

AMNESTY INTERNATIONAL POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF SEX WORKERS

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AMNESTY INTERNATIONAL POLICY IN BRIEF

This policy has been developed in recognition of the high rates of human rights abuses experienced globally by individuals who engage in sex work; a term that Amnesty International uses only in regard to consensual exchanges between adults. It identifies the most prominent barriers to the realization of sex workers' human rights and underlines states' obligations to address them.

Multiple and intersecting forms of discrimination and structural inequalities have an impact on the lives of many sex workers and can play a role in a person's decision to engage or remain in sex work, as well as their experiences while in sex work. People who face multiple forms of discrimination and structural inequalities, such as women and those who face discrimination on the basis of their sexual orientation, gender identity, race, caste, ethnicity, Indigenous identity, migrant or other status, are often over-represented in sex work.

In addition to the marginalization that sex workers can experience on the basis of their gender and/or other aspects of their identity or status, they also frequently encounter censure, judgement and blame for being seen to transgress social or sexual norms and/or gender stereotypes on the basis of their participation in sex work. The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection. As a result, sex workers face an increased risk of violence and abuse, and such crimes against them often go unreported, under-investigated and/or unpunished, offering perpetrators impunity.

This policy sets out states' obligations to respect, protect and fulfil the human rights of sex workers. It also details the actions by states that Amnesty International believes will best address the barriers that sex workers routinely face in realizing their rights. This policy is grounded in the principles of harm reduction, gender equality, recognition of the personal agency of sex workers, and general international human rights principles.

In particular, the policy sets forth that states must:

- Address underlying harmful gender and other stereotypes, discrimination and structural inequalities that drive marginalization and exclusion and lead to individuals from marginalized groups selling sex in disproportionate numbers, and to discrimination against sex workers;
- Comply with their obligations with respect to all people's economic, social and cultural rights, in particular guaranteeing access for all to education and employment options and social security to prevent any person from having to rely on selling sex as a means of survival due to poverty or discrimination;
- Combat gender and other forms of direct and indirect discrimination and ensure that the human rights of all individuals, including women and girls, and those at risk of discrimination and abuse because of their sexual orientation or gender identity and expression, race, caste, ethnicity, Indigenous identity, migrant status or other characteristics of their identity, are equally respected, protected and fulfilled;
- Repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration;
- Refrain from the discriminatory enforcement against sex workers of other laws, such as those on vagrancy, loitering, and immigration requirements;
- Ensure the meaningful participation of sex workers in the development of law and policies that directly affect their lives and safety;
- Refocus laws away from catch-all offences that criminalize most or all aspects of sex work and towards laws and policies that protect sex workers' health and safety and that oppose all acts of exploitation and trafficking in commercial sex (including of children);
- Ensure that there are effective frameworks and services that allow people to leave sex work if and when they choose; and
- Ensure that sex workers have equal access to justice, health care and other public services, and to equal protection under the law.

States should implement the above positive obligations through the following three levels of interventions:

1. Applying criminal laws to prevent forced labour, human trafficking, abuse and violence in the context of commercial sex and the involvement of children in commercial sex acts;
2. Ensuring that legal protections pertaining to health, employment and discrimination are accessible to sex workers and are effective in protecting them from abuse and exploitation; and
3. Putting in place specific economic, social and cultural law and policy measures in order to address the intersectional discrimination, harmful gender stereotypes and denial of economic, social and cultural rights that may lead to entry into sex work, stigmatize sex workers and prevent exit for those who wish to stop selling sex.

Amnesty International calls for the decriminalization of all aspects of adult consensual sex work due to the foreseeable barriers that criminalization creates to the realization of the human rights of sex workers. As described further in this policy, Amnesty International considers that to protect the rights of sex workers, it is necessary not only to repeal laws which criminalize the sale of sex, but also to repeal those which make the buying of sex from consenting adults or the organization of sex work (such as prohibitions on renting premises for sex work) a criminal offence. Such laws force sex workers to operate covertly in ways that compromise their safety, prohibit actions that sex workers take to maximize their safety, and serve to deny sex workers support or protection from government officials. They therefore undermine a range of sex workers' human rights, including their rights to security of person, housing and health.

This policy does not argue that there is a human right to buy sex or a human right to financially benefit from the sale of sex by another person. Rather, it calls for sex workers to be protected from individuals who seek to exploit and harm them and it recognizes that the criminalization of adult consensual sex work interferes with the realization of the human rights of sex workers.

Amnesty International does not take a position on the exact form that regulation of sex work should take, or whether it is necessary for states to develop regulations specifically designed for sex work, which are separate from the general laws that broadly regulate other businesses or employment practices in a jurisdiction.

RELATED AMNESTY INTERNATIONAL POSITIONS

Forced labour and human trafficking (within any country or across borders, including for the purpose of sexual activity) constitute serious human rights abuses and must be criminalized. Under international law, states have a range of obligations to prevent, suppress and punish trafficking in persons, especially women and children, and to protect the human rights of victims of trafficking.

Children¹ involved in commercial sex acts are victims of sexual exploitation, recognized by the International Labour Organization as one of the worst forms of child labour² and a grave human rights abuse. They are entitled to remedies and reparation, including provision of all necessary support. States have obligations to address underlying factors that increase the vulnerability of children to sexual exploitation (including but not limited to lack of social support, discrimination, homelessness, poverty, harmful gender stereotypes and structural inequality).³ Under international law, states must ensure that offering, delivering or accepting a child for the purpose of sexual exploitation is treated as a criminal offence, and must take all appropriate measures to prevent the exploitation and abuse of children.⁴ States have additional responsibilities to protect the rights of children, including by ensuring that children are not prosecuted or otherwise penalized for involvement in commercial sex but are supported as victims of crime.⁵ Along these lines, criminal justice systems should not be used as the primary entry point to provide services to children who are engaging in commercial sex.

People who engage in sex work are entitled to respect for the full-range of their human rights on the basis of equality and non-discrimination. This policy should therefore be considered in conjunction with Amnesty International's existing and future relevant human rights policies and positions. All of Amnesty International's positions, including those for example on gender equality, gender-based violence, sexual violence, non-discrimination, rights of lesbian, gay, bisexual, transgender and/or intersex (LGBTI) people, human trafficking, sexual and reproductive rights, access to justice, rights at work and the right to adequate housing, apply equally to sex workers as to any other individuals facing human rights abuses. In fighting for the full realization of sex workers' rights, Amnesty International must both acknowledge and mainstream the rights of sex workers into all other relevant areas of our work.

TERMINOLOGY

Sex work: For the purposes of this policy, the term "sex work" is used to mean the exchange of sexual services (involving sexual acts)⁶ between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. Sex work takes different forms, and varies between and within countries and communities. Sex work may vary in the degree to which it is more or less "formal" or organized.⁷

¹ A "child" is any person under the age of 18, regardless of the age of majority in a particular country.

² ILO Convention No. 182 (Worst Forms of Child Labour), 1999, Arts. 3(b) and 6(1).

