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Under-Secretary-General of the United Nations  
Executive Director, UN Women

**16 October 2016**

Dear H.E. Mlambo-Ngcuka,

## CONSULTATION SEEKING VIEWS ON UN WOMEN APPROACH TO SEX WORK, THE SEX TRADE AND PROSTITUTION

Thank you for the opportunity to respond in writing to the consultation on a potential policy position of UN Women on 'sex work, the sex trade and prostitution'.

In May 2016 Amnesty International completed a three-year process to develop its own policy on ['state obligations to respect, protect and fulfil the human rights of sex workers'](#). This process included a review of international human rights standards as well as academic, UN agency and other human rights-based evidence from around the world and a global consultation which involved our National Sections and Structures engaging with their members, external agencies, and rights holders. Amnesty International carried out research in four countries- [Argentina](#), [Hong Kong](#), [Norway](#), and [Papua New Guinea](#)- resulting in reports. This lengthy and resource intensive process allowed us to consider this complex topic in depth, meaningfully engage with a wide range of stakeholders and gather a significant evidence base to inform our policy position.

Information on this process can be found [here](#), and we would welcome the opportunity to discuss it and our work with UN Women.

**In light of Amnesty International's experience in this context, we recommend that UN Women extend the period of its consultation to allow for more comprehensive engagement with sex workers and other key stakeholders.** We are concerned that the format and length of the consultation, which is based on consultation via an email address, employs technical UN language and is subject to a short two-month deadline for response, will not allow for broad and meaningful engagement as a significant proportion of sex workers, particularly in the global south, may not have easy access to the Internet. It also does not allow adequate time for sex worker groups to engage with their members and feed back to UN Women.

Our answers to the consultation questions are set out below. However, as an initial matter we would like to raise an over-arching issue, which we are unable to address in allotted word limit.

## CONFLATION OF ADULT CONSENSUAL SEX WORK WITH HUMAN TRAFFICKING

The term "sex trade" is referred to in the consultation email. This term is unclear in meaning/definition and we are concerned that it inaccurately equates adult consensual sex work with trafficking in persons for sexual exploitation. Trafficking in persons, including into the sex sector, is not the same as sex work. Sex work refers to a contractual arrangement where sexual services are negotiated between



consenting adults with the terms of engagement agreed upon between the seller and the buyer.<sup>1</sup> Trafficking is non-consensual. There is increasing evidence that when the two phenomena are conflated in law, policy and/or enforcement, this leads to harmful practices which violate human rights.

International standards recognise the distinction between adult consensual sex work and human trafficking. The delineation between “traffic in women” and “exploitation of prostitution” in the UN Convention on the Elimination of All Forms of Discrimination in Women (CEDAW) recognizes the two issues as distinct.<sup>2</sup> The definition of human trafficking set out in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) emerged from debates which centred on how to address consensual sex work.<sup>3</sup> Those advocating for the inclusion of all prostitution as a form of trafficking in the Protocol’s definition argued that it is always inherently abusive and women cannot consent to it. This proposal would have undermined the framework of the trafficking definition – requiring the three elements of action, means and purpose to be present – and would have equated women in sex work with children, for whom the “means” of the trafficking definition does not apply. The Human Rights Caucus working at the negotiations of the Trafficking Protocol observed that “[s]uch a stance historically has ‘protected’ women from the ability to exercise their rights.”<sup>4</sup> The UN Office on Drugs and Crime (UNODC) has published an Issue Paper detailing that the UN Trafficking Protocol in Persons does not equate these issues.<sup>5</sup>

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<sup>1</sup> See UNDP, Global Commission on HIV and the Law, *Risks, rights & health*, 2012, p. 41.

<sup>2</sup> See also CEDAW General Recommendation 19 (violence against women), UN Doc. A/47/38, 1992, para. 16; CEDAW, Concluding Observations: Indonesia, UN Doc. CEDAW/C/IDN/CO/5, 2007, paras. 28-29.

