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**Human Rights Council**  
**Working Group on discrimination against women and girls**Thirty-ninth session  
Geneva, 15–19 January 2024**Eliminating discrimination against sex workers and securing their human rights****Guidance document of the Working Group on discrimination against women and girls\****Summary*

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-care and social services, impeded access to justice, interference with private and family life and exclusion from civil, political and cultural life. The Working Group on discrimination against women and girls has prepared the present document on eliminating discrimination against sex workers and securing their human rights pursuant to Human Rights Council resolutions 15/23 and 50/18. With the present document, the Working Group aims to raise the visibility of violations of the human rights of sex workers under different policy regimes, to clarify and reaffirm international human rights standards and to make recommendations for States and other stakeholders.

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\* Agreement was reached to publish the present document after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. 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-care and social services, impeded access to justice, interference with private and family life and exclusion from civil, political and cultural life.<sup>1</sup> Although 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 polarized views on the relationship among sex work, feminism and human rights have restricted any real progress in protecting the human rights of sex workers.

2. The Working Group on discrimination against women and girls considers that it is high time for the discrimination, marginalization and stigmatization of sex workers to be addressed by human rights bodies so that their human rights are protected. With this in mind, the present document, informed by the views of sex workers,<sup>2</sup> is aimed at raising the visibility of violations of their human rights under different policy regimes, to clarify and reaffirm international human rights standards and to make recommendations for States and other stakeholders to further realize the human rights of sex workers. With the present document, the Working Group hopes to contribute to building solidarity among movements and ensuring that no one is left behind. Before analysing human rights standards and making recommendations, the Working Group provides an overview of the main feminist approaches to sex work, as well as the main legislative and regulatory models.

## II. Different feminist perspectives

3. Sex work<sup>3</sup> is a gendered phenomenon and arrangements within sex work sectors tend to follow existing patriarchal, racial, class-based and nationalistic hierarchies. In many sex work sectors, most of those who sell sexual services are women, and most of those who buy them are men. Moreover, gender systems are one of the core regulatory frameworks for sexuality.<sup>4</sup> Hence, sex work has been at the centre of feminist considerations.

4. Despite the different identities and experiences of people involved in sex work (as affected by, inter alia, sex, sexual orientation, gender identity, race, citizenship, socioeconomic background and sex work market, and how they intersect), the topic has been predominantly discussed from the perspective of two polarized ideological positions.<sup>5</sup> On

<sup>1</sup> See Open Society Foundations, "Common human rights violations experienced by sex workers" (2011). 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. The Working Group expresses its gratitude to the interlocutors for their time and expertise. The main author of the present document, 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 the document. The document benefited from reviews by Alice Miller, Christina Zampas and Trajche Janushev, for which the Working Group also expresses its gratitude.

<sup>3</sup> The term "sex work" was coined by sex workers' rights activists to resist the dominant representation of sex work or prostitution as an illegal, immoral and dangerous activity and emphasize the labour aspect. Although a broader term, in the present document, the term "sex work" is used to refer to the selling of sexual services for money or other economic gain, as a term preferred by persons who sell sexual services. The term "prostitution" is used when referencing specific legal provisions or using direct citations. See Open Society Foundations, "Understanding sex work in an open society" (April 2019). Available at <https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>.

<sup>4</sup> Joyce Outshoorn, "The political debates on prostitution and trafficking of women", *Social Politics*, vol. 12, No. 1 (Spring 2005), pp. 141–155.

<sup>5</sup> There are, however, many feminist perspectives on prostitution, including liberal, radical, socialist, Marxist, existentialist, postmodern and postcolonial. See Sarah Bromberg, "Feminist issues in prostitution", paper presented at the International Conference on Prostitution at California State University, Northridge, United States of America, 1997. Available at

one side, the abolitionist feminist position frames sex work as violence against women and sex workers as victims and argues for the criminalization of clients.<sup>6</sup> On the other side, there is a feminist position that defines sex work as a matter of choice and sex workers as rational agents, and advocates for the full decriminalization of voluntary adult sex work.<sup>7</sup> A third perspective, which challenges dichotomous thinking, recognizing the agency of sex workers as well as the social, economic and political constraints in which this agency is exercised 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 the full decriminalization of adult sex work from a harm reduction perspective.