³ Convention of the Rights of the Child, Art. 19; Committee on the Rights of the Child, General Comment 10 (Children's rights in juvenile justice), UN Doc. CRC/C/GC/10, 2007, paras. 7, 16.

⁴ Convention on the Rights of the Child, 1989; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000.

⁵ International standards prescribe that in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration, and that the different development needs of children constitute the basis for the lesser culpability of children in conflict with the law. The protection of the best interests of the child requires that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. See Committee on the Rights of the Child, General Comment 10 (Children's rights in juvenile justice), UN Doc. CRC/C/GC/10, 2007, para 10. In addition, International standards stipulate that children must not be criminalized for acts that would not be crimes if they were adults. See, for example, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), UN Doc. A/RES/45/112, 1990, Art. 56.

⁶ This policy does not apply to adult dancing or the production of sexually explicit material, including pornography.

⁷ See also the definition employed by the World Health Organization. See WHO, HIV/AIDS Programme, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries*:

The term “sex work” is used to describe situations where adults who are engaging in commercial sex have consented to do so. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse which must be treated as a criminal offence. (See definition of ‘**Consent**’ for further discussion.)

Sex worker: For the purposes of this policy, “sex workers” are adults (aged 18 and older) of all genders who receive money or goods in exchange for the consensual provision of sexual services, either regularly or occasionally.

Amnesty International recognizes that the terms used to refer to sex work and sex workers vary across contexts and according to individual preference and that not all people who do sex work identify as “sex workers”. Where possible, Amnesty International will employ the terminology used by rights holders or rights claimants themselves. However, generally Amnesty International uses the terms “sex work” and “sex worker”. As outlined above, these terms are not applicable to children.

Criminalization: For the purposes of this policy, “criminalization” refers to the process of prohibiting consensual adult sex work and attaching punishments in law. Criminalization of consensual adult sex work generally takes three different forms which are applied in a variety of combinations across countries. These can be summarized as:

- Laws which make the sale of sex by consenting adults a criminal offence, including for example laws on solicitation, and under which penalties are imposed upon sex workers themselves;
- Laws which make the organization of adult consensual sex work a criminal offence. These include, but are not limited to, laws against keeping a brothel; promotion of prostitution; renting premises for the purposes of prostitution; living off the proceeds of sex work; and facilitating sex work through the provision of information or assistance. These laws can result in the imposition of penalties against sex workers themselves for organizing their own sex work and against anyone who assists them; and
- Laws which make the buying of sex from consenting adults a criminal offence and under which penalties are imposed on buyers.

For the purpose of this policy, “criminalization” also refers to other laws not specific to sex work. Such laws could include those on vagrancy and loitering which are either applied in a discriminatory way against people involved in sex work, and/or have a disproportionate impact on sex workers which can in practice work as a *de facto* prohibition. Similarly, immigration laws can be applied in a discriminatory way against sex workers as a *de facto* prohibition on sex work by migrants. The criminalization of irregular (sometimes called “illegal”) entry or residence may give rise to – or exacerbate – the penalization of sex work by migrants, as engaging in this type of work may make them more visible and liable to being targeted by state authorities.

Penalization: For the purposes of this policy, “penalization” is used to refer to laws, policies and administrative regulations that have the same intent or effect as criminal laws in punishing, controlling and undermining the autonomy of people who sell sex, because of their involvement in sex work.⁸ These measures include, but are not limited to, the imposition of fines, detention for the purposes of “rehabilitation”, deportation, loss of child custody, disentitlement from social benefits, and infringement on rights to privacy and autonomy.

Human trafficking: For the purposes of this policy, Amnesty International uses the definition of human trafficking (or ‘trafficking in persons’) as set forth in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). The UN Trafficking Protocol defines trafficking as constituting three elements:

1. An “**action**”: that is, the recruitment, transportation, transfer, harbouring or receipt of persons;
2. A “**means**” by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and
3. A “**purpose**” (of the action/means): specifically, exploitation.⁹

Recommendations for a Public Health Approach, World Health Organization, 2012, p.12.

⁸ See CEDAW, Concluding Observations: Russian Federation, UN Doc. CEDAW/C/RUS/CO/8, 2015, paras. 25-26 (calls upon the government to repeal the provision of the Administrative Code which penalizes prostitution and to establish an oversight mechanism to monitor violence against women involved in prostitution including by the police)

⁹ UN Trafficking Protocol, 2000, Art. 3(a).

All three elements must be present to constitute “trafficking in persons” under the UN Trafficking Protocol.¹⁰ The only exception is when the victim is a child, in which case a trafficking-in-persons crime is deemed to have been committed even if none of the above “means” is involved. Human trafficking, including into the sex sector, is not the same as sex work. (See section on ‘**Human Trafficking**’ for further elaboration.)

Consent: While there is no clear uniform definition of consent under international law, for the purposes of this policy Amnesty International applies the term to mean the voluntary and ongoing agreement to engage in a particular sexual activity. Consenting to sex or to sell sex does not mean consenting to violence and consent can be rescinded at any time. Consent analysis is necessarily fact- and context-specific and the views, perspectives and experiences of individuals selling sex should be fundamental to any consideration of issues of consent. (See section on ‘**Consent**’ for further elaboration.)

INTERSECTIONAL DISCRIMINATION AND STRUCTURAL INEQUALITIES

Human rights violations against sex workers are due not solely to criminalization of sex work, but also to stigmatization, gender-based violence and discrimination, among other things. Furthermore, multiple and intersecting forms of discrimination and structural inequalities 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 while in sex work. Direct and indirect discrimination against sex workers and/or on the basis of gender, sexual orientation, gender identity, race, caste, ethnicity, Indigenous identity, migrant or other status, intersect to deny affected groups resources, opportunities, security and power necessary for the full enjoyment of human rights. Groups most affected by discrimination and inequality are frequently over-represented in sex work.¹¹

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.¹² Gender inequality is ingrained in the structure of societies, and influences the distribution of power and access to resources at every level. Women facing multiple and intersecting forms of discrimination, such as on the basis of sexual orientation, gender identity, race, caste, status as a migrant, ethnicity and Indigenous identity, experience compounded inequalities which present multiple barriers to the full enjoyment of their human rights

Sex workers who are lesbian, gay, bisexual, transgender and/or intersex (LGBTI), or who are otherwise seen as transgressing gender or sexuality norms, face intersectional discrimination and marginalization. For example, whilst the majority of the world’s sex workers are cisgender¹³ women, when examined on a per capita basis a larger proportion of the transgender¹⁴ community is involved in sex work compared to the proportion of the population of

¹⁰ See UNODC, *Issue paper: The concept of ‘exploitation’ in the Trafficking in Persons Protocol*, 2015, p. 5.

¹¹ For further analysis, see the section on ‘Demographics of sex work’ in the explanatory note accompanying this policy.

¹² 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; 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; 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.

¹³ Cisgender people are individuals whose gender expression and/or gender identity accords with conventional expectations based on the physical sex they were assigned at birth. In broad terms, “cisgender” is the opposite of “transgender”.

