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Special Rapporteur on violence against women and girls
Office of the United Nations High Commissioner for Human Rights
8-14 Avenue de la Paix, 1211 Genève, Switzerland

Input to the report of the Special Rapporteur on violence against women and girls to the Human Rights Council on “Prostitution and Violence Against Women and Girls”

The Health and Human Rights Initiative (“HHRI”) of the O’Neill Institute for National and Global Health Law (“O’Neill Institute”) at Georgetown Law, respectfully submits the following inputs for consideration by the Special Rapporteur.

The O’Neill Institute is a not-for-profit institution located at Georgetown University in Washington, D.C. Its mission is to conduct rigorous research to identify solutions to pressing national and international health concerns. The HHRI is a program within the O’Neill Institute, working to improve health through academic research that focuses on the nexus between health and human rights law.

Given this background and recognizing the significance of the Special Rapporteur’s thematic reports, our opinion emphasizes specific linkages between sex work and women’s right to health. Our submission specifically challenges the underlying assumption that the use of criminal law can be a valid public health intervention and an effective means to prevent violence in this context.

I. Scope of this input

We consider the use of the term “prostitution” in the call for inputs to be inadequate, as it perpetuates stigma and stereotypes associated with sex workers. Therefore, this submission opts for the the term “sex work” to refer to adults aged 18 and above who receive money or goods in exchange for sexual services, either regularly or occasionally (World Health Organization, 2022, p. xii). Additionally, the term “sex worker” in this submission is used to refer to both female sex workers (FSWs) and transgender women engaged in sex work.

We define sex work as consensual sexual activity between adults, which can take various forms and varies between and within countries and communities. We underscore that this definition excludes girls and adolescents under the age of 18 who exchange sex for money, goods, or favors. We consider such cases as sexual exploitation rather than sex work, and they fall outside the scope of this input. This input does not cover sex trafficking or other forms of sexual exploitation.

II. Sex work and the right to health

- 6. Describe the linkages, if any, between prostitution and the violation of the human rights of women and girls.

The existing literature on sex work highlights a clear connection to various challenges that can impact the realization of the right to health for sex workers, and may lead to violations of this right. In various environments, sex workers encounter numerous health inequities and disparities, characterized as “preventable differences in the burden of disease, injury, violence, or opportunities to achieve optimal health” (Centers for Disease Control and Prevention, 2023).

Specifically, evidence suggests that FSWs face an elevated risk of HIV, viral hepatitis, and other sexually transmitted infections (STIs); tuberculosis; cervical and anal cancer; unintended pregnancy; physical and sexual violence; poor mental health outcomes; hazardous or harmful alcohol or substance use; and social exclusion (See, e.g., American College of Obstetricians and Gynecologists, 2017; World Health Organization, 2022, p. 47). For instance, according to UNAIDS, the median HIV prevalence among sex workers in 2023 was 2.5%, which is approximately 3.571 times higher than the 0.7% global prevalence in the general population (aged 15–49 years) (UNAIDS, 2023).

There is an increasing consensus that the primary determinants fueling health inequities for sex workers are **stigma, discrimination, and punitive legal and social environments** (The Lancet Public Health, 2023). **States can address these disparities by adopting preventive interventions** that target the key social and structural determinants of health for sex workers. Research suggests that behavioral and biomedical interventions alone among sex workers have had only modest effects on reducing health disparities (Shannon et al., 2015, p. 45). Instead, they need to be combined with interventions in the legal, sociopolitical, cultural, and economic environments to address the structural determinants of sex worker health (e.g., criminalization, violence, or police harassment, barriers to access to prevention and treatment, housing, etc).

Against this backdrop, this input will delve into the argument that **the decriminalization of sex work is a crucial intervention that can effectively tackle the underlying determinants** and contribute to the overall health and well-being of sex workers.

III. *Decriminalization of sex work as an effective structural intervention*

- 9. How effective have legislative frameworks and policies been in preventing and responding to violence against women and girls in prostitution?
- 13. What are some of the lessons learned about what works and what does not when it comes to stemming any negative human rights consequences from the prostitution of women and girls?

There are three general legal approaches to the regulation of sex work: criminalization, legalization, and decriminalization (Deady, 2011, p. 516).

Criminalization makes sex work illegal, either by directly criminalizing the act itself or through related offenses (e.g., loitering, soliciting, and brothel-keeping) that also directly impact sex workers and other marginalized communities (Human Rights Council & Grover, 2010, para. 29; Release, 2017). As of June 2023, 168 countries had punitive laws that criminalized any aspect of sex work (UNAIDS, 2023, p. 13).

The underlying assumption of legal frameworks that criminalize sex work is that the use of criminal law will effectively reduce or eliminate the sex industry, along with the adverse human rights impacts associated with it. However, existing international standards, literature, and evidence converge on the view that **the criminalization of sex work affects all aspects of health for sex workers and proves ineffective in responding to violence against this group** (See, e.g., Human Rights Council & Grover, 2010, para. 34).

In particular, it has been noted that criminalization has the following adverse effects on sex worker's health:

- *Escalation of risks and vulnerabilities for sex workers.* **Criminalization increases HIV and STI risks for this group**, insofar as fear of arrest forces them to rush transactions with clients, engage in risky sexual practices, or move to isolated or hidden venues where they have less control.

For instance, in sub-Saharan Africa, the odds of living with HIV infection was found to be 7.2 higher for sex workers in countries that criminalize sex work, compared to jurisdictions that decriminalized or partially legalized the activity (World Health Organization, 2022, p. 18).