<sup>3</sup> See for example, A. Gallagher, ‘Human rights and the new UN Protocols on trafficking and migrant smuggling: A preliminary analysis’, *Human Rights Quarterly*, 2001, pp. 975–1004; J. Doezema, ‘Who gets to choose? Coercion, consent and the UN Trafficking Protocol’, *Gender and Development*, Vol.10, No. 1, 2002; M. Ditmore and M. Wijers, ‘The negotiations on the UN Protocol on Trafficking in Persons’, *Nemesis*, 2003; J. Doezema, *Sex slaves and discourse masters: The construction of trafficking*, 2010. The split on the issue of prostitution/sex work amongst delegates and civil society groups in the negotiations exerted strong influence on the final text: “The focus on sex workers has however had tremendous influence on the trafficking debate also after the adoption of the Protocol, which is evident e.g. in the focus on trafficking of women and of women and children for sexual exploitation, a focus which is not necessarily promoting the human rights of trafficking victims, nor the fight against traffickers in the most effective way, as will be considered below.” UNESCO, K. Touzenis, *Trafficking in Human Beings: Human rights and transnational criminal law, developments in law and practices*, 2010, p.32. Debates about prostitution/sex work have emerged in many other negotiations where they have been used as a tactic by some states and non-state actors to undermine rights protections in the negotiations, including those at the Fourth World Conference on Women (1995), the UN General Assembly Special Session on HIV/AIDS in 2001, and the UN General Assembly Special Session on children in 2002. See International Gay and Lesbian Human Rights Commission (IGLHRC) and the Center for Women’s Global Leadership (CWGL), C. Rothschild, S. Long and S. Fried, *Written out: How sexuality is used to attack women’s organizing*, 2005.

<sup>4</sup> J. Doezema, ‘Who gets to choose? Coercion, consent and the UN Trafficking Protocol’, *Gender and Development*, Vol.10, No. 1, 2002 (quoting the Human Rights Caucus, 1999, p.21).

<sup>5</sup> UNODC, *Issue paper: The concept of ‘exploitation’ in the Trafficking in Persons Protocol*, 2015, p.7. See also A.T. Gallagher, *The International Law of Human Trafficking*, 2010, p. 39 (“There was clear consensus within the drafting group that the Trafficking Protocol definition was not to extend to prostitution or pornography per se”.) This is supported by the Council of Europe, working from the Council of Europe Convention, which clarifies a distinction between the prostitution and trafficking in persons: “It must be clear that the forms of exploitation covered by the Convention are not limited to sexual exploitation. Moreover, trafficking in human beings differs from “prostitution” in that it is a new form of slavery which can include sexual exploitation, but not necessarily. Prostitution can only be qualified as “trafficking in human beings” if one of the actions e.g. “recruitment” and means, “threat or use of force referred to under at. 4 of the Convention have been used.” Statement by the Head of the Minorities, Media and Equality Department, Directorate General of Human Rights, Council of Europe as published in Proceedings from the regional seminar in Riga, 2006. Directorate General of Human Rights, Council



Conflation of human trafficking and consensual sex work creates confusion amongst practitioners, media and the public and can lead to harmful laws and policies that negatively impact trafficked persons, migrants, and sex workers, among others.<sup>6</sup> Anti-trafficking organizations, including the Global Alliance Against Traffic in Women (GAATW), La Strada International, and the Freedom Network have documented the harm done to sex workers, entertainment workers, migrants, and others (including people who have been trafficked) by anti-trafficking laws, policies, programmes and initiatives that conflate sex work and trafficking.<sup>7</sup>

Additionally, such interventions can impede trafficked persons from reaching out for legal protection and support, and/or leaving commercial sex.<sup>8</sup> For example, some states respond by restricting women's rights, including their freedom of movement, in order to prevent trafficking in persons, particularly into the sex sector.<sup>9</sup> The first two holders of the mandate of the UN Human Rights Council's Special Rapporteur on trafficking in persons, especially women and children have raised concerns about failures of the criminal justice system whereby trafficked persons are not identified and the principle of non-prosecution or non-punishment for status offences is breached; leading to the arrest, detention,

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of Europe, Strasbourg, 2007.