¹⁴ Transgender is a term used in this document to describe individuals whose gender identity and/or gender expression differs from conventional expectations based on the physical sex they were assigned at birth. [...] not all transgender individuals identify as male or female; transgender is a term that can include members of third genders, as well as individuals who identify as more than one gender or no gender at all. See Amnesty International Policy Statement on the Rights of Transgender People, POL 39/002/2013. Note that the term “transgender” is used as an umbrella term. However, people with a range of gender and sexual identities are not necessarily captured by the term “transgender” and may not identify as such, but still face discrimination because of their gender identity and expression if they are seen as transgressing gender or sexuality norms.

cisgender women who are sex workers.¹⁵ This is indicative of the often marginalized status of transgender people in society. Deeply-embedded prejudiced attitudes inhibit LGBTI people from accessing education, thus impacting their access to livelihood options and housing.¹⁶ These individuals also tend to have less access to justice and to social support services due to stigma and institutionalized discrimination.¹⁷ The discrimination faced by LGBTI sex workers also intersects with and can be compounded by discrimination on the basis of factors such as race, caste, ethnicity, Indigenous identity, migrant or other status.

Cisgender men¹⁸ also account for a significant proportion of sex workers in many states,¹⁹ and can also face multiple and intersectional discrimination.

In addition, sex workers who transgress social norms around gender identity, expression and sexual orientation are often targeted directly under laws criminalizing same-sex intimacy,²⁰ as well as under laws regarding loitering, public nuisance, public decency and cross-dressing.²¹

People subject to discrimination on the basis of their race, ethnicity, caste,²² Indigenous identity or migrant status²³ are often over-represented among individuals selling sex.²⁴ This reflects structural discrimination faced by such groups, including social, political and historical factors and harmful stereotypes about such groups. These dynamics are often entrenched and, as in the case of Indigenous Peoples, often reflect a history of colonial oppression. In the present day, such dynamics can be reinforced by poverty and other forms of exclusion. In addition they may lead to a heightened risk of human rights violations in sex work, including higher rates of criminalization,²⁵ abuses of power or discrimination by authority figures such as police officers, judges and magistrates.

In addition to the marginalization that sex workers can experience on the basis of their gender and/or other aspects of their identity or status, sex workers also frequently face censure, judgment and blame for being seen to transgress social or sexual norms and/or to not conform to gender roles and stereotypes specifically because they are sex workers. They can also face denial of their agency and individual freedoms and further shaming where they are seen to reject rehabilitation, exit, or other prohibition initiatives. The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection. The multifaceted discrimination and exclusion that sex workers face leaves them at increased risk of violence and abuse, and offers impunity to perpetrators of violence and abuse

¹⁵ One study estimated that 43% of the transgender population have been estimated to have had experiences in sex work. See V. L. Hounsfield, et al., 'Transgender people attending Sydney sexual health services over a 16 year period', *Sex Health*, 4, 2007; Another national study in the United States estimated that transgender people engage in sex work at a rate of 10 times that of cisgender women. See J. Grant, L. Mottet, J. Tanis, J. Harrison, J. Herman and M. Keisling, *Injustice at every turn: A report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

¹⁶ See S. Chatterjee, 'Problems faced by LGBT people in the mainstream society: Some recommendations', *International Journal of Interdisciplinary and Multidisciplinary Studies*, 2014; Amnesty International, *Because of who I am: Homophobia, transphobia and hate crimes in Europe* (EUR 01/014/2013).

¹⁷ See Human Rights Council, 'Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights', 2015, UN Doc. A/HRC/29/23; Human Rights Watch, 'Sex workers at risk: Condoms as evidence of prostitution in four US cities, 2012.

¹⁸ Male sex workers include men who sell sex to people of all genders and may identify as heterosexual, bisexual or gay.

¹⁹ See S., B. Adebajo, G., I. Eluwa, J., U. Tocco, B., A. Ahonsi, L., Y. Abiodun, A., O. Anene, D., O. Akpona, A., S. Karlyn, S. Kellerman, 'Estimating the number of male sex workers with the capture-recapture technique in Nigeria', *African Journal of Reproductive Health*, 2013; HIV and STI Control Board, National Centre for AIDS and STD Control: 'Mapping and size estimation of most at risk populations in Nepal, Vol 1: Male Sex Workers, Transgenders and their Clients', 2011, Available at www.unodc.org/documents/southasia/reports/MTC_final_report.pdf

²⁰ State sponsored homophobia, A World Survey of Laws: Criminalisation, protection and recognition of same-sex love, May 2015, 10th edition, ILGA, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf.

²¹ Undeserved, Overpoliced, Invisibilised: LGBT sex workers do matter. Intersection briefing paper #1. October 2015, ICRSE http://www.sexworkeurope.org/sites/default/files/resource-pdfs/icrse_briefing_paper_october2015.pdf.

²² See R. Sahni, & K.V. Shankar, 'The First Pan-India Survey of Sex Workers: A summary of preliminary findings', Center for Advocacy on Stigma and Marginalisation, 2011.

²³ See TAMPEP, *Sex Work Migration and Health*, 2009. Available at tampep.eu/documents/Sexworkmigrationhealth_final.pdf

²⁴ C. Overs, *Sex Workers, Empowerment and Poverty Alleviation in Ethiopia*, Institute of Development Studies, 2014.

²⁵ Research in Brooklyn, New York, USA, found people of colour come before the Human Trafficking Intervention Court and face prostitution-related charges at a disproportionately high rate: see, Red Umbrella Project, *Criminal, Victim, or Worker: The effects of New York's Human Trafficking Intervention Courts on adults charged with prostitution-related offences*, 2014.

against sex workers.

Under international human rights law, states have an obligation to combat gender and other forms of direct and indirect discrimination, and to ensure that the human rights of all individuals, including women and girls, and those at risk of discrimination because of their sexual orientation or gender identity, race, caste, ethnicity, Indigenous identity, migrant or other status, are equally respected, protected and fulfilled.²⁶

States have obligations to combat discrimination and achieve substantive equality. One such obligation is to take effective measures to transform cultural and social attitudes underpinning discrimination. This, in turn, includes measures aimed at eliminating harmful gender and other stereotypes that are based on the idea of the superiority of men over women, or on stereotyped roles for men and women, and those that perpetuate structural inequalities and impair or nullify the enjoyment of human rights and fundamental freedoms by women and others at risk of discrimination.²⁷ 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. These measures should aim to end stigma and discrimination against sex workers. States have a broad obligation to take measures to challenge stereotypes that objectify women and should achieve this end through measures that do not infringe human rights. Rather than seeking to achieve this end through criminalizing sex work, states should utilize human rights consistent measures to challenge stereotypes, such as education and awareness measures.

Amnesty International considers that policies that aim to support and improve the situation of marginalized people must empower individuals and not compromise their safety or criminalize the contexts in which they live and work. Amnesty International recognizes and respects the agency of sex workers and their decisions to engage in, remain in or leave sex work. Globally, the voices of sex workers are frequently obscured or silenced as a result of the marginalization they experience, despite the fact that they are best placed to help define the most appropriate mechanisms to maximize their own welfare and safety. Amnesty International will take a participatory approach to work in this area, ensuring that it consults sex workers as it seeks to help defend their rights.