5. 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 that should benefit from labour and social protections and argues for the full decriminalization of sex work and for involving sex workers in the development, implementation and evaluation of public policies.<sup>10</sup>

6. The Working Group finds that the dominant polarized discussions about sex work do not reflect its complexity and the different experiences of persons involved in it. These divisive debates have not led to a reduction in the discrimination, violence and other human rights abuses that sex workers face, and are counterproductive. The Working Group recognizes that sex work is a way of earning money for some people and is concerned by the discrimination and human rights violations faced by people who engage in this activity.

7. In examining sex work from a human rights perspective, the Working Group focuses 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

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[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 Jane Scoular, "The 'subject' of prostitution: Interpreting the discursive, symbolic and material position of sex/work in feminist theory", *Feminist Theory*, vol. 5, No. 3 (December 2004), pp. 343–355.

<sup>6</sup> This is a position of radical feminists such as Kathleen Barry, *The Prostitution of Sexuality* (New York, New York University Press, 1996); Sheila Jeffreys, *The Idea of Prostitution* (North Geelong, Australia, Spinifex Press, 1997); Catherine A. MacKinnon, "Trafficking, prostitution, and inequality", *Harvard Civil Rights: Civil Liberties Law Review*, vol. 46, No. 2 (Summer 2011); and Melissa Farley, ed., *Prostitution, Trafficking and Traumatic Stress* (New York, Routledge, 2004).

<sup>7</sup> The so-called sex radicals and some sex workers' rights activists have even positioned sex workers as subverters of patriarchy. See Frédérique Delacoste and Priscilla Alexander, eds., *Sex Work: Writings by Women in the Sex Industry* (San Francisco, Cleis Press, 1998).

<sup>8</sup> This perspective is situated mostly within postmodern and postcolonial theories and often reflects labour rights work. See Maggie O'Neill, *Prostitution and Feminism: Towards a Politics of Feeling* (Cambridge, United Kingdom of Great Britain and Northern Ireland, Polity, 2001); Julia O'Connell Davidson, *Prostitution, Power and Freedom* (Ann Arbor, University of Michigan Press, 1998); Jane Scoular, *The Subject of Prostitution: Sex Work, Law and Social Theory* (Abingdon, United Kingdom, Routledge, 2015); and Ivana Radačić, Marija Antić and Mirjana Adamović, "Sex workers' professional activities in the interplay of structure and agency", *Croatian Political Science Review*, vol. 59, No. 2 (forthcoming).

<sup>9</sup> Gregor Gall, *Sex Worker Union Organising: An International Study* (Basingstoke, United Kingdom, Palgrave Macmillan, 2006); Global Network of Sex Work Projects, "History". Available from <https://nswp.org/history>; and Kamala Kempadoo and Jo Doezema, eds., *Global Sex Workers: Rights, Resistance, and Redefinition* (New York, Routledge, 1998).

<sup>10</sup> See "Sex workers in Europe manifesto". Available at [https://www.opensocietyfoundations.org/uploads/4519572c-ebbf-45c8-980c-d8b36da1f050/manifesto\\_2005.pdf](https://www.opensocietyfoundations.org/uploads/4519572c-ebbf-45c8-980c-d8b36da1f050/manifesto_2005.pdf); European Sex Workers Rights Alliance, "Feminists for sex workers: Our manifesto", March 2023. Available at [https://www.eswalliance.org/the\\_femifesto](https://www.eswalliance.org/the_femifesto); and Global Network of Sex Work Projects, "Consensus statement on sex work, human rights and the law", 2013. Available at <https://www.nswp.org/resource/nswp-publications/nswp-consensus-statement-sex-work-human-rights-and-the-law>.

fact that deciding to practise 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-transgender violence, racism, socioeconomic marginalization, 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 during 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.”

8. 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. In the present document, before clarifying standards and making recommendations, the Working Group will discuss the human rights implications of different legislative models.

