

The Real Impact of the Swedish Model on Sex Workers

#8

**Sex Work and Violence:
Obligations of the State**

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The State has an obligation to investigate all acts of violence against women, including systemic failures to prevent violence against women. Where a specific incident of violence takes place in the context of a general pattern of violence against women, there is a wider scope required to comply with the due diligence obligation. The investigation should also be conducted with a gender perspective and consider a victim's special vulnerability.

(Rashida Manjoo, UN Special Rapporteur on Violence Against Women, 2013)¹

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Introduction

Sex workers are vulnerable to violence in many settings. They often experience violence at the hands of the police, but also from clients and those for whom violence is an expression of hatred or social disdain. Many experiences of violence recounted by sex workers around the world stem from stigma and discrimination, which are heightened when sex work is criminalised. Violence against sex workers may take the form of rape and other sexual violence, beating and other physical violence sometimes in acts amounting to torture, and, in the worst cases, homicide, as well as numerous forms of psychological and emotional violence.² Furthermore, vilification, hate speech, and social isolation can be violent, even if they do not directly attack bodily integrity. Male, female and transgender sex workers are all vulnerable to violence.

The murder of Petite Jasmine in Sweden, a horrific outcome of the stigma and related abuse caused by the Swedish model of criminalising the purchase of sex, prompted the production of this series of papers on sex work and human rights, including the right of sex workers to be protected from violence. The intention of these papers is to highlight that where there is criminalisation of sex work – including criminalisation of third parties such as clients – violence against sex workers will, and does, flourish. This paper explains that violence and related abuse against sex workers are a violation of fundamental human rights and suggests some ways to use human rights norms to address this widespread abuse.

It should be noted that depicting sex work as inherently victimising and a form of violence against sex workers – who are portrayed as having no agency and requiring protection in the form of removing them from sex work – contradicts the spirit of human rights protections to which Sweden and other Nordic countries are committed. Under human rights law, all persons have the agency to choose their means of livelihood, and all persons enjoy the right to bodily security and to lives of dignity and freedom from stigma and discrimination.

1 Human Rights Council, GA Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, Para 73, 14 May 2013.

2 WHO, UNFPA, UNAIDS, NSWP, World Bank. Implementing comprehensive HIV/STI programmes with sex workers: practical applications from collaborative interventions, chapter 2, 'Addressing violence against sex workers,' Geneva, 2013, p 23.



Sex workers face many forms of violence and vilification

I want to report the crime but don't think I can win, but I don't have any organisation to back me up, so if I can't win then it will only get worse afterwards.

(A sex worker who was raped by a police officer in Phnom Penh, 2009)³

Information on violence against sex workers is, in some places, very limited. This leads to underestimation of the problem of violence, but the lack of data is not surprising. As noted in the annexes to the UNAIDS Guidance Note on HIV and Sex Work:

“... sex workers who suffer violence or abuse at the hands of clients or other persons are too fearful to report these offenses to the police. They have little reason to expect that the police would help them.”⁴

In many settings, police may be the principal perpetrators of violence, making it especially unlikely that sex workers would turn to them to report violent abuse. Even where the police are not direct perpetrators of violence, if they harass, isolate, or marginalise sex workers, they deepen stigma and make it easier for sex workers to be vilified. Even if sex workers have the courage to report incidents of violence, in many places it is likely that no official action would be taken. In some places such as Sweden, police and social service agents may work together to target sex workers as a way to arrest clients, or to make the case that sex workers are unfit parents. These actions also make it unlikely that sex workers will exercise their right to seek the protection of the state from violence and other abuse. (See also the paper in this series on child custody.)

Nonetheless, thanks to the work of sex worker organisations as well as some human rights groups and researchers, there are many accounts of violence and related abuse against sex workers.⁵ A full summary is beyond the scope of this paper, but a few examples may convey the depth of these abuses. The most extreme form of violence is homicide, and it is shocking that sex workers remain vulnerable to violent murder in many places. The case of Petite Jasmine is unfortunately not an isolated case, and is far from the only such story from the global north. One of the worst cases of serial killing in Canada involved the murder of twenty-six sex workers in the Vancouver area in 1999–2001. Police did not take reports of missing sex workers seriously, noting that they ‘come and go,’ or suggesting that they were keeping out of sight after disputes over drugs.⁶ In at least one case they ignored the complaint of a sex worker who came to them having already been beaten: she was later killed.⁷ Following a long period of police neglect, the murdered sex workers were found buried on the pig farm of the killer, who is now serving a life sentence. Shockingly, after the closure of that case, sex workers continued to be targeted by killers in parts of Canada.⁸

EVEN WHERE THE POLICE ARE NOT DIRECT PERPETRATORS OF VIOLENCE, IF THEY HARASS, ISOLATE, OR MARGINALISE SEX WORKERS, THEY DEEPEN STIGMA AND MAKE IT EASIER FOR SEX WORKERS TO BE VILIFIED.