LAW AND POLICY DEVELOPMENT BY GOVERNMENTS

The rights of all sex workers to participate without discrimination in decisions affecting their lives must be respected.²⁸ In establishing laws and policies relevant to sex work, whether they relate to entry, participation or exit, governments should ensure the meaningful participation and consultation of sex workers, including, in particular current sex workers. Participation must involve sex workers from marginalized groups and those facing discrimination on the basis of, for example, sexual orientation, gender identity, race, caste, ethnicity and Indigenous identity. To be effective, such consultation must allow participation of sex workers in a way that permits anonymous engagement and other measures required to protect them from criminalization, retaliation, or harm. The consultation process should also ensure effective access to information and resources to allow meaningful engagement.

²⁶ 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 gender equality in all areas.

²⁷ The CEDAW and CRPD Conventions have explicitly set out obligations for states to eliminate harmful stereotypes and stereotyping. See, for example, Article 5 of CEDAW. In addition, multiple international human rights treaty bodies have interpreted the rights to non-discrimination and equality to include implied obligations to address stereotypes and stereotyping, including gender stereotypes, in a range of other human rights and fundamental freedoms, for example the freedom from arbitrary interference in private life and the right to the highest attainable standard of health. They have done this by reading the rights to non-discrimination and equality – which impose overarching obligations on States Parties – together with the substantive rights and freedoms guaranteed by the treaties for which they are responsible for monitoring. See OHCHR commissioned report, “Gender Stereotyping as a Human Rights Violation”. OHCHR, 2013.

²⁸ For example, the UN Committee on Economic, Social and Cultural Rights has stated that the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12”, General Comment No. 14: The right to the highest attainable standard of health, para. 54.

The situation of Indigenous Peoples, and the multiple forms of discrimination experienced by Indigenous individuals, means that that decisions taken by governments, including decisions of general applicability to the population as a whole, often have distinct, differentiated or disproportionate impacts on Indigenous Peoples and individuals. These impacts may be poorly understood or unanticipated by the state. International law recognizes that Indigenous Peoples have specific rights to participate in decision-making processes. Depending on a range of factors, including the seriousness of potential harm, these rights include the exercise of free, prior and informed consent.²⁹

Decisions at all levels of government including at the national, regional, local and community levels, must ensure the protection of the human rights of sex workers, including by refraining from criminalizing or penalizing sex work.

ENTRY INTO SEX WORK

Sex workers are a heterogeneous group. People of different backgrounds and identities undertake sex work for a variety of reasons and report a diversity of experiences.³⁰ Some sex workers make the decision to engage in sex work as a matter of preference: for some it can offer more flexibility and control over working hours or a higher rate of pay than other options available to them. For many, the decision to engage in sex work is a reflection of limited livelihood options. For example, it may be one of a limited number of sources of earnings open to irregular migrants who are denied permission to work and therefore rely on informal economies for work.³¹ Other individuals may turn to sex work as a means to address immediate needs because of poverty.

States have obligations under international law to provide an adequate social safety net and to address intersectional discrimination and structural inequalities in order to ensure that people do not have to rely on sex work as their means of survival. 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).

State responses to sex work that rely principally on enforcement of criminal laws against sex work to discourage and/or penalize involvement in sex work have a detrimental impact on the human rights of sex workers and do not offer support, alternatives or choices to people who do not want to engage in sex work. In addition, because women often bear the primary responsibility as caregivers for children, older persons and people with disabilities, these types of state responses often have a detrimental impact on families, especially children.³²

With regard to entry into sex work, states must:

- Ensure that the central aim of policies and programmes on sex work is to protect the human rights of sex workers;
- Adopt and implement effective programmes, laws and policies, in line with obligations under international human rights law, to ensure the right to an adequate standard of living and the right to social security, so that no person has to rely on sex work as their only means of survival;
- Guarantee and enforce legal protections to ensure that no person is compelled to sell sex against their will, ensuring that such protections do not conflate sex work (including that involving migrants) with human trafficking and do not violate sex workers' human rights;
- Provide appropriate educational options and support so that people can secure access to freely chosen work that actively empowers marginalized individuals and groups, respects individual agency and guarantees the realization of human rights;

²⁹ 'Disproportionate impacts' refer to the factual situation of Indigenous Peoples to be taken into account. The specific legal standard is the principle of 'differentiated effects'. In 2009, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, stated that the duty of States to consult directly with indigenous peoples through special, differentiated procedures applies "whenever a State decision may affect indigenous peoples in ways not felt by others in society. Such a differentiated effect occurs when the interests or conditions of indigenous peoples that are particular to them are implicated in the decision, even when the decision may have a broader impact, as in the case of certain legislation." Report of the UN Special Rapporteur on the rights of indigenous peoples, UN doc A/HRC/12/34, 15 July 2009, para. 43. For further analysis, see the section on 'Indigenous peoples and decision-making' in the explanatory note accompanying this policy.

³⁰ R. Weitzer, 'The Mythology of Prostitution: Advocacy Research and Public Policy', *Sexuality Research and Social Policy*, 7, 2010, p.15-29; R. Weitzer, 'Sociology of Sex Work', *Annual Review of Sociology*, 35, 2009, p. 213-234.

³¹ Those who migrate through irregular channels to earn a better livelihood should not immediately be conflated with those who are forced, defrauded or coerced to travel to another country for work (i.e. human trafficking). See, for example, L.M. Agustin, *Sex at the margins: Migration, labour markets and the rescue industry*, 2008.

³² For further analysis, see the sections on 'Entry into sex work' and 'Economic, social and cultural rights' in the explanatory note accompanying this policy.

- Take all necessary measures to eradicate discrimination against marginalized individuals and groups who are commonly represented in sex work, including discrimination in employment; and
- Take all necessary measures to modify social and cultural practices and oppose stereotypes (particularly stereotyped gender roles) that enable and perpetuate inequality and discrimination.

PARTICIPATION IN SEX WORK

Sex workers experience high rates of human rights abuses globally. These abuses occur at the hands of a range of state and non-state actors including: law enforcement officials, clients of sex workers, third-parties involved in sex work, other private individuals or groups, landlords and health care providers. State responses to sex work that seek to criminalize/penalize involvement in sex work actively disempower sex workers, entrench stigma, discrimination and social inequalities, and support a culture of impunity for human rights abuses against them.

STIGMA, STEREOTYPING AND DISCRIMINATION

Sex work is generally a highly stigmatized activity and sex workers routinely face prejudice and discrimination at the hands of state and non-state actors.³³ Sex workers are frequently subjected to punishment, blame and social exclusion for being seen to transgress social, sexual and gender norms or stereotypes. The criminalization of sex work and penalization of sex workers in most countries imposes a criminal status (or a presumption of illegality) that can follow them in every aspect of their lives. Sex workers can also suffer discrimination based on their criminal records for past or current involvement in sex work. These realities affirm and compound a discriminatory view of sex workers as immoral and socially irresponsible criminal actors who are to “blame” for any harm, punishment or judgment they incur in the course of their sex work.