<sup>6</sup> UNAIDS, *Guidance note on HIV and sex work*, 2012, p.14; Urban Justice Center, Sex Workers Project, *The danger Of conflating trafficking and sex work - A position paper*, 2007, available at: [sexworkersproject.org/media-toolkit/downloads/20070330-](http://sexworkersproject.org/media-toolkit/downloads/20070330-BriefingPaperOnConflationOfTraffickingAndSexWork.pdf)

[BriefingPaperOnConflationOfTraffickingAndSexWork.pdf](http://sexworkersproject.org/media-toolkit/downloads/20070330-BriefingPaperOnConflationOfTraffickingAndSexWork.pdf); GAATW, *Collateral damage: The impact of anti-trafficking measures on human rights around the world*, 2007; Urban Justice Center, Sex Workers Project, *Submission on Mexico to the general discussion of rural women to the United Nations Committee on the Elimination of all forms of Discrimination Against Women (CEDAW)*, 2013, available at: [sexworkersproject.org/downloads/2013/20130919-cedaw-recommendations-rural-women-mexico.pdf](http://sexworkersproject.org/downloads/2013/20130919-cedaw-recommendations-rural-women-mexico.pdf); NSWP, *Briefing Paper #03 Sex work is not trafficking*, 2011 available at: [www.nswp.org/sites/nswp.org/files/SW%20is%20Not%20Trafficking.pdf](http://www.nswp.org/sites/nswp.org/files/SW%20is%20Not%20Trafficking.pdf).

<sup>7</sup> See GAATW, *Collateral damage: The impact of anti-trafficking measures on human rights around the world*, 2007; La Strada International NGO Platform - United against human trafficking in Europe, *Statement 17 December: International day to end violence against sex workers, 2013*, available at: [lastradainternational.org/lsidocs/LSI%20statement%2017%20December%20-%20end%20violence%20against%20sex%20workers%20day%20def.pdf](http://lastradainternational.org/lsidocs/LSI%20statement%2017%20December%20-%20end%20violence%20against%20sex%20workers%20day%20def.pdf); Freedom Network USA, *Human trafficking and sex workers rights*, 2015, available at: [freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf](http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf). The harms resulting from this conflation have also been documented by anti-trafficking experts, health professionals, funders, women's rights groups, and sex worker rights groups. See for example, Urban Justice Center, Sex Workers Project, *The danger of conflating trafficking and sex work - A position paper*, 2007; Urban Justice Center, Sex Workers Project, Working group on sex work and human rights, *Human trafficking and sex work*, available at: <http://sexworkersproject.org/media-toolkit/downloads/05-HumanTraffickingAndSexWork.pdf>; CREA, NSWP, OSF, *Sex Work and trafficking: A donor-activist dialogue on rights and funding* (conference report), 2008, available at: [www.opensocietyfoundations.org/sites/default/files/dndreport\\_2009.pdf](http://www.opensocietyfoundations.org/sites/default/files/dndreport_2009.pdf); Georgina Perry, "Sex work and the London 2012 Olympics - How was it for you?", *The Trafficking Research Project*, available at: [thetraffickingresearchproject.wordpress.com/2012/09/14/sex-work-and-the-london-2012-olympics-how-was-it-for-you/](http://thetraffickingresearchproject.wordpress.com/2012/09/14/sex-work-and-the-london-2012-olympics-how-was-it-for-you/); Empower Foundation, *Hit & run: The impact of anti-trafficking policy and practice on Sex Workers' Human Rights in Thailand*, 2012; A.T. Gallagher, "Two cheers for the Trafficking Protocol", *Anti-Trafficking Review*, Issue 4, 2015. L. Maher, et al., 'Conflicting rights: How the prohibition of human trafficking and sexual exploitation infringes the right to health of female sex workers in Phnom Penh, Cambodia', *Health and Human Rights*, 2015, available at: [www.hhrjournal.org/2015/04/30/conflicting-rights-how-the-prohibition-of-human-trafficking-and-sexual-exploitation-infringes-the-right-to-health-of-female-sex-workers-in-phnom-penh-cambodia/](http://www.hhrjournal.org/2015/04/30/conflicting-rights-how-the-prohibition-of-human-trafficking-and-sexual-exploitation-infringes-the-right-to-health-of-female-sex-workers-in-phnom-penh-cambodia/).