Due to the intersectionality of factors influencing this risk, transgender women face greater vulnerabilities as a result of criminalization. Rates of HIV acquisition are notably higher for transgender women compared to cisgender women. Moreover, within the transgender women community, those who engage in sex work experience even higher rates of HIV acquisition compared to their counterparts who do not participate in sex work (Bland & Brooks, 2020, pp. 1–3).

- *Escalation of violence against sex workers. Criminalization has been repeatedly shown to* (i) **increase the rates of harassment, violence and coercion** by the police and others against sex workers and those perceived as such; (ii) contribute to community violence; and (iii) propagate crime (Shannon et al., 2015; Bland & Brooks, 2020, p. iii; Human Rights Council & Grover, 2010, paras. 41–42; International Committee on the Rights of Sex Workers in Europe, 2016). The threat of criminal law makes sex workers less likely to report abuses, increasing their vulnerability to these forms of violence (World Health Organization, 2022, p. 2).
- *Reduced access to prevention and treatment services for sex workers. Criminalization enables incarceration and perpetuates stigma and discrimination against this group, which has severe detrimental effects on access to care.* For instance, arrest has been linked to interruptions in medication and care for sex workers (e.g. Disruptions in Pre-Exposure Prophylaxis for HIV), delayed diagnoses and psychological suffering.

Moreover, the stigma, discrimination and the threat of criminal law creates barriers to accessing STI care and prevention, regular screening and medical care, community programs, and other health services and information needed by sex workers (Bland & Brooks, 2020, p. 17). Criminalization also leads to defunded specialist services for this group.

Criminalization has been linked to other adverse impacts on the human rights of sex workers. These include, but are not limited to, arbitrary arrest and detention; expulsion and deportation; discrimination and unlawful profiling; confiscation of property; child custody disallowance; obstacles in access to housing, adequate food, social security schemes and other social rights; and denial of access to justice (see, e.g., Vanwesenbeeck, 2017; Bland & Brooks, 2020; Grenfell et al., 2023).

Decriminalization schemes involve the elimination of laws that criminalize sex work, without introducing specific legal frameworks that regulate the industry. Under this scheme, sex work is indirectly regulated similarly to any other profession: through employment and health regulations. Conversely, **legalization** describes government regulation of sex work through specific regulations that make the activity legal under specified conditions (Deady, 2011, p. 517; Bland & Brooks, 2020, p. 31).

Evidence indicates that that full decriminalization stands out as the most suitable alternative to protect and promote the health, empowerment, and legal rights of sex workers, while respecting their individual autonomy and inherent dignity (See, e.g., Tandon et al., 2014; Bland & Brooks, 2020; Human Rights Council & Grover, 2010, paras. 46–50). By tackling a structural determinant of sex worker health, the removal of the threat of

criminal law can lead to better health outcomes since it has an immediate and sustained effect on reducing violence, improving access to health services, creating safer work environments for sex workers, and removing other barriers to earning a livelihood.

For instance, a 2015 *Lancet* study estimated that the decriminalization of sex work in India had the potential to significantly lower rates of HIV transmission by averting 33-46% of HIV infections among FSW and their clients over a decade (Shannon et al., 2015, p. 66). New Zealand's experience with decriminalizing sex work in 2003 resulted in FSWs reporting a sense of having enforceable rights, including the right to health (Human Rights Council & Grover, 2010, para. 35). Importantly, this decriminalization did not lead to a significant increase in the sex industry nor a massive influx of women choosing to become FSWs (Deady, 2011, p. 552).

While the detailed impacts have not been extensively studied, the legalization of sex work also has the potential to improve outcomes for the health and well-being of sex workers, provided that it is implemented in accordance with a human-rights based approach and does not inadvertently incentivize the growth of an illegal sector (Human Rights Council & Grover, 2010, para. 46; Deady, 2011, p. 541). Any legalization models should consider the context and particular situation of sex workers in different geographies, as well as contextual differences between high-income and low-income countries.

IV. Recommendations

- 15. What recommendations do you have to prevent and end violence associated with the prostitution for women and girls?

As outlined in this document, criminalization and stigma have a detrimental impact on the health and well-being of sex workers. Accordingly, we recommend that States:

1. ***Eliminate the use of criminal law for consensual commercial sexual exchange between adults.*** Full decriminalization of sex work is widely supported by public health research as a cost-effective method to protect the health and rights of sex workers and improve health outcomes for this group. Research indicates that partial decriminalization does not reduce experiences of violence for sex workers or allow them to seek remedies for abuses (Bland & Brooks, 2020, p. 51); and
2. ***Adopt other enabling interventions to safeguard the rights of sex workers.*** This includes appropriate health and safety regulations for sex workers; adequate education; access to legal aid; access to affordable housing; access to social security schemes; access to job training and employment programs; access to care services; and enhanced health prevention and treatment programs (Human Rights Council & Grover, 2010, paras. 46–50; Bland & Brooks, 2020, pp. 51–53).

We similarly recommend that the study and analysis of policies pertaining to sex work reflect the lived experiences of this group and are grounded in the best available evidence, avoiding the influence of assumptions and stereotypes often found in criminal legislation and policies. To this end, States should similarly seek technical advice from the international community and specialized agencies, when possible.

We express our gratitude for the opportunity to make this submission, and we hope our suggestions ultimately lead to more tailored recommendations. We remain available to answer any questions the Special Rapporteur might have in regards to this input.

Sincerely,

The Health and Human Rights Initiative

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