It is necessary to avoid the stereotyping of all sex workers as lacking in agency or capacity as this is harmful and disempowering, and not reflective of evidence regarding the situations and experiences of sex workers globally.³⁴ In most instances, the fact that many sex workers are cisgender and transgender women and/or from communities that are already marginalized and oppressed, compounds the prejudice they face, meaning that they experience multiple, intersecting forms of discrimination and often face high levels of judgment, stereotyping, blame and criminalization. Stigma can also extend to and impact on the children of sex workers.³⁵

In addressing stigma and discrimination against sex workers, states must:

- Ensure that policies and programmes on stigma and discrimination against sex workers and their families are developed through meaningful participation and consultation with sex workers, including those facing multiple forms of discrimination;
- Ensure that sex workers and their families enjoy equal protection under the law and are protected from all forms of discrimination;
- Take measures to eradicate and oppose harmful stereotypes and stigma against sex workers and their families, including through programmes to promote respect for sex workers’ dignity and human rights among law enforcement officials, and ensuring legal support for sex workers exercising their rights;
- Provide sex workers with access to health, housing, education, social security and other services or government programmes without discrimination; and halt measures which serve to penalize sex workers for their engagement in sex work.

³³ 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).

³⁴ Claims that suggest the majority of sex workers enter the sex industry as children, that most were sexually or physically abused as children, are forced against their will to undertake sex work and/or are addicted to drugs have been shown to be misrepresentative of a large proportion of sex workers. See I. Vanwesenbeeck, ‘Another decade of social scientific work on prostitution’, *Annual Review of Sex Research*, 12, 2001; See also R. Weitzer, ‘Sociology of Sex Work’, *Annual Review of Sociology*, 35, 2009, p. 213-234; T. Clatt, D. Cavner, V. Egan, ‘Rationalising predictors of child sexual exploitation and sex-trading’, *Child Abuse and Neglect*, 2014.

³⁵ For further analysis, see the section on ‘Stigma’ in the explanatory note accompanying this policy.

CRIMINALIZATION AND OTHER PENALTIES

The primary and secondary evidence gathered by Amnesty International demonstrates that criminalization and penalization of sex work have a foreseeably negative impact on a range of human rights.³⁶ These include: the rights to life, liberty, autonomy and security of person; the right to equality and non-discrimination; the right to be free from torture or cruel, inhuman or degrading treatment or punishment; the right to privacy; the right to the highest attainable standard of health; the right to information and education; the right to freedom of opinion and expression; the right to adequate housing; the right to just and favourable conditions of work; the right to family life and to found a family; and the right to remedy for human rights abuses.³⁷

Evidence indicates that criminalization interferes with and undermines sex workers' right to health services and information, in particular the prevention, testing and treatment of sexually transmitted infections (STIs) and HIV. Criminalization of sex work has specifically been shown to directly undermine global HIV prevention efforts.³⁸ For example, 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.³⁹

Criminalizing consensual adult sexual activities has been recognized as violating states' obligation to respect the right to sexual and reproductive health as it amounts to a legal barrier that impedes access to sexual and reproductive health services.⁴⁰ 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".⁴¹ The UN Committee on Economic Social and Cultural Rights has confirmed that states must specifically ensure that sex workers have access to the full range of sexual and reproductive health care services.⁴²

Where sex workers are required by law to operate alone and/or are prohibited from securing premises, their capacity to secure a safe working environment is greatly reduced. Laws against paying for consensual sex or organizing sex work have a detrimental impact on their ability to work and lead to the penalization of sex workers. Such laws regularly force sex workers to operate covertly and/or prohibit actions that sex workers take to manage their safety and, in doing so, violate sex workers' human rights, including their rights to security of person, housing and health.⁴³ Laws against organizing sex work are often enforced against sex workers, and in some circumstances, their family members.

Criminalization of sex work also creates an environment where law enforcement officers and other officials can perpetrate violence, harassment and extortion against sex workers with impunity. Where sex workers face the threat of criminalization, penalization or loss of livelihood when or if they report crimes against themselves to police, their access to justice and equal protection under the law is significantly compromised.⁴⁴ This, in turn, offers impunity to perpetrators of violence and abuse against sex workers.

³⁶ For further analysis, see the section on 'Human rights and the criminalization of sex work' 'Impact of criminalizing the purchase of sex' and 'What Amnesty International means by Decriminalization' in the explanatory note accompanying this policy.

³⁷ For an elaboration of affected legal standards, see the section on 'Human rights standards and UN agency positions on sex work' in the explanatory note accompanying this policy.

³⁸ 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.

³⁹ 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.

⁴⁰ See CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), (UN Doc. E/C.12/GC/22), 2016, para. 57.

⁴¹ CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 49(a).

⁴² See CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 32.

⁴³ See for example the judgement, based on a unanimous decision, by the Supreme Court of Canada: *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101.

⁴⁴ See CEDAW, General Recommendation 33 (women's access to justice), UN Doc. CEDAW/C/GC/33, 2015, paras. 9, 51(I).

The enforcement of laws criminalizing sex work can lead to forced evictions, arbitrary arrests, investigations, surveillance, prosecutions and severe punishment of sex workers,⁴⁵ including flogging, stoning or death. It can also limit their ability to access housing, education and social security.⁴⁶ Such violations can also have a particularly negative impact on sex workers living in poverty, as well as their children and families.

The criminalization of sex work also frequently works to exclude sex workers from protections available to others under labour laws, as well as health and safety laws, and can impede or prohibit them from forming or joining trade unions to secure better working conditions and health and safety standards. This, in turn, can render sex workers at greater risk of exploitation by third parties.⁴⁷ Criminalization of sex work also undermines the right to privacy, which includes individuals' freedom to make autonomous decisions with regard to their bodies.⁴⁸ Criminalization and penalization measures can have a disparate impact on women in sex work, given that women make up the majority of those living in poverty worldwide, have less access to education, employment opportunities and economic resources, and often bear the primary burden of family and community caretaking.⁴⁹

Sex workers are at risk of multiple, intersecting forms of criminalization and penalization. Sex workers who are at risk of discrimination on the basis of their sexual orientation and/or gender identity face criminalization in some countries under laws against sex work and/or laws against sexual activity between people of the same sex, or laws enforcing norms of gender expression such as prohibitions against cross-dressing. Sex workers who are living with HIV may also face criminalization under laws on HIV transmission, exposure or non-disclosure, in addition to the criminalization they face under sex work laws. Women who are sex workers may face additional criminalization in countries where access to abortion is prohibited by law and/or where sex outside marriage is criminalized.⁵⁰ Likewise, the criminalization of irregular (sometimes called "illegal") migration or residence may give rise to – or exacerbate – the penalization of sex work by migrants and refugees, as engaging in this type of work might make them more visible and liable to being targeted by state authorities.