<sup>8</sup> See New York Anti-Trafficking Network, *Ending Trafficking: #Talk Traffic Video Series*, NYATN 2015, available at: [nyatn.org/talktraffic/](http://nyatn.org/talktraffic/) (see particular episodes on *Human Rights Approach* and *Solutions*).

<sup>9</sup> Special Rapporteur on Violence Against Women, its Causes and Consequences, speaking at the 'Prostitution, Trafficking and the Global Sex Trade in Women' conference, NYU Law School, 2001, referenced in J. Doezeema, 'Who gets to choose?: Coercion, consent and the UN Trafficking Protocol', *Gender and Development*, Vol. 10, No. 1, 2002, 25.



charge and prosecution of women for engaging in sex work.<sup>10</sup>

Anti-trafficking experts express concern that expanding the definition of trafficking in persons to include all cases of commercial sex undermines initiatives directed to ending trafficking by diluting attention and effort: “The equation of prostitution with trafficking...permits states to claim easy credit for virtually effortless arrests and prosecutions that do little or nothing to address those egregious forms of sexual exploitation that the Protocol was intended to challenge.”<sup>11</sup> The Special Rapporteur on trafficking in persons has also urged that more attention be paid to the structural root causes of trafficking and has recognised that laws prohibiting sex work do not prevent trafficking and can discourage victims of trafficking from approaching police.<sup>12</sup>

**Amnesty International encourages UN Women to reflect the legally recognized and practical distinctions between adult consensual sex work and trafficking in persons for sexual exploitation in any policy position and approach to these issues.**

**QUESTION 1) THE 2030 AGENDA COMMITS TO UNIVERSALITY, HUMAN RIGHTS AND LEAVING NOBODY BEHIND. HOW DO YOU INTERPRET THESE PRINCIPLES IN RELATION TO SEX WORK/TRADE OR PROSTITUTION?**

Amnesty International considers recognition of the universality of human rights, realization of those rights and the principle of ‘leaving no one behind’ to be fundamental to any approach to sex work.

The full realization of sex workers’ human rights provides the means by which states can ensure that fewer women have to rely on sex work as a means of economic survival; that those who engage in sex work can have greater control over their working environments and secure protection from, and redress for, human rights violations and abuses against them, including violence and exploitation; and that women can leave sex work if, and when, they choose. The 2030 agenda provides a practical vehicle through which sex workers’ human rights can be realised. The fundamental premise of the SDGs that “no one will be left behind,” requires that sex workers should be fully included in the global development process.<sup>13</sup> **As such, there is an urgent need for states, UN agencies, international human rights bodies, and civil society to fully include sex workers in the development of effective laws, policies and practices that respect, protect and fulfil their human rights (SDG 16.7).**

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<sup>10</sup> See Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc. A/HRC/20/18, 2012, para. 23; Commission on Human Rights, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Addendum: Mission to Lebanon, UN Doc. E/CN.4/2006/62/Add.3, 2006, para. 58; Commission on Human Rights, Report of the Special Rapporteur on trafficking in persons, especially women and children, UN Doc. E/CN.4/2005/71, 2004, para. 10.

<sup>11</sup> A.T. Gallagher and J.N. Ezeilo, “The UN special rapporteur on trafficking: A turbulent decade in review”, *Human Rights Quarterly*, Vol.37, No.4, 2015, pp. 913-940.

<sup>12</sup> “[The Special Rapporteur] wants to shift the attention away from exclusively tackling consumer demand and to underline the critical need to ensure that undivided attention is paid to prevention strategies that focus on tackling the structural root causes of trafficking while respecting the human rights of trafficked persons.” UN General Assembly, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, UN Doc. A/65/288, 2010, para. 36. Human Rights Council, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children* on her mission to Jordan, UN Doc A/HRC/32/41/Add.1. paras 17 & 29

<sup>13</sup> Transforming our world: the 2030 Agenda for Sustainable Development (preamble), available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.