### III. Different policy approaches

9. Different feminist perspectives have, in recent times, informed sex work policy approaches.<sup>11</sup> For example, liberal feminist perspectives have influenced legislation in the Netherlands (Kingdom of the) and New Zealand.<sup>12</sup> On the other hand, radical feminist perspectives have influenced the adoption of the client criminalization model (also known as “end demand”), first in Sweden and then in other countries. In addition to these approaches, in some jurisdictions (such as the United States of America, excluding some counties in the State of Nevada), there is full criminalization (of sex workers, clients and the third parties). In many jurisdictions, the organizing, managing and facilitating of prostitution are criminalized and, in some countries (primarily former communist countries), the selling of sex is additionally treated as an administrative or misdemeanour offence.<sup>13</sup> Even in jurisdictions in which sex work is not criminalized, many provisions are used against sex workers, in particular those working on the streets. In practice, most regulatory frameworks have elements that are punitive towards sex workers, and all have human rights implications.<sup>14</sup>

10. In addition to the complexity of the systems, the regulation of sex work is characterized by large grey areas between the legal and the illegal spheres, which creates a situation of legal uncertainty and often breaches international human rights standards. Further, the implementation of sex work policies is characterized by the wide and often arbitrary exercise of power by enforcement agencies, whether the police, councils or social welfare agencies. In addition, most policies are implemented in a way that targets the most vulnerable sex workers – those working on the streets.<sup>15</sup> Lastly, laws that are discriminatory against LGBTIQ communities, restrictive migration policies, the conflation of trafficking in persons for the purpose of sexual exploitation and sex work and impeded access to reproductive rights in many countries, together with widespread anti-migrant, racist and anti-LGBTIQ sentiments and socioeconomic injustice, all contribute to the disadvantageous position of sex workers, in particular transgender women, migrants and members of racial

<sup>11</sup> Of course, feminist discourses are not the only or necessarily the most dominant discourses on regulating sex work. Other frameworks include public order, public security, public health and the combating of trafficking in persons. Sex work discourse is also becoming relevant in policymaking.

<sup>12</sup> The Kingdom of the Netherlands introduced legalization in 2000; in 2003, New Zealand adopted a softer model of the full decriminalization of sex work. Those approaches will be discussed below. See also Joyce Outshorn, “Debating prostitution in the parliament: a feminist analysis”, *European Journal of Women’s Studies*, vol. 8, No. 4 (November 2001), pp. 472–490; and Alison Laurie, “Several sides to this story: feminist views of prostitution reform”, in *Taking the Crime out of Sex Work*, Gillian Abel and others, eds. (Bristol, Bristol University Press, United Kingdom, 2010).

<sup>13</sup> See Global Network of Sex Work Projects, “Global mapping of sex work laws”, December 2021. Available at <https://www.nswp.org/sex-work-laws-map>.

<sup>14</sup> The Global Network of Sex Work Projects has found that one or more aspects of sex work in some form are criminalized in 193 countries and dependencies (see *ibid.*).

<sup>15</sup> Jane 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*, vol. 37, No. 1 (March 2010), pp. 12–39.

and ethnic minorities, as was noted during the consultations. States are failing to guarantee that sex workers fully enjoy their human rights without discrimination.

## 1. Different criminalization models

11. In jurisdictions in which sex workers are criminalized, violations of their rights are numerous and range from arbitrary arrests (for simply standing on the street or for having condoms on their person), a lack of respect for the right of defence, police abuses (extortion of money or sexual services, discrimination and degrading treatment) and failure to be protected from violence by private individuals to a lack of access to adequate health care.<sup>16</sup> Even in jurisdictions in which sex work itself is not criminalized, many related activities are, and this significantly harms sex workers.<sup>17</sup> For example, criminalization of third party activities may lead to the criminalization not only of the managers, organizers and facilitators of sex work, 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 criminalized for pimping, even where there is no element of exploitation among them.<sup>18</sup> Moreover, sex workers may be penalized under the criminalization of soliciting and advertising of prostitution.

12. In addition, sex workers – particularly those working outdoors – may be indirectly criminalized through the criminalization of behaviours and activities adopted by marginalized and disadvantaged communities (of which sex workers are often part), such as the criminalization of drug use and possession, the criminalization of certain sexual orientations or gender identities, and homelessness.<sup>19</sup> Sex workers may be charged with offences such as loitering, vagrancy, impeding the flow of traffic, congregating for the purposes of prostitution, public indecency and 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 the police powers to directly or indirectly target sex workers, criminalization models facilitate systemic violence and undermine sex workers’ health and safety.<sup>21</sup> As stressed by sex workers during the consultations, the criminalization of sex work furthers violence and fosters stigma, increases the risk of HIV and other sexually transmitted infections and impedes access to justice, thus undermining sex workers’ human rights.