In response to the human rights violations caused by the criminalization of sex work, states must:

- Repeal existing laws and/or refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration;
- Ensure that any criminal laws that are applied to sex work are aimed at addressing harm to sex workers, including through clearly defined prohibitions on acts of coercion or exploitation, such as compelling a person to sell sex (including through the abuse of authority). Such laws should not be applied in a way that conflates all sex work with violence and/or exploitation or acts as a de facto prohibition on sex work;⁵¹
- Refrain from the discriminatory enforcement of other laws such as those on vagrancy, loitering, and immigration requirements against sex workers; and
- Ensure that sex workers are entitled to equal protection under the law and access to justice, and are not excluded directly or in practice from the application of anti-discrimination, labour, health and safety, and other laws.

⁴⁵ See Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010*; Global Commission on HIV and the Law, *Risks, Rights and Health*, 2012; WHO, *Prevention and Treatment of HIV*; UNAIDS *Guidance Note*, L. Lim, *The Sex Sector*; C. Overs, *Sex Workers, Empowerment and Poverty Alleviation in Ethiopia*; WHO, *Prevention and Treatment of HIV*.

⁴⁶ 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); Global Commission on HIV and the Law, *Risks, Rights and Health*, 2012.

⁴⁷ NSW, *Sex Work and the Law: Understanding Legal Frameworks and the Struggle for Sex Work Law Reform*, 2014.

⁴⁸ ICCPR, Article 17(1)(2); ICRPD, Article 22(1); *K.L. v. Peru*; UN Doc. CCPR/C/85/D/1153/2003, paras. 6.4-6.5; CEDAW, General Recommendation 24. At least one human rights body has directly applied the right to privacy to sex outside of the confines of marriage. The UN Human Rights Committee in *Toonen v Australia* held that laws criminalizing same-sex activity in private were in breach of the ICCPR. While the Committee considered a criminal "sodomy" law in this communication, it did not limit its reasoning to this specific type of law. See Human Rights Committee, *Toonen v Australia*, UN Doc. CCPR/C/50/D/488/1992, 1994.

⁴⁹ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, UN Doc. A/66/265 (2011), para. 11 (addressing the human rights impact of penalizing poverty).

⁵⁰ See CEDAW, General Recommendation 33 (women's access to justice), 2015, para. 49 ("Women are also disproportionately criminalized due to their situation or status, for instance women in prostitution, migrant women, women accused of adultery, lesbian, bisexual, transgender women and intersex persons, women who undergo abortion or women belonging to other discriminated groups.")

⁵¹ See for example: Sections 16 and 17 of The Prostitution Reform Act 2003, New Zealand on "Inducing or compelling persons to provide commercial sexual services or earnings from prostitution" and "Refusal to provide commercial sexual services" Available at www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html

PHYSICAL AND SEXUAL VIOLENCE

In many countries sex workers face high levels of violence at the hands of both state and non-state actors. This violence is often a manifestation of the stigma and discrimination directed towards sex workers and is exacerbated by their criminalized status. Violence faced by sex workers is often gender-based and or/influenced by other forms of discrimination.

Violence against sex workers is further 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 sex workers to operate in covert ways that compromise their safety. In most countries law enforcement is not adequately focused on the protection of sex workers from violence but instead on prohibition of sex work through enforcement of criminal law. This creates an adversarial relationship between sex workers and law enforcement officials that compromises the safety of sex workers and offers impunity to perpetrators, including law enforcement officials themselves, of violence and abuse against sex workers.

The fact that various aspects of sex work are treated as criminal conduct in many countries means that sex workers cannot rely on support or protection from the police. For many sex workers, reporting crimes experienced during the course of their work means putting themselves at risk of criminalization and/or penalization on the basis of their involvement in sex work, seizure of their earnings, potential loss of their livelihood through related sanctions and/or monitoring by the police to detect their clients.⁵² As a result, sex workers are frequently unable to seek redress for crimes committed against them, thereby offering impunity to perpetrators.⁵³ In addition, the stigmatized and criminalized status that sex workers experience gives law enforcement officials in many countries the scope to harass, extort and perpetrate physical and sexual violence against them, also with impunity.⁵⁴ 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.⁵⁵

⁵² 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 '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).

⁵³ 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.

⁵⁴ 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.

⁵⁵ 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.sexworkereurope.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; *UNAIDS guidance note on HIV and sex work*, 2012.

Laws that criminalize the buying of sex or general organizational aspects of sex work, such as laws regarding brothel-keeping or solicitation, often force sex workers to work in ways that compromise their safety.⁵⁶ Bans on buying sex criminalize the transaction between the sex worker and the client. While these laws are often intended to shift police focus, and therefore blame, from the sex worker to the client, in practice they can lead to sex workers having to take risks to protect their clients from detection by law enforcement, such as visiting locations determined only by their clients.⁵⁷ Laws prohibiting organizational aspects of sex work often ban sex workers from working together, renting secure premises, or hiring security or other support staff, meaning that they face prosecution and other penalties if they try to operate in safety. In prohibiting activities that help keep sex workers safe, criminalization denies sex workers their right to security of person.

In order to protect sex workers from violence, states must:

- Ensure that sex workers enjoy full and equal protection under the law as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, extortion and all other crimes;
- Introduce all necessary measures to ensure the effective investigation, prosecution and punishment of violence against sex workers without discrimination, including legal or procedural reforms where appropriate, such as standards of good practice which reflect policing that is consistent with human rights;⁵⁸ and
- Provide training and monitoring measures for law enforcement officials and health and social service providers to help protect the human rights of sex workers.

PROTECTIONS FROM EXPLOITATION

Exploitation within commercial sex takes different forms and can encompass a wide range of actions extending from labour violations (for example relating to health and safety regulation), up to and including very serious forms of exploitation involving servitude-like practices and forced labour. States have a range of obligations to protect individuals, including those involved in sex work, from exploitation and abuse. Amnesty International considers that there is greater scope for sex workers to benefit from labour-based protections from exploitation where sex work is not treated as a criminal activity. Similarly, sex workers are more empowered to claim their rights and seek protection from exploitation under the law when they do not have to risk criminalization and/or penalization as a consequence of engaging with law enforcement or other state actors.

Amnesty International considers that states must provide sex workers with comprehensive protections from exploitation, including protections under the law and adequate reporting and investigation mechanisms. These include but are not limited to:

- **Labour and employment regulations:** States can regulate sex work either via the general laws that apply to all businesses or employment practices, or through the introduction of regulations specific to sex work. Amnesty International does not take a position on whether states should formally recognize sex work as a form of work that requires regulation specific to sex work, nor does it take a position on the exact form such regulation should take.
- **Other criminal laws:** States must ensure that sex workers can access adequate legal protection from the range of other forms of exploitation that do not constitute human trafficking. These protections may be provided for more generally through other laws, for example via laws on physical and sexual violence, abuse of authority, forced labour, or other clearly defined acts of exploitation. Such laws should not be applied in a way that conflates all sex work with violence and/or exploitation or acts as a *de facto* prohibition on sex work.
- **Anti-trafficking laws:** States fulfil their obligations under international law to prevent, suppress and punish human trafficking, by adopting legislative and other measures necessary to establish human trafficking for all purposes as a criminal offence.⁵⁹ These laws must comply with human rights standards.

