



Submission to Special
Rapporteur on violence
against women and girls on
prostitution and violence
against women and girls

PICUM represents a network of 158 organisations working with undocumented migrants in 31 countries, for human rights and social justice.

PICUM's submission begins with some introductory remarks setting out our concerns regarding the framing of the call for input. It then goes on to provide information in the following areas, in response to some of the posed questions:

- The situation of migrant women in sex work
- Impacts of criminalisation on human rights and dignity
- Recommendations

Much of the information for this submission is taken from PICUM's report [Safeguarding the human rights and dignity of undocumented migrant sex workers](#) (September 2019). We also refer the UN SR to this report for further information and country-specific data and examples.

Introduction

PICUM is concerned by the terminology used, bias and false information in the call for input.

International law has not recognised that prostitution or sex work is incompatible with the dignity and worth of the human person. The call goes on to cite international legislation on trafficking in human beings, which sets out specific conditions in which sex work may be trafficking in human beings. This does not apply in all cases of sex work. The 1949 Convention for the Suppression of the Traffic in Persons is outdated and superseded by the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons.

Further, the call sometimes uses prostitution and trafficking interchangeably despite their clear

differences. The treatment of all sex work as human trafficking and vice versa is detrimental both to efforts to reduce human trafficking for sexual and labour exploitation, and to the human rights and safety of migrant sex workers.

We advocate for the use of the terms 'sex work' and 'sex workers' as the terms preferred by those promoting the human rights of sex workers, including sex worker organisations and international organisations such as the [WHO](#) and [UNAIDS](#). While some sex workers also refer to themselves as 'prostitutes', it is generally considered to have negative connotations¹, be stigmatising and correlate with criminalisation, and so contribute to exclusion from services and abuse.

¹ For a brief overview of the historical evolution of the term 'prostitute' see Kate Lister, [Sex workers or prostitutes? Why words matter](#), iNews 5 October 2017.

The situation of migrant women in sex work

There are many reasons why any adult may engage in providing consensual sexual services. For some migrants, discrimination, poverty and lack of alternative employment opportunities can play a huge role, particularly when undocumented. Employment opportunities are often particularly restricted for both cisgender and transgender migrant women. While not all migrant sex workers are women, a majority are, and gender discrimination is a factor for engaging in and shaping experiences of sex work. Critical studies have underlined the need to go beyond the dichotomy between free and forced when looking at the links between migration and the global sex industry, in order to recognise the agency of migrant women in the sex sector².

Regardless of the reasons people start sex work,

people have agency and make choices; providing sexual services is an important livelihood strategy for many. Recognising agency and consent is also essential for sex workers' safety and access to protection and remedy for harm.

There are few possibilities for migrants to work regularly as sex workers, in part due to the lack of recognition of sex work as a form of employment. This means that migrant sex workers often have little choice but to reside and work irregularly. Certain admission schemes, for 'dancers' or 'entertainment' for example, are largely used to recruit sex workers and have restrictive conditions associated with the work permits that can place workers in situations of high dependency and risk.

Multiple layers of precarity and discrimination

Undocumented migrants face immense barriers to accessing services, decent work and justice, regardless of the sector they work in. Their precarious situation vis-à-vis authorities increases their risks of experiencing violence and exploitation and puts them at risk of social exclusion and poverty.

When working as sex workers, undocumented migrants are placed in a doubly precarious situation vis-à-vis state authorities, facing additional discrimination and violence due to stigma and prejudice against sex work, and multiple layers of criminalisation due to their residence status and work.

Impacts of criminalisation on human rights and dignity

Since Sweden introduced the Swedish Sex Purchase Act in 1999, France, Iceland, Ireland, Lithuania,

Northern Ireland, Norway, and Serbia have introduced laws criminalising clients in the last decade, **while**

² Nicola Mai, *Embodied cosmopolitanisms: The subjective mobility of migrants working in the global sex industry*, Gender Place and Culture 20(1):1-18, January 2012.

often continuing to criminalise various aspects of sex work or sex workers themselves³. These new laws have had a devastating impact on sex workers.

Criminalisation of the buying and organisation of sex work forces sex workers to operate in ways that compromise their safety, health, working conditions and access to justice. For example, street-based sex workers have to work in more isolated areas and to reduce the time spent conducting safety screenings of clients in order to avoid identification by law enforcement. Violence is more prevalent in these conditions⁴.

In practice, enforcement actions against sex workers, buyers or organisers frequently lead to migrant sex workers being deprived of their earnings, and undocumented migrant sex workers being arrested, detained and deported. For example, since client criminalisation was introduced in France, Chinese sex workers have been specifically targeted by police for harassment, including more-than-daily identity checks by the same officers, destruction of documents, photographing and threats, as well as immigration enforcement actions leading to their detention⁵. Migrant sex workers have lost income and face increasing vulnerability and rates of poverty.