Sex work is generally a highly stigmatized activity and sex workers routinely face prejudice, discrimination and human rights violations and abuses at the hands of state and non-state actors.<sup>14</sup> Sex workers are frequently subjected to punishment, blame and social exclusion for transgressing social, sexual and gender norms or stereotypes and are excluded from policy-making. **The negative impacts of legal and policy approaches to sex work and trafficking- including many which violate human rights- are also frequently excused or justified on the basis that they are crucial to the eradication of sex work and therefore in the ‘best interests’ of sex workers and/or gender equality.<sup>15</sup> This approach directly contradicts the principle of universality and the aim of ‘leaving no one behind’.**

**Policies that aim to support and improve the situation of marginalized women must empower individuals and not compromise their safety or criminalize the contexts in which they live and work. It is crucial that international bodies, national governments and civil society respect the agency of sex workers and their decisions to engage in, remain in or leave sex work and recognise that they are best placed to help define the most appropriate mechanisms to maximize their own welfare and safety. Amnesty International considers that decriminalization of sex work is a necessary element of a human rights based approach to sex work.**

QUESTION 2) THE SUSTAINABLE DEVELOPMENT GOALS (SDGS) SET OUT TO ACHIEVE GENDER EQUALITY AND TO EMPOWER WOMEN AND GIRLS. THE SDGS ALSO INCLUDE SEVERAL TARGETS PERTINENT TO WOMEN'S EMPOWERMENT, SUCH AS

- A) REPRODUCTIVE RIGHTS
- B) WOMEN'S OWNERSHIP OF LAND AND ASSETS
- C) BUILDING PEACEFUL AND INCLUSIVE SOCIETIES
- D) ENDING THE TRAFFICKING OF WOMEN
- E) ELIMINATING VIOLENCE AGAINST WOMEN.

HOW DO YOU SUGGEST THAT POLICIES ON SEX WORK/TRADE/PROSTITUTION CAN PROMOTE SUCH TARGETS AND OBJECTIVES?

The SDGs contain a range of targets that support the realization of women's and girls' human rights, including those who sell sex. Some sex workers make the decision to engage in sex work as a matter of preference: for some it can offer flexibility and control over working hours or higher pay than other options. For many, the decision to engage in sex work is a reflection of limited livelihood options. State responses to sex work that rely principally on enforcement of criminal laws against sex work to discourage and/or penalize those involved have a detrimental impact on sex workers' human rights and do not offer support, or provide alternatives to people who sell sex.

States have obligations under international law to provide an adequate social safety net<sup>16</sup> and address intersectional discrimination and structural inequalities<sup>17</sup> to ensure that people do not have

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<sup>14</sup> See Amnesty International reports, "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (AMR 13/4042/2016); The human cost of 'crushing' the market: Criminalization of sex work in Norway, (EUR/36/4034/2016); Harmfully Isolated: Criminalizing sex work in Hong Kong (ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (ASA 34/4030/2016).

<sup>15</sup> See for example: The human cost of 'crushing' the market: Criminalization of sex work in Norway, (EUR/36/4034/2016)

<sup>16</sup> The right of everyone to social security is recognized in international law, including in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>17</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core



to rely on sex work as their means of survival. Additionally, Goals 1 to 8 of the SDGs set out multiple targets<sup>18</sup> to achieve the economic empowerment of individuals affected by poverty and inequality, and ensure access to resources for women and girls that will increase and improve their choices and reduce the extent to which many engage in sex work because they lack options.