⁵⁶ See *Canada (Attorney General) v Bedford*, 2013 SCC 72 [2013] 3 S.C.R. 1101.

⁵⁷ I. U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Oslo, 2012.

⁵⁸ See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), (UN Doc. E/C.12/GC/22), 2016, para. 32. The CEDAW Committee has expressed concern to one state party about “widespread violence and discrimination against women in prostitution, in particular by the police.” CEDAW, Concluding observations: Kyrgyzstan, (UN Doc. CEDAW/C/KGZ/CO/4), 2015, para. 21(c).

⁵⁹ UN Trafficking Protocol, Article 5.

In enforcing these laws, victims of violence must be ensured access to legal and social protection, remedies and, in the case of migrants, immigration support (particularly when complying with anti-trafficking investigations and prosecutions). Additionally, victims made to engage in illegal activities should not themselves be criminalized.

REGULATION OF SEX WORK

Decriminalization of sex work does not mean the total absence of any regulation of sex work. Rather it means that laws should be refocused away from catch-all offences that criminalize most or all aspects of sex work towards laws and policies that provide protection for sex workers from acts of exploitation and abuse.

States have an obligation to ensure that all persons, including sex workers, have access to just and favourable conditions of work (which includes matters of safety)⁶⁰ and are protected against exploitation, including those who are self-employed or who make their living in informal settings.⁶¹ There has been some movement at all levels – international⁶², regional⁶³ and national⁶⁴ – to recognize that sex workers must be protected with relevant labour and employment guarantees even in the absence of explicit recognition by the state of sex work as an occupation and where sex work has not been decriminalized.

Amnesty International does not take a position on the exact form that regulation of sex work should take, or whether it is necessary for such measures to be either within or apart from the general laws that broadly regulate other businesses or employment practices in a country.⁶⁵ Rather, this should be determined in collaboration with sex workers and should comply with human rights standards.⁶⁶

States can impose restrictions on the sale of sexual services, provided that such restrictions comply with international human rights law, in particular in that they must be for a legitimate purpose, appropriate to meet that purpose, provided by law, and necessary for and proportionate to the legitimate aim sought to be achieved, and not discriminatory.⁶⁷ For example, states may restrict sexually explicit imagery in advertising to the general public and the timing and locations of such advertising. Restrictions that would aim to limit sex work to the extent that it becomes impossible or risky or which prohibit sex workers from working together for safety – for example, by organizing collectively – would not be legitimate.

Regulation should respect the agency of sex workers and guarantee that all individuals who undertake sex work can

⁶⁰ See CESCR, General Comment 23 (right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 2016, UN Doc. E/C.12/GC/23, 2016, paras. 25-30.

⁶¹ Universal Declaration of Human Rights, Article 23; CESCR, General Comment 23 (right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 2016, UN Doc. E/C.12/GC/23, 2016, para. 5 (The right to just and favourable work conditions applies to everyone, including self-employed people and those in the informal sector. Additionally, “[w]hile the overall objective should be to formalize work, laws and policies should explicitly extend to workers in the informal economy and States parties should take steps to gather relevant disaggregated data so as to include this category of workers in the progressive realization of the right. For that purpose the informal economy should be included in the mandate of a respective monitoring and enforcement mechanism” para. 47 (iv).

⁶² For example, despite initial opposition from some member states, the ILO agreed in 2010 that its recommendation on HIV and the World of Work (200/2010) should apply to all workers, both formal and informal and this should include sex workers. See ILO Report of the Committee on HIV/AIDS ‘*HIV Aids and the World of Work*, Provisional Record 13 (Rev.) 99th session, 2010, paras. 192-210.

⁶³ In 2001, the European Court of Justice ruled that a group of Polish and Czech women had the right to engage in sex work in the Netherlands under treaties between the European Union and its applicant countries. The judges said that “prostitutes” could work in any European Union country where selling sex was tolerated as long as they were genuinely self-employed, had the means to set up their business and had a reasonable chance of success. (*Jany and Others* C-268/99).

⁶⁴ See *Kylie v Commission for Conciliation, Mediation and Arbitration & Ors* [2008] ZALC 86; [2008] 9 BLLR 870 (LC) ; (2008) 29 ILJ 1918 (LC) (31 July 2008) in which the South African Labour Appeals Court ruled that a sex worker was entitled to protection against unfair dismissal even though sex work remained criminalized. See also the minority judgment of Sachs and O Regan JJ in *S v Jordan and others* 2002 (6) SA 642 (CC), para 74.

⁶⁵ For an elaboration of why Amnesty International is taking this position, see the section on ‘Why not legalization?’ in the explanatory note accompanying this policy.

⁶⁶ See J. Pitcher, ‘The Impact of Different Regulatory Models on the Labour Conditions, Safety and Welfare of Indoor-based Sex Workers’, *Criminology and Criminal Justice*, 2014.

⁶⁷ See ICCPR, Arts. 18, 19, 21 and 22; ICESCR, Art. 4; European Social Charter, Art. 31.1; Protocol of San Salvador, Art. 5. The content of these requirements has been developed extensively elsewhere. See, for example, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, annex, 1985; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/CN.4/1987/17, annex, 1987. See also UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, UN Doc. A/66/265 (2011), para. 11 (addressing the human rights impact of penalizing poverty).

do so in safe conditions, are free from exploitation, and are able to continue or stop selling sex when and if they choose.

In the context of regulating sex work, states must:

- Respect and protect the right of sex workers to just and favourable conditions of work;
- Ensure that regulatory frameworks comply with international human rights law and that the safety and fulfilment of sex workers' human rights is the paramount objective for any such regulations;
- Ensure the meaningful participation of and consultation with sex workers, including those facing multiple forms of discrimination, in the development of any regulatory frameworks; and
- Recognize the rights of sex workers to associate and to form and/or join trade unions.

CONSENT

A key component of Amnesty International's definition of sex work is the focus on consent as a factor to distinguish sex work from human trafficking, sexual exploitation, sexual violence and gender-based violence. While there is no clear definition of consent under international law, for purposes of this policy, Amnesty International uses the term to mean the voluntary and ongoing agreement to engage in a particular sexual activity. Consenting to sex does not mean consenting to violence. Rather, sex workers, like other persons, can change or rescind their consent to have or sell sex at any point and this must be respected by all parties (e.g. clients, potential clients, third parties, police, judges and other law enforcement officials). Where consent is not voluntary and ongoing, including when a person's changed or rescinded consent is not respected, this constitutes rape and is a human rights abuse and must be treated as a criminal offence. Consent analysis is necessarily fact- and context-specific and the views, perspectives and experiences of individuals selling sex should be prioritized in any consideration of issues related to consent. Law enforcement bodies, other government bodies and clients often make assumptions, based on stereotypes, that sex workers always consent to sex (because they may engage in sex frequently for their work) or, conversely, that sex workers can never consent to sex (because no one could rationally consent to selling sex). These assumptions lead to violation of sex workers' human rights, particularly their safety, access to justice and equal protection under the law. Criminalization of sex work often reinforces these problematic assumptions.