3 Amnesty International. ‘Breaking the Silence –Sexual Violence in Cambodia’, [ASA 23/001/2010] 2010

4 UNAIDS. Guidance Note on HIV and Sex Work, annex 1, ‘The legal and policy environment and the rights of sex workers,’ Geneva, 2011.

5 See, e.g., WHO, UNFPA, UNAIDS, NSWP, World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical applications from collaborative interventions*, esp. chapter 2, ‘Addressing violence against sex workers,’ pp 19–40. Geneva, 2013.

6 Y Jiwani, ML Young. Missing and murdered women: reproducing marginality in news discourse. *Canadian Journal of Communication* 31: pp. 895–917, 2006.

7 T Theodore, ‘Police were callous to beaten sex worker, missing-women inquiry told,’ *Globe and Mail*, 27 February 2012;

8 M Hager, K Bolan, ‘Sex trade workers still getting killed a decade after Pickton arrest,’ *Vancouver Sun*, 13 May 2014.



NOT ONLY DOES MISAPPLYING CRIMINAL LAW TO SEX WORK LEAD TO VIOLENCE, BUT FAILURE TO USE CRIMINAL LAW TO PROSECUTE CRIMES AGAINST SEX WORKERS ALSO CONTRIBUTES TO VIOLENCE.

Sex worker organisations are best placed to document violent abuse against sex workers, in addition to other kinds of abuse that may not constitute physical or sexual violence but are in many ways as demeaning and inhumane as violence. Many of their reports have been gathered by the Global Network of Sex Work Projects.⁹ Some mainstream human rights organisations have also documented homicides and other violence against sex workers. The murder of at least nine sex workers in Honduras, in early 2014, was characterised by Amnesty International as a crime of impunity because ‘those who murder sex workers believe they can literally treat these human beings as garbage to be disposed of’.¹⁰ Amnesty International has also documented extreme mistreatment amounting to torture and extortion of sex workers by police in a number of countries including Nigeria.¹¹ Human Rights Watch also documented violent abuse of sex workers by police and other officials in China, including in ‘re-education through labour’ detention centres.¹²

In addition to many reports from human rights organisations and sex worker organisations, UN Special Rapporteurs on Violence Against Women have also highlighted violence against sex workers in some reports. In Papua New Guinea, the Special Rapporteur documented police violence, sexual abuse, and arbitrary detention, faced by sex workers in Port Moresby.¹³ In El Salvador, the Special Rapporteur investigated reports of killed and missing women and noted that ‘many of the murdered women come from the most marginalised sectors of society: they are poor, from rural areas, of ethnic origin, sex workers or maquila workers.’¹⁴

Many factors underlie violence against sex workers. It is however clear that criminalisation of sex work – or of elements of the practice of sex work

– makes violence more likely in many ways.¹⁵ Firstly, violence at the hands of the police or detention officers – either in detention settings or during stops, searches, and arrests – is much less likely if the police do not have authority under the law to interfere with sex work. Secondly, sex workers are much more able to organise and protect themselves from violence through their organisations if they are not rendered criminals by the law. Indeed, criminalisation of sex work may also be a direct barrier to being able to register a sex worker organisation as a legal NGO. Sex worker organisations in many places have enabled sex workers to share information on dangerous clients, to negotiate safer working conditions, and otherwise to protect themselves from violence. Thirdly, criminalisation feeds social disdain and marginalisation, which may manifest themselves in violent hate crimes. Criminalisation of sex work or sex work practices adds to the multiplicity of other human rights violations that may underlie violence against sex workers, including discrimination based on socio-economic status, class, caste, race, ethnicity, migration status, and use of illicit drugs.

Not only does misapplying criminal law to sex work lead to violence, but failure to use criminal law to prosecute crimes against sex workers also contributes to violence. For example, there are few laws in the world that explicitly protect sex workers from sexual violence, and there are too many jurisdictions where sexual violence in particular is simply disregarded or considered an ‘occupational hazard’ of sex work.¹⁶ It is equally demeaning to depict all aspects of sex work as inherently violent and all sex workers as victims without agency: this depiction fundamentally undermines sex workers’ status as persons, like all others, who can seek the protection of the law from abusive actions of society or the state.