## 2. “End demand” approach

13. The model of the criminalization of clients also has problematic human rights implications and has been widely criticized by sex workers, including during the

<sup>16</sup> Sex Workers’ Rights Advocacy Network, *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* (Budapest, Association Against AIDS (JAZAS) and Anti-trafficking Action (ASTRA), 2015); Sladjana Baros and others, *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* (Belgrade, 2017); Ivana Radačić and Marija Antić, “Criminalisation of sex workers: Rethinking the public order”, *The International Journal of Human Rights*, vol. 26, No. 8 (2022), pp. 1374–1393; and Jerushah Rangasami and others, “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> Global Network of Sex Work Projects, “Global mapping of sex work laws”.

<sup>18</sup> Baros and others, *Law Above All and Court Practices*; and Radačić and Antić, “Criminalisation of sex workers”.

<sup>19</sup> Sex Workers’ Rights Advocacy Network, *Failures of Justice*.

<sup>20</sup> Sex Worker Inclusive Feminist Alliance, “Impact of criminal law on the health, safety and human rights of sex workers”, *OpinioJuris*, 21 June 2023. Available at <http://opiniojuris.org/2023/06/21/impact-of-criminal-law-on-the-health-safety-and-human-rights-of-sex-workers/>; and Open Society Foundations, “Laws and policies affecting sex work” (New York, 2012). Available at <https://www.opensocietyfoundations.org/publications/laws-and-policies-affecting-sex-work>.

<sup>21</sup> Sex Worker Inclusive Feminist Alliance, “Impact of criminal law on the health, safety and human rights of sex workers”.

consultations held by the Working Group.<sup>22</sup> The broad criminalization of all sex work-related activities of third parties (including renting an apartment to a sex worker) leads to violations of sex workers' right to private life, right to housing and right to non-discrimination.<sup>23</sup> It has been shown that this model intensifies the surveillance and harassment of sex workers by the police, leading to increases in arrests and detentions, as well as to the deportation of migrant sex workers, while simultaneously undermining sex workers' access to justice. By pushing sex work underground, it also furthers the stigmatization and discrimination of sex workers, who report impeded access to housing and financial institutions, as well refusal of services.<sup>24</sup> The model also has a negative impact on sex workers' health and safety, as recognized by the Joint United Nations Programme on HIV/AIDS (UNAIDS), which found that the criminalization of the clients of sex workers negatively affected sex workers' health and safety, including by reducing condom access and use, and increasing the rates of violence.<sup>25</sup> During consultations held by the Working Group, participants explained how, due to clients' fear of the police, sex work had been displaced to less safe places and sex workers had less control over working conditions, including screening clients. Moreover, they described how the illegal status of sex work had left them without any social protection during the time of the coronavirus disease (COVID-19) pandemic.

### 3. Legalization

14. Legalization, 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 where and how sex work can be practised and who can practise it, which leaves many sex workers outside the scope of legality. In certain jurisdictions, sex workers have to register with the police; in others, mandatory testing for sexually transmitted infections or restrictions in terms of sex, age and citizenship with regard to who can work as a sex worker are in place.<sup>26</sup> Migrants in Europe who come from outside the European Union and undocumented migrants throughout the world, who in many jurisdictions where sex work is legalized make up the majority of sex workers, cannot legally work as sex workers, and street work is often criminalized.

15. Hence, stringent regulations leave a wide (and more vulnerable) section of the sexual services industry criminalized. The legalization model has similar elements to criminalization models and is hence also opposed by the sex workers' movement.

### 4. Full decriminalization

16. The full decriminalization approach, implemented in New Zealand, the State of New South Wales in Australia and recently in Belgium,<sup>27</sup> is a model that is widely advocated by the sex workers' rights movement. Unlike the legalization model, which implies the adoption

<sup>22</sup> Ibid; Global Network of Sex Work Projects, "The impact of 'end demand' legislation on women sex workers" (Edinburgh, 2018). Available at [https://www.nswp.org/sites/default/files/pb\\_impact\\_of\\_end\\_demand\\_on\\_women\\_sws\\_nswp\\_-\\_2018.pdf](https://www.nswp.org/sites/default/files/pb_impact_of_end_demand_on_women_sws_nswp_-_2018.pdf); and European Sex Workers Rights Alliance, "Myth-busting the Swedish model" (2022). Available at [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: Criminalization of Sex Work in Norway* (London, 2016). Available at <https://www.amnesty.org/en/documents/eur36/4034/2016/en/>.

<sup>24</sup> Global Network of Sex Work Projects, "The impact of 'end demand' legislation on women sex workers".

<sup>25</sup> "HIV and sex work", Human Rights Fact Sheet Series, (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).

