is a necessary part of a right-to-health policy approach. Taking into account the intersecting positions such as race, class, gender identity, migration, disability, sexual orientation, decriminalisation is the only way of reducing systemic violations and abuses and remains the legislative reform that safeguards the rights of sex workers.
49. There are several non-criminal options that can eliminate stigma and violence against sex workers and protect their rights. For example, policy choices such as social welfare policies, protection of socio-economic rights, support programs, ensuring sex workers have effective access to justice when violence and exploitation occur, and programs to eliminate stigma against sex workers, should be promoted.
50. The Special Rapporteur supports the right of sex workers to have the enjoyment of the highest attainable standard of physical and mental health and that can only be achieved through decriminalisation.