Additionally, SDG commitments to improve health, reduce maternal mortality, ensure universal access to sexual and reproductive healthcare services (SDG 3.7 and 5.6) and end the HIV/AIDS epidemic (SDG 3.3) by 2030 are of central importance to sex workers who frequently report discrimination and exclusion from healthcare settings. Evidence collected by Amnesty and others indicates that criminalization undermines sex workers' right to health services and information, in particular those relating to sexual and reproductive health and HIV; undermining global HIV prevention efforts.<sup>19</sup> States have an immediate obligation to "repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine [an] individual's or particular group's access to sexual and reproductive health facilities, services, goods and information".<sup>20</sup>

SDG target 5.2 aims to eliminate violence against all women and girls. This will not be achieved without consideration of the high levels of violence that sex workers experience from state and non-state actors. This violence is often a manifestation of the stigma directed towards sex workers and is compounded by criminal and other punitive laws and policies against sex work which inhibit sex workers' ability to seek state protection from violence and and/or compel them to operate in covert ways that compromise their safety.

For many sex workers, reporting crimes they experience means putting themselves at risk of criminalization and/or penalization on the basis of their involvement in sex work. This can lead to seizure of earnings, potential loss of livelihood through related sanctions and/or monitoring by the police to detect their clients.<sup>21</sup> As a result, sex workers are frequently unable to seek redress for crimes

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Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, 2010 CEDAW/C2010/47GC.2 paras 16 & 18

<sup>18</sup> For example: Progress in ending poverty (SDG 1) and hunger (SDG 2) and providing free, equitable and quality education (SDG 4), as well as, targets to ensure greater provision of social protection (SDG 5.4), access to economic resources (SDG 5a), employment (SDG 8.5)

<sup>19</sup> See generally Global Commission on HIV and the Law, *Risks, Rights and Health*, 2012; UNAIDS Guidance Note on HIV and Sex Work, Annex 3; UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012; UNDP, UNFPA, APNSW, SANGRAM, *The Right(s) Evidence: Sex, Violence and HIV in Asia – A Multi-country Qualitative Study*, 2015. For example, AI's research indicates that police in many countries frequently confiscate and cite the use of condoms as evidence of sex work offences, creating a disincentive to their use and further jeopardizing the right to the highest attainable standard of health. See Amnesty International reports, *The human cost of 'crushing' the market: Criminalization of sex work in Norway* (EUR/36/4034/2016); *Harmfully Isolated: Criminalizing sex work in Hong Kong* (ASA 17/4032/2016); *Outlawed and abused: Criminalizing sex work in Papua New Guinea* (ASA 34/4030/2016). See also Open Society Foundations, *Criminalizing Condoms, How policing practices put sex workers and HIV services at risk in Kenya, Namibia, Russia, South Africa, the United States and Zimbabwe*, 2012; Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, 2012; M.H. Wurth *et al.*, 'Condoms as Evidence of Prostitution in the United States and the Criminalization of Sex Work', *Journal of the International AIDS Society*, 2013.

<sup>20</sup> CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 49(a). The UN Committee on Economic Social and Cultural Rights indicates that states must specifically ensure that sex workers have access to the full range of sexual and reproductive health care services See CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 32.

<sup>21</sup> See for example: Amnesty International reports, *"What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina* (AMR 13/4042/2016); *The human cost of*



committed against them; offering impunity to perpetrators.<sup>22</sup> In addition, the stigmatized and criminalized status that sex workers experience provides law enforcement officials in many countries with the opportunity to harass, extort and perpetrate physical and sexual violence against them, also often with impunity.<sup>23</sup> When they are not threatened with criminalization/penalization, sex workers are better able to collaborate with law enforcement to identify perpetrators of violence and abuse, including human trafficking.<sup>24</sup>

Laws that criminalize the buying of sex or organization of sex work, such as brothel-keeping or solicitation laws, often force sex workers to work in ways that compromise their safety.<sup>25</sup> Bans on buying sex can lead sex workers to take risks to protect their clients from detection by police, such as visiting locations determined by their clients.<sup>26</sup> Laws prohibiting the organization of sex work often ban sex workers from working together or with security or support staff or renting secure premises; leaving them open to prosecution and penalties if they try to operate in safety.

SDG 5.2 calls for elimination of trafficking and sexual and other types of exploitation. Human trafficking amounts to a grave human rights abuse and states have an obligation under international human rights and criminal law to ensure that it is recognized as a criminal offence and to guarantee effective legal protections against it. States must investigate, prosecute and bring traffickers to justice and guarantee victims access to justice and reparation.