Decisions to sell sex can be influenced by situations of poverty and/or marginalization. Such situations do not necessarily undermine or negate a person's consent. Constrained circumstances do not eliminate an individual's ability to make decisions about their own lives, except under particular circumstances that amount to coercion where an individual faces threats, violence or abuse of authority.

Nevertheless, there may be an increased risk of exploitation for individuals making decisions in the context of poverty, displacement and/or conflict. States have obligations to protect all individuals from exploitation and the conditions that create a risk of exploitation. However, in doing so, states must also recognize and respect the agency and capacity of adults engaged in consensual sex work. States must address the conditions that give rise to exploitation, by enhancing sex workers' choices and control over their own circumstances.⁶⁸

LEAVING SEX WORK

In the same way that forms of intersectional discrimination can limit employment options for people considering selling sex, they can also curtail individuals' ability to leave sex work. Leaving sex work may be particularly challenging for women, for a number of reasons: they may have limited access to education and therefore employment opportunities; they may have caregiver responsibilities which prevent other employment opportunities; or may be denied land and property rights including as a result of marital status, divorce and inheritance laws; or because of cultural frameworks which discriminate against women. In addition, individuals who face discrimination and inequalities on the basis of their sexual orientation or gender identity, race, caste, ethnicity, Indigenous identity, migrant or other status may also face significant barriers to leaving sex work. Those who have criminal records due to their involvement in sex work may struggle to find other employment and thus may be constrained to remain in sex work.

States have obligations to address discrimination and inequalities and to provide a sufficient social safety net to

⁶⁸ For further analysis, see the section on 'Coercion, consent and autonomy' in the explanatory note accompanying this policy.

ensure that no person has to rely on sex work due to poverty or discrimination and that everyone can leave when and if they choose.

To ensure that individuals are in a position to leave sex work, states must:

- Provide adequate and timely access to support through, for example, state benefits, education and training and/or freely chosen alternative employment;⁶⁹
- Develop and implement support programmes, in meaningful consultation with sex workers, including those facing multiple forms of discrimination, that are responsive to the lived experiences of sex workers and respect individual agency;
- Guarantee that sex workers are not compelled to participate in coercive “rehabilitation” programmes;
- Provide targeted support and care to those who have been victims of human rights abuses and exploitation within sex work;
- Take measures to remove common barriers to alternative and supplementary forms of employment that sex workers face (such as issues relating to criminal records or employment history checks), remove any legal barriers to exit from sex work and protect former sex workers from discrimination on the basis of their previous sex work;⁷⁰
- Tackle gender inequality and discrimination against cisgender women and transgender people in the field of employment, including by reforming discriminatory laws, policies and practices that diminish their opportunities in the economy, and taking steps to end gender stereotypes, rigid gender roles and prejudice that undermine their equal participation in the economy;⁷¹ and adopt effective measures, including temporary special measures, to eliminate occupational segregation based on gender stereotypes;⁷² and
- Combat stigma and discrimination against people who are gender non-conforming that inhibit their access to education and employment opportunities or enable and reinforce violence against them by state and non-state actors, and work to dismantle gender stereotypes that lead to punishment of those who transgress gender norms.

HUMAN TRAFFICKING

Human trafficking amounts to a grave human rights abuse and states have an obligation under international human rights and international criminal law to ensure that it is recognized as a criminal offence. Amnesty International supports the criminalization of human trafficking and calls on states to guarantee effective legal protections against it. States must investigate, prosecute and bring traffickers to justice and guarantee victims access to justice and reparation, including with all necessary levels of support. Trafficking victims should not be criminalized.

The UN Trafficking Protocol defines trafficking as constituting three elements:

1. An **“action”**: that is, the recruitment, transportation, transfer, harbouring or receipt of persons;
2. A **“means”** by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and
3. A **“purpose”** (of the action/means): specifically, exploitation.

All three elements must be present to constitute “trafficking in persons” under the UN Trafficking Protocol. The only exception is when the victim is a child, in which case the “means” requirement is no longer an element of the crime.

⁶⁹ See CEDAW, Concluding Observations: Sweden, UN Doc. CEDAW/C/SWE/CO/8-9, 2016, para. 26 (recommends strengthening the assistance provided to women and girls who wish to leave prostitution, including by providing alternative income generating opportunities).

⁷⁰ For example, sex workers in licensed brothels in Tunisia who wish to leave their jobs must demonstrate their ability to earn a living through “honest” means, and obtain authorization from the police, thereby creating a barrier to exit. See Amnesty International, *Assaulted and accused: Sexual and gender-based violence in Tunisia*, (MDE 30/2814/2015), p. 44.

⁷¹ CEDAW Committee, General Recommendation 28, UN Doc. CEDAW/C/GC/28, para. 22; CEDAW Committee, Concluding Observations: Greece, UN Doc. CEDAW/C/GRC/CO/7 (26 March 2013), para. 29(b); CEDAW Committee, Concluding Observations: Turkmenistan, UN Doc. CEDAW/C/TKM/CO/3-4 (9 November 2012), para. 33(c).

⁷² CEDAW Committee, Concluding Observations: Bahamas, UN Doc. CEDAW/C/BHS/CO/1-4 (2012), para. 34(b).

Sex work (which must be between adults and consensual in order to be considered sex work) is distinct from human trafficking. The conflation of human trafficking with sex work can result in broad and over-reaching initiatives that seek to eradicate all commercial sex as a means to end trafficking. Such approaches work in practice to violate sex workers' human rights,⁷³ and in general can make sex workers and people who have been trafficked more vulnerable to violence and harm.⁷⁴ Additionally, there is a lack of evidence to suggest that such approaches are successful in addressing trafficking (in terms of preventing, identifying and protecting victims and supporting prosecution of perpetrators).⁷⁵

⁷³ The Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the Office of the High Commissioner for Human Rights' require that states should consider: "*Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked*". Recommended Principles and Guidelines on Human Rights and Human Trafficking, OHCHR, 2002, p. 3.

⁷⁴ For further analysis, see the sections on 'International Standards on Trafficking in Persons', 'Trafficking in persons and its conflation with sex work', 'Methodological difficulties in human trafficking research' and 'Impact of calls for decriminalization of sex work on anti-trafficking initiatives' in the explanatory note accompanying this policy.

⁷⁵ UNAIDS Guidance Note on HIV and Sex Work, at Annex 3; UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific* 3, 16, 39 (2012); A/HRC/14/20 Report of the Special Rapporteur on the Right to Health, 2010 at paras. 32, 33; see also generally Global Alliance Against Traffic in Women, *Moving Beyond 'Supply and Demand' Catchphrases: Assessing the Uses and Limitations of Demand-based Approaches in Anti-trafficking* (2011), Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, 2007.