<sup>26</sup> In Austria, sex workers have to register with the police; in Hungary and Türkiye, testing for sexually transmitted infections is mandatory. Only unmarried cisgender women can work as sex workers in Greece and Türkiye, and they may work only in brothels. Working in brothels is also the sole form of registered sex work in Ecuador, in which mandatory testing for *sexually transmitted diseases is also mandatory*. Senegal allows only women who are nationals to practise sex work (Global Network of Sex Work Projects, "Global mapping of sex work laws").

<sup>27</sup> Global Network of Sex Work Projects, "Sex workers in Belgium celebrate historic vote for decriminalisation in parliament", 25 March 2022. Available at <https://www.nswp.org/news/sex-workers-belgium-celebrate-historic-vote-decriminalisation-parliament>.

of sex work-specific laws, decriminalization removes all sex work-specific provisions. However, it does not entail an absence of any regulation. Instead, regulations are put in place that are aimed at ensuring respect and protection for 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.

17. While certain problems, such as stigma and societal discrimination, persist even in decriminalized contexts, evidence from New Zealand shows that decriminalization has improved the working conditions and rights of sex workers and has resulted in improved relationships with the police.<sup>28</sup>

## IV. International standards on sex work

18. In the past few decades, much progress has been made on sex workers' rights, largely as a result of advocacy by sex workers. A number of United Nations bodies, including special procedure mandate holders, have recognized 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 provisions on sex work. Recently, the European Court of Human Rights declared admissible a case concerning the criminalization of clients in France.<sup>29</sup> In addition, in some jurisdictions, the criminalization of sex work has been declared unconstitutional by the highest national courts.<sup>30</sup>

### 1. Working Group on discrimination against women and girls

19. The Working Group first addressed the topic in its 2016 report on eliminating discrimination against women with regard to health and safety, in which it demonstrated that the criminalization of sex work was one example of a discriminatory use of criminal law. It held that enforcement of punitive provisions to regulate women's control over their own bodies generated stigma and discrimination and violated women's human rights, which had infringed women's dignity and bodily integrity by restricting their autonomy to make decisions about their own lives and health. It noted that criminal laws and other punitive regulations had led to the imposition of 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 sex work placed them in a situation of injustice, vulnerability and stigma and was contrary to international human rights law. Recalling that international organizations and human rights bodies had called upon States to ensure that women involved in sex work enjoyed the right to access sexual health services, were free from violence and discrimination and had access to equal protection under the law, the Working Group recommended that States decriminalize sex work.<sup>31</sup>

20. In its 2019 report on women deprived of liberty, the Working Group emphasized that female sex workers were likely to face deprivation of liberty because of laws and social attitudes seeking to control women's morality and sexuality, noting that women sex workers were disproportionately affected and targeted by law enforcement agents, including where

<sup>28</sup> Gillian Abel, Lisa Fitzgerald and Cheryl Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers* (University of Otago, Christchurch, 2007); and Lynzi Armstrong, "From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry", *The British Journal of Criminology*, vol. 57, No. 3 (May 2017), pp. 570–588.

<sup>29</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "UN expert welcomes European Court decision to hear appeal against French anti-prostitution law", 5 September 2023. Available at <https://www.ohchr.org/en/press-releases/2023/09/un-expert-welcomes-european-court-decision-hear-appeal-against-french-anti>.

<sup>30</sup> Global Network of Sex Work Projects, "Sex workers in Portugal welcome new constitutional court ruling", 19 May 2023. Available at <https://www.nswp.org/news/sex-workers-portugal-welcome-new-constitutional-court-ruling>; and Sarthak Gupta, "India's Supreme Court rules to protect sex workers amid the COVID-19 pandemic", Open Global Rights, 21 July 2022. Available at <https://www.openglobalrights.org/india-supreme-court-rules-to-protect-sex-workers-amid-covid-pandemic/>.