**Amnesty recommends that in promoting human rights and the SDGs, UN Women should recognise the multiple realities of women’s lives, their autonomy to make decisions and should fully involve sex workers in its work. We would also strongly recommend against endorsing criminal and punitive approaches that in practice compromise the safety of sex workers and lead to human rights violations**

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*‘crushing’ the market: Criminalization of sex work in Norway (EUR/36/4034/2016); Harmfully Isolated: Criminalizing sex work in Hong Kong (ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (ASA 34/4030/2016).*

<sup>22</sup> C.M. Lowndes et al., ‘Injection Drug Use, Commercial Sex Work, and the HIV/STI Epidemic in the Russian Federation’, *Sexually Transmitted Diseases*, 2003; ‘Rights, Risks & Health’, p.37 (citing UNIFEM, ‘A legal analysis of sex work in Anglophone Caribbean’, 2007; USAID, C. Jenkins, C. Sainsbury, Cambodian Prostitutes’ Union, Women’s Network for Unity, *Violence and exposure to HIV among sex workers in Phnom Penh, Cambodia*, 2006; A. Crago, *Our Lives Matter: Sex Workers Unite for Health and Rights*, 2008, p. 31-32; I. Pauw and L. Brener, ‘You are just whores—You can’t be raped’: Barriers to safer sex practices among women street sex workers in Cape Town’, *Culture, Health and Sexuality*, 2003, pp. 465-81.

<sup>23</sup> See Amnesty International reports, *“What I’m doing is not a crime”: The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (AMR 13/4042/2016); The human cost of ‘crushing’ the market: Criminalization of sex work in Norway (EUR/36/4034/2016); Harmfully Isolated: Criminalizing sex work in Hong Kong (ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (ASA 34/4030/2016); Assaulted and accused: Sexual and gender based violence in Tunisia (MDE 30/2814/2015); Amnesty International, “Welcome to hell fire”: Torture and other ill-treatment in Nigeria (AFR 44/011/2014); Rights, Risks & Health p. 37; Human Rights Watch, *Off the Streets: Arbitrary Detention and other Abuses Against Sex Workers in Cambodia*, 2010; WHO, *Violence Against Women and HIV/AIDS: Critical Intersections, Violence against Sex Workers and HIV Prevention*, Information Bulletin Series, No. 3, 2005.*

<sup>24</sup> See, for example, *Innovative approaches to combat trafficking of women in sex trade by Durbar Mahila Samanwaya Committee (Kolkata)*, Durbar Mahila Samanwaya Committee, available at [www.sexworkeurope.org/sites/default/files/resource-pdfs/dmsc\\_innovative\\_approaches\\_trafficking.pdf](http://www.sexworkeurope.org/sites/default/files/resource-pdfs/dmsc_innovative_approaches_trafficking.pdf); *10 reasons to decriminalize sex work: A reference brief*, Open Society Foundations, p. 6, available at: [www.opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf](http://www.opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf); *UNAIDS guidance note on HIV and sex work*, 2012.

<sup>25</sup> See *Canada (Attorney General) v Bedford*, 2013 SCC 72 [2013] 3 S.C.R. 1101.

<sup>26</sup> I. U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Oslo, 2012.



against them.

## QUESTION 3) THE SEX TRADE IS GENDERED. HOW BEST CAN WE PROTECT WOMEN IN THE TRADE FROM HARM, VIOLENCE, STIGMA AND DISCRIMINATION?

As previously stated, Amnesty has serious concerns regarding use of the phrase 'sex trade'.

Women face entrenched gender discrimination and structural inequalities in most societies. Women bear a disproportionate burden of poverty and make up the majority of sex workers globally.<sup>27</sup> Multiple and intersecting forms of discrimination have an impact on the lives of many sex workers and can play a role in an individual's decision to engage or remain in sex work, as well as their experiences in sex work. Under international human rights law, states have an obligation to combat sex and other forms of direct and indirect discrimination, and ensure that the human rights of all individuals are equally respected, protected and fulfilled.<sup>28</sup> States have a broad obligation to take measures to challenge stereotypes that objectify women<sup>29</sup> and should achieve this end through measures that do not infringe human rights.