9 Global Network of Sex Work Projects, ‘Violence against sex workers’ (web inventory), <http://www.nswp.org/category/tags/violence-against-sex-workers>

10 L Ladutke. The ‘most dangerous city in the world’ – especially for sex workers. Amnesty International (blog), 18 January 2014.

11 Amnesty International. ‘Welcome to hell fire’: torture and other ill-treatment in Nigeria. London, 18 September 2014.

12 Human Rights Watch. ‘Swept away’: abuses against sex workers in China. New York, May 2013.

13 Human Rights Council, GA Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: Mission to Papua New Guinea, A/HRC/23/49/Add.2, para 46, 18 March 2013.

14 Human Rights Council, GA Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, para 68, 23 May 2012.

15 See also UNAIDS, Guidance Note and annexes, op.cit.

16 K Gilbert. Rape and the sex industry. *Criminology Australia* 3(4): pp. 14–17, 1992.

International standards on the protection of women from violence

According to international human rights law, every person enjoys protection of his or her ‘security of person.’¹⁷ While some experts have understood ‘security of person’ to be particularly relevant to the protection from arbitrary detention, the expert committee that oversees compliance with the International Covenant on Civil and Political Rights has made it clear that protection from violence is central to this idea:

The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury. The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.¹⁸

This interpretation is especially relevant to sex workers who are vulnerable to violent abuse both by ‘officials of states parties’ and ‘in the public sphere’. Depicting sex work as inherently a form of violence against sex workers, is contrary to the spirit of sex workers as human beings with the right to choose to live as sex workers and to be free of ‘intentional infliction of bodily or mental injury’.

While there was a desire on the part of UN member states to build on the two bedrock international covenants on civil/political rights and economic/social rights to have specialised treaties on the rights of groups such as women, children, and persons with disabilities, there have also been efforts by some member states to have more specific protections against violence, especially violence against women. These efforts have been more successful at regional levels than at the global level.

It is both significant and unfortunate that the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), a legally binding treaty covering a wide range of women’s rights issues, is silent on the explicit matter of violence against women. It has proven very difficult for the UN member states to agree to legally binding language on violence against women. The UN General Assembly’s 1994 Declaration on the Elimination of Violence Against Women refers to this challenge, noting that states seeking to protect women from violence ‘should not invoke any custom, tradition or religious consideration to avoid their obligations.’¹⁹ This wording relates to the fact that there may be some UN member states that are unready to condemn all violence against women as a crime because they see some violence against women as culturally acceptable. While the 1994 declaration contains valuable language, it is however not legally binding.

DEPICTING SEX WORK AS INHERENTLY A FORM OF VIOLENCE AGAINST SEX WORKERS, IS CONTRARY TO THE SPIRIT OF SEX WORKERS AS HUMAN BEINGS WITH THE RIGHT TO CHOOSE TO LIVE AS SEX WORKERS AND TO BE FREE OF ‘INTENTIONAL INFLICTION OF BODILY OR MENTAL INJURY’.

17 International Covenant on Civil and Political Rights. UN General Assembly, 1966, article 9(1).

18 UN Human Rights Committee. General Comment no. 35. Article 9: Liberty and security of person, 28 October 2014.

19 UN GA Resolution, Declaration on the Elimination of Violence against Women [A/RES/48/104], 23 February 1994.

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The CEDAW Committee, which oversees compliance with the women's rights Convention, has recommended to member states that the intent of several of the non-discrimination provisions of CEDAW is to protect women against violence in the home, the workplace, and elsewhere, even if 'violence' does not appear in the Convention.²⁰ Although these recommendations do not have the force of law, it is helpful that the CEDAW Committee urges governments – when reporting on the status of women – to give accounts of their activities in the area of 'laws against family violence and abuse, rape, sexual assault, and other gender-based violence' and 'effective legal measures including penal sanctions, civil remedies, and compensatory provisions, to protect women against all kinds of violence, including inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace.'²¹ In addressing violence against women, the CEDAW Committee underscored the vulnerability of sex workers to violence, noting that 'their status, which may be unlawful, tends to marginalise them,' adding that sex workers 'need the equal protection of laws against rape and other forms of violence.'²²

In relation to legally binding law at the regional level, the first regional human rights treaty that explicitly addressed violence against women was approved by the Organization of American States in 1994: the 'Inter-American Convention on the Prevention, Punishment and Eradication of

Violence Against Women.' The Convention notes that some women are particularly vulnerable to violence 'by reason of [...] their race or ethnic background or their status as migrants, refugees or displaced persons.'²³ It further notes the need for special protections for 'women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.'²⁴ Although sex work is not explicitly mentioned, it is clear that some sex workers would fall into the listed categories of vulnerability.