<sup>31</sup> A/HRC/32/44, paras. 76, 84, 85 and 106 (e).

sex work itself was not a criminal offence, in which case provisions on loitering, indecency or migration-related offences were applied. The Working Group noted that in addition to incarceration, sex workers could be confined to “re-education” institutions, designed to “cure” them of “deviant behaviour”. Again, it recommended that States ban laws and practices policing, targeting, punishing or confining women in relation to sex work.<sup>32</sup>

21. In its 2020 report on women’s human rights in the changing world of work, the Working Group noted that the criminalization of women sex workers increased their vulnerability to violence and compounded their exclusion from essential services.<sup>33</sup> In its 2023 report on the gendered inequalities of poverty, it noted that the criminalization of sex workers was often linked to socioeconomic status and marginalization.<sup>34</sup>

22. In addition, in 2020, the Working Group, together with the Working Group on Arbitrary Detention, issued an amicus curiae brief in a case before the Federal High Court of Nigeria concerning the arbitrary arrest, detention and abuse of women suspected of sex work, exposing the discriminatory impact of punitive laws.<sup>35</sup> 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, the Working Group issued a communication in support of the criminal law amendments aimed at the decriminalization of sex work in South Africa.<sup>36</sup>

## 2. Other United Nations human rights bodies

23. The Committee on the Elimination of Discrimination against Women has also defined the criminalization of sex workers as a form of gender-based discrimination. In its general recommendation No. 19 (1992), the Committee, noting the vulnerability of sex workers to violence, as well as the role of poverty and armed conflict in pushing some women into “prostitution”, held that the law often facilitated marginalization and violence (including by State agents) and that punitive and protective measures were required to protect sex workers.<sup>37</sup> In its general recommendation No. 35 (2017), the Committee recommended that States parties repeal all legal provisions that were discriminatory against women and thereby enshrined, encouraged, facilitated, justified or tolerated any form of gender-based violence, in particular provisions criminalizing “women in prostitution”.<sup>38</sup> This was also expressed in a number of the Committee’s concluding observations, in which it requested State parties to review laws penalizing sex workers, repeal provisions on administrative offences, suspend the imposition of fines and decriminalize women in prostitution. In some concluding observations to States parties, the Committee expressed concern over the lack of safe working conditions for sex workers, but this has not been done consistently.<sup>39</sup>

24. In addition to the Working Group and the Committee on the Elimination of Discrimination against Women, other special procedure mandate holders have also addressed sex work. For example, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in his 2010 report to the Human Rights Council, noted that the criminalization of sex work had negative consequences on sex workers’ health and safety. Recalling that basic rights afforded to other workers were denied to sex workers because of criminalization, as illegal work did not afford the protections that legal work required, such as occupational health and safety standards, he discussed in detail the consequences of criminalization on poor health outcomes, stigmatization, violence and harassment and working conditions, and he also criticized the conflation of sex work and trafficking in persons for the purpose of sexual exploitation. He concluded that the decriminalization or legalization of sex work with appropriate regulation formed a necessary part of a right-to-health approach to sex work. He recommended that States repeal all laws

<sup>32</sup> A/HRC/41/33, paras. 36 and 80 (c).

<sup>33</sup> A/HRC/44/51, para. 43.

<sup>34</sup> A/HRC/53/39, para. 32.

<sup>35</sup> See [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>36</sup> See communication ZAF 1/2023, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27841>.

<sup>37</sup> Paras. 14–16.

<sup>38</sup> Para. 29 (c) (i).

<sup>39</sup> For example, CEDAW/C/HUN/CO/7-8 and CEDAW/C/HUN/CO/7-8/Corr.1, para. 22.



criminalizing sex work and practices around it, establish appropriate regulatory frameworks within which sex workers could enjoy the safe working conditions to which they were entitled, and implement programmes and educational initiatives to allow sex workers access to appropriate, quality health services.<sup>40</sup> In 2022, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health referred to sex work in her report on violence and its impact on the right to health, noting that the criminalization of sex work enabled abuse and exploitation and that sex workers were exposed to conditions including exposure to sexually transmitted infections and also to violence, extortion and intimidation by clients and police.<sup>41</sup>

25. The Special Rapporteur on trafficking in persons, especially women and children, in her 2020 report to the General Assembly, raised the issue of sex work in connection with anti-trafficking laws, noting that, in many countries, anti-trafficking laws had been used to repress sex work and had resulted in further violations of women's rights, including restrictions on their freedom of movement and migration. She also noted that victims of trafficking could be criminalized for engaging in sex work in jurisdictions in which it was criminalized, and called for the decriminalization of sexual services and all related behaviour not amounting to exploitation.<sup>42</sup>

26. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in his 2022 report to the General Assembly, identified sex work as a form of informal employment that often led to exploitation and abuse. He noted that lack of proper regulation meant that many sex workers were not entitled to social protection in times of need and that, where sex work was criminalized, sex workers often fell under the influence of criminals. He also noted the heightened vulnerability of migrants and those subject to discrimination on the basis of minority status or caste or descent-based discrimination.<sup>43</sup>