Women who sell sex are frequently subjected to harmful gender stereotypes on account of being perceived to transgress traditional notions of what is acceptable sexual behaviour for women.<sup>30</sup> Stigmatization of sex work is also frequently informed by, and enmeshed in racist and colonialist notions of the racialized, sexualized "Other" and/or heteronormative prejudices. Rather than seeking to end violence and combat stigma and discrimination through criminalizing sex work, states should utilize human rights-based measures to challenge stereotypes, such as education and awareness

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<sup>27</sup> J. Vandepitte, R. Lyerla, G. Dallabetta, F. Crabbé, M. Alary, A. Buvé, 'Estimates of the number of female sex workers in different regions of the world', *Journal of Sexually Transmitted Infections*, 82, 2006; HIV and STI Control Board, National Centre for AIDS and STD Control, *Mapping and size estimation of most at risk populations in Nepal, Vol 3: Female Sex Workers*, UN Office on Drugs and Crime, 2011; B. Vuylsteke, H. Vandenhoudt, L. Langat, G. Semde, J. Menten, F. Odongo, A. Anapapa, L. Sika, A. Buve M. Laga, 'Capture–recapture for estimating the size of the female sex worker population in three cities in Côte d'Ivoire and in Kisumu, western Kenya', *Journal of Tropical Medicine and International Health*, 2010; REDLACTRANS, International HIV/AIDS Alliance, What's Preventing Prevention, 'The night is another country: Impunity and violence against transgender women human rights defenders in Latin America', 2012, p. 9, available at: [redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English.pdf](http://redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English.pdf); Best Practices Policy Project, National Center for Transgender Equality, The Red Umbrella Project, 'Meaningful work: Transgender experiences in the sex trade', 2015, available at: [www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report\\_FINAL\\_3.pdf](http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf); S. Baral, C. Beyrer, T. Poteat, 'Human rights, the law, and HIV among transgender people', Working Paper prepared for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, 2011; T. Poteat, A.L. Wirtz, A.Radix, A Borquez, A. Silva-Santisteban, 'HIV risk and preventive interventions in transgender women sex workers', *Lancet*, 2014, pgs. 274–286; WHO, 'Transgender people and HIV: Policy brief, 2015, p. 8, available at: [apps.who.int/iris/bitstream/10665/179517/1/WHO\\_HIV\\_2015.17\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/179517/1/WHO_HIV_2015.17_eng.pdf).

<sup>28</sup> The International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of all forms of Racial Discrimination (CERD); the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD); and the International Convention on the Rights of all Migrant Workers and Members of their Families (CMW), between them comprehensively prohibit discrimination on all grounds, including age, race, caste, ethnicity, disability, sexual orientation, gender identity, marital status, and migrant status. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires governments to address specifically discrimination against women and guarantee substantive equality in all areas.

<sup>29</sup> Article 5a Convention on the Elimination of All Forms of Discrimination against Women

<sup>30</sup> R. Fassinger and J. Arseneau, "Diverse Women's Sexualities", in F. Denmark and M. Paludi, *Psychology of women: A handbook of issues and theories*, 1993.





measures.<sup>31</sup>

**Amnesty supports UN Women's aim of developing a policy on sex work which promotes human rights and recognises the role of gender discrimination in the lives of many sex workers. Recognition of the multi-layered discrimination that many sex workers experience should not detract from the fact that women who are sex workers can and do exercise agency. We would also recommend that UN Women strongly oppose punishing or endangering sex workers through criminalization of sex work and instead support concerted action to confront the structural conditions that can lead women to do sex work and contribute to gender inequalities, violence and discrimination more broadly.**

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<sup>31</sup> For example immediate measures may include reforming discriminatory laws, policies and practices; introducing temporary special measures; building the capacity of state institutions to combat discrimination and promote equality; and public education and awareness-raising programmes and initiatives to promote the enjoyment of the full range of human rights for all, in particular for people at risk of discrimination and marginalization.