The 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,' also known as the Maputo Protocol of 2003, is the Africa region's main women's rights treaty and it explicitly prohibits violence against women. Article 4 of the Protocol urges governments to 'enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex, whether the violence takes place in private or public' and to give priority to the enforcement of such laws.²⁵

The European region came later to the issue of developing a convention on gender-based violence. Its convention deals with gender-based violence and domestic violence, and was approved for member state consideration in 2011 and came into force with the required ten ratifications in 2014.²⁶ While the European convention also addresses the need for special attention to vulnerable women and girls, it does not make explicit reference to sex work.

20 Committee on the Elimination of Discrimination against Women. General recommendation no. 12, 8th session, 1989; also General recommendation no. 19, 11th session, 1992. At: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

21 CEDAW Committee, General Recommendation No. 19 (11th session, 1992): Violence against women.

22 Ibid.

23 Organization of American States. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

24 Ibid., Article 9.

25 African Union. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 2nd Ordinary Session of the African Union Assembly, Maputo, 11 July 2003.

26 Council of Europe. Convention on preventing and combating violence against women and domestic violence. Council of Europe Treaty Series no. 210.

...REMOVING SEX WORK AND RELATED PRACTICES FROM CRIMINAL LAW CAN QUICKLY LOWER THE RISK OF DAY-TO-DAY VIOLENCE FOR SEX WORKERS.

Redress in courts and other state response

Judicial decisions, and in a few a few cases legislation at regional and national levels, demonstrate that persistent violent abuse against sex workers does not need to be inevitable. Sex worker organisations in many parts of the world have trained their members as paralegals to advise and accompany sex workers pursuing justice or have otherwise organised access to legal services for their members.²⁷ Where sex workers have been able to pursue claims for protection against or redress from violence, they have sometimes won cases in national or regional courts. For example, a sex worker in Spain won a judgment by the European Court of Human Rights in 2012 whereby the court found that the government of Spain had failed to protect sex workers from police violence.²⁸ (In general, cases in regional courts can be pursued only when all remedies in national courts have been exhausted). In recent years, some national and provincial courts have also issued decisions that assert the need to protect sex workers from extreme abuse. For example, in India, where sexual violence against female sex workers is a persistent crisis, a New Delhi judge ruled in 2014 against youths accused of gang-raping a sex worker of Rwandan origin. The judge explicitly rejected the idea put forward by the defence – that since the woman was a sex worker, raping her was not a crime.²⁹ Furthermore, although it had taken a long time to progress to this point, a 2014 judgment from a provincial court in South Africa brought a conviction in the case of a rape and murder of a sex worker in 2008.³⁰

Sex workers have initiated many other efforts to protect themselves from violence, including anti-violence training for police, establishing safe spaces, creating hot-lines and other ways to report violence, ‘know your rights’ information and/or campaigns, and safe and respectful health services for survivors of violence.³¹

However it is notable – and sadly ironic – that in places such as Sweden, policies that are based on a construction of sex work as inherently violent fundamentally undermine use of the justice system to end abuse of sex workers, including violence and vilification, from society. Under this model, the justice system, human rights institutions, and social services see themselves as required to protect women from sex work, rather than to protect sex workers from abuse, as is suggested by international human rights law. Moreover, in relation to human rights institutions, where Sweden and other Nordic countries have been held up as global leaders, the construction of sex work as inherently violent opposes the emerging consensus on the rights of sex workers as expressed by the global organisation of national human rights commissions.³²

Although there are relatively few examples of decriminalisation of sex work, those that exist serve to demonstrate that removing sex work and related practices from criminal law can quickly lower the risk of day-to-day violence for sex workers. Indeed, in New Zealand, where sex work was decriminalised in 2003, an expert review of the impact of the law after about five years found that street-based sex workers still felt they were at high risk of violence, but that many sex workers felt for the first time that they could seek the protection of the police when they faced a violent situation.³³ While decriminalisation is not an immediate panacea, it may be one of the most effective single measures for reducing violence against sex workers.