### 3. Other United Nations bodies

27. The Secretary-General addressed the criminalization of sex work in his 2016 report on the fast track to ending the AIDS epidemic. He expressed the view that the decriminalization of sex work could reduce violence, harassment and HIV risk and called upon States to remove punitive laws, policies and practices that violated human rights, including the criminalization of sex work.<sup>44</sup>

28. A number of United Nations entities, including UNAIDS, the United Nations Population Fund (UNFPA), the World Health Organization (WHO) and the United Nations Development Programme (UNDP), as well as the World Bank, have called for the decriminalization of voluntary adult sex work.<sup>45</sup> The Global Commission on HIV and the Law, set up by UNDP and UNAIDS, concluded that States should repeal laws prohibiting consenting adults from buying or selling sex, as well as laws otherwise prohibiting commercial sex, such as laws against "immoral earnings", "living off the earnings of prostitution" and "brothel keeping".<sup>46</sup> Similarly, WHO concluded that the criminalization of sex work was one of the barriers to effective HIV services for key populations and vulnerable groups and called for the decriminalization of sex work and the elimination of the unjust application of non-criminal laws against sex workers.<sup>47</sup> In a statement made in 2017,

<sup>40</sup> A/HRC/14/20, paras. 27, 36–46 and 76 (b).

<sup>41</sup> A/HRC/50/28, para. 71.

<sup>42</sup> A/75/169, paras. 41 and 70.

<sup>43</sup> A/77/163, para. 46.

<sup>44</sup> A/70/811 and A/70/811/Corr.1, paras. 53 and 75 (f).

<sup>45</sup> Sex Worker Inclusive Feminist Alliance, "Impact of criminal law on the health, safety and human rights of sex workers".

<sup>46</sup> *Risks, Rights and Health* (New York, UNDP, 2012), p. 43. Available at <https://www.undp.org/publications/hiv-and-law-risks-rights-health>.

<sup>47</sup> *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* (Geneva, 2016), pp. 86 and 87. Available at <https://www.who.int/publications/i/item/9789241511124>.

12 United Nations entities recommended that States review and repeal laws that criminalized or otherwise prohibited adult consensual sex work.<sup>48</sup>

#### 4. International non-governmental organizations

29. 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”.<sup>49</sup> Principle 17, on sex work, 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.

30. The decriminalization of sex work is also advocated by a number of human rights organizations, including Amnesty International, Human Rights Watch, Open Society Foundations, the International Community of Women Living with HIV, the International Women’s Health Coalition, the Association for Women’s Rights in Development, the Global Alliance against Traffic in Women and the Global Fund for Women.<sup>50</sup>

## V. Approach of the Working Group

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

32. Decriminalization would not jeopardize the protective functions of the State in relation to combating exploitation, as other criminal law provisions, including anti-trafficking laws, would be used in cases of violence, compulsion or exploitation. However, anti-trafficking measures should not be implemented in a way that infringes sex workers’ rights, as recognized by the Special Rapporteur on trafficking in persons, especially women

<sup>48</sup> UNAIDS, Office of the United Nations High Commissioner for Refugees, United Nations Children’s Fund, World Food Programme, UNDP, UNFPA, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), International Labour Organization, United Nations Educational, Scientific and Cultural Organization, WHO, OHCHR and IOM, “Joint United Nations statement on ending discrimination in health-care settings” (2017), p. 3. Available at <https://www.unaids.org/en/resources/documents/2017/ending-discrimination-in-health-care-settings>.

<sup>49</sup> 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 then Chair of the Working Group, Ivana Radačić, was involved in the development of the text as a member of the expert group.

<sup>50</sup> Sex Worker Inclusive Feminist Alliance, “Impact of criminal law on the health, safety and human rights of sex workers”.

and children, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

33. In addition to removing any criminal law provisions relating to sex work, the Working Group calls for ending the practice of the arbitrary application of other punitive provisions against sex workers, including those on vagrancy, public decency and public order, and forms of “re-education”, as well as ending the practice of criminalizing poverty.<sup>51</sup>

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

35. 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.

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

37. 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. They should also be 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 taken into account in the development of any new law or policy.

38. Lastly, 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.

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<sup>51</sup> See [A/HRC/53/39](#).