Being suspected, accused or charged for offences related to sex work can also result in migrant sex workers losing their status, being unable to regularise their status or becoming a priority for deportation, even if they are in the country

regularly. Stigmatisation against sex work can weigh against people in 'good character' and other assessments which frequently form part of criteria for regularisation, or in some cases to maintain status. Also in countries where sex work is not a criminal offence, it can expose migrant workers to deportation. For example, in the Swedish and Finnish Aliens Acts, a suspicion of selling of sex, or in the Swedish case, the assumption that he or she will not support himself or herself "by honest means", is grounds for deportation and denial of entry, even if the person would be in the country regularly or would have otherwise the right to travel to the country⁶.

Laws and policies that criminalise sex workers or third parties for renting premises for the purpose of sex work add another layer of exclusion from the rental housing market. In practice, such criminalisation leads to evictions of sex workers from official apartment rentals and hotels, into more informal housing arrangements that can be exploitative, as well as resulting in loss of rent and deposits⁷. Sex workers who do not commit to stop sex work can be also denied access to shelters.

Sex workers who organise themselves, including by sharing and working from their flats to increase their safety, risk prosecution for brothel-keeping and eviction⁸. Migrant sex workers are affected by anti-immigration and anti-sex work policies that violate their right to housing and expose them to violence, exploitation and homelessness.

3 See e.g. ICRSE, "[Hands off our clients!](#)" Toolkit, 2013; Global Network of Sex Work Projects (NSWP), [Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers](#), 2015.

4 Open Society Foundations, [10 reasons to decriminalise sex work](#), March 2015.

5 STRASS, [20 May 2016](#), [28 May 2016](#), [press statement \(no date\)](#), [testimonies](#). See also Médecins du Monde, [What do sex workers think about the French Prostitution Act: Synthesis Report](#) and [full report](#), April 2018.

6 Ibid; N. Vuolajärvi, [Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex](#), 2018.

7 N. Vuolajärvi, [Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex](#), 2018.

8 For one recent example, see [The Independent](#), 17 June 2019. Adrina Podaru, 25, and Ana Tomascu, 20, were living in Newbridge in Kildare, Ireland, when the property was raided in November 2018. The women, both from Romania, were charged with keeping a brothel and were jailed for nine months after a hearing at Naas District Court. Both women admitted offering sexual services for money. The court heard there were no clients present at the time of the raid and that no significant money was found at the scene. Ms Podaru is pregnant and faces the prospect of giving birth in prison.

Impacts of the conflation of trafficking and sex work

The conflation of trafficking and sex work has led to a focus of enforcement actions and anti-trafficking raids targeting migrant sex workers and venues, disproportionately exposing migrant sex workers to immigration checks and risks of detention and deportation⁹.

Migrant sex workers who organise themselves, and those providing accommodation to sex workers, also risk prosecution for trafficking as well as pimping and brothel-keeping.

Migrant women from some countries also face particular risks of being refused entry at borders (usually airports) and summarily deported to their country of origin, when border guards suspect them

of being victims of trafficking¹⁰.

At the same time, there is no evidence to indicate criminalisation of clients is effective in reducing human trafficking for sexual exploitation¹¹.

Further, clients are often the ones who identify people who are being controlled and coerced to work and can be central in helping and supporting people to exit the situation and seek appropriate help.

Given that criminalisation of the purchaser of sexual services can also increase risks of violence and exploitation and undermine access to justice and health, it is counterproductive to prevention and protection of victims of trafficking.

Recommendations

- Remove all criminal and administrative prohibitions and penalties on sex work related to sex workers, clients and non-exploitative third parties (including laws targeting brothel owners). This will not solve all the challenges facing undocumented migrant sex workers, but is a crucial step to support the empowerment, human rights and dignity of sex workers.
- Ensure migrant sex workers have safe and equal access to health, housing, decent work and justice, including labour and workplace protections, regardless of their status.
- Implement independent legislation which criminalises acts including human trafficking, coercion, violence, and the sexual exploitation of children in a way that is victim-centred - focused on addressing harm and violence against victims, including when they are selling sexual services, by ensuring equal access to protection and justice, to unpaid wages and compensation, and to secure residence status where desired.
- Develop migration pathways for decent work, family reunification, study and protection, which promote the rights and autonomy of migrants and their families.
- Involve organisations working with diverse communities, including sex worker-led organisations and migrant-led organisations, in all stages of the depolivy policy processes of policies that affect them.

⁹ N. Vuolajärvi, Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex, 2018.

¹⁰ See for example, the Scottish Sun, '100 sex slaves at airport: Around 100 sex slaves nabbed by border cops at Glasgow Airport in just nine months', 24 August 2017. N. Vuolajärvi, Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex, 2018.

¹¹ For example, according to STRASS' submission to the CEDAW consultation on its General Recommendation on trafficking of women and girls in the context of global migration, the specialised anti-trafficking office in the French police (OCRTEH) has announced an increase in human trafficking cases they follow from about 40 every year before the law to criminalise clients was enacted in 2016, to 87 cases in 2017 (STRASS Submission to CEDAW, February 2018. Other submissions to CEDAW's consultation can be found [here](#).)



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for social justice.

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