27 See, e.g., WHO et al., op.cit., p. 27; J Csete and J Cohen. Health benefits of legal services for criminalised populations: the case of people who use drugs, sex workers and sexual and gender minorities. *Journal of Law, Medicine and Ethics* 38(4): pp. 816–831, 2010.

28 European Human Rights Court, B.S. v. Spain, Application no. 47159/08, para 62–63, 24 July 2012.

29 ‘Delhi court: being a prostitute doesn’t confer right to violate her,’ *OneIndia*, 12 November 2014, at <http://www.oneindia.com/india/being-a-sex-worker-does-not-confer-right-to-violate-her-court-1559435.html>.

30 Sonke Gender Justice, SWEAT, Sisonke Sex Workers Movement, Women’s Legal Centre. Civil society applaud verdict in sex work murder case and call on the South African Law Reform Commission to urgently recommend the decriminalisation of sex work for the safety of all sex workers (press statement), 26 May 2014, at: <http://www.genderjustice.org.za/news-item/>.

31 WHO et al., op.cit., pp. 30–35.

32 Amman Declaration and Programme of Action, International Coordinating Committee of National Institutions, 7 November 2012, at: <http://nhri.ohchr.org/EN/ICC/InternationalConference/11IC/Background%20Information/Amman%20PoA%20FINAL%20-%20EN.pdf>.

33 Ministry of Justice, Government of New Zealand. Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act of 2003. Wellington, 2008. At: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.

Conclusions and recommendations

...STATE INSTITUTIONS SHOULD DO EVERYTHING POSSIBLE TO ENSURE THAT ALL MECHANISMS RELATED TO PROTECTING WOMEN FROM VIOLENCE CLEARLY ADDRESS THE NEEDS OF SEX WORKERS.

Global-level human rights law (which the UN oversees) and the treaties established by regional human rights bodies do not explicitly prohibit violence against sex workers. But international law prohibiting violence against all persons, as well as commentaries of UN treaty bodies, reports of UN Special Rapporteurs, binding regional prohibitions, and some court decisions, all highlight the vulnerability of female sex workers to violence and the responsibility of states to address this vulnerability. While most states are grossly negligent in this area, there is emerging experience in many countries demonstrating effective measures for protecting women sex workers from violence.

Some actions that should be taken to enable states to realise their human rights responsibility in this area are as follows:

- ▶ **Decriminalisation of sex work, including decriminalisation of both the sale and the purchase of sex:** As already noted, removing sex work and practices involved with sex work from the remit of criminal law would in most places be the most effective single measure to protect female sex workers from violence. Decriminalisation would give the police less of a free hand to engage in abusive and violent practice, enable sex workers to organise for their own protection more easily, and, over time, reduce the stigma associated with criminality that causes social disdain and abuse.
- ▶ **Ensuring capacity of sex workers to seek justice:** Where decriminalisation is not immediately possible or during periods of transition to decriminalisation, it should be a priority of governments, international donors, United Nations leaders, and civil society groups focused on human rights, to ensure that sex workers to have access to legal services and the mechanisms of justice. National human rights commissions should make violence against sex workers a priority in their work. In addition, there should be adequately funded and specialised legal aid services to deal with violence against sex workers. Police, prosecutors, and judges should also be trained to enable them to prosecute crimes against sex workers as effectively as possible. Furthermore, state institutions should do everything possible to ensure that all mechanisms related to protecting women from violence clearly address the needs of sex workers.
- ▶ **Participation of sex workers in documentation of abuses and follow-up action:** A central part of government responsibility in protecting sex workers from violence is documenting these abuses, an activity in which sex workers and their organisations should participate meaningfully. Follow-up actions, including ensuring that reported abuses are pursued in the criminal justice system, must be transparent and independently monitored.



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► **UN leadership:** There is a clear need for legally binding UN-level human rights law on violence against women that recognises the vulnerability of women in sex work to violent abuse. As well as member states, UN leaders in the areas of women's rights, criminal justice, HIV/AIDS, and protection from torture and other cruel punishment, should actively and publicly take up the cause of establishing lasting legal protections for women from all forms of violence.

► **Human rights institutions:** In countries such as Sweden – and others where law and policy are based on the demeaning and dehumanising idea of sex workers fundamentally lacking agency – human rights institutions and leaders should educate policy-makers and the public on fundamental human rights standards, under which sex workers have the right to choose their means of livelihood, to live in dignity, and to be free of stigma and vilification.



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