



**european
sex workers
rights
alliance**

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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.

European Sex Workers Rights Alliance (ESWA)

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European Sex Workers Rights Alliance (ESWA) is a sex worker-led network representing more than 111 organisations in 30 countries across Europe and Central Asia. More than 50% of ESWA membership organisations are led by sex workers themselves. ESWA board and majority of ESWA staff are sex workers of diverse background and experience. ESWA aims to ensure that all sex worker voices are heard and that their human, health, and labour rights are recognised and protected. ESWA's work is rooted in four key organising principles that guide our activities, approach and decision-making process. As part of this, we believe in:

- **Being community-led.** As a membership organisation, we will always be sex worker-led, with projects and programmes designed to meet the needs and fight for the rights of all those who make up our community. With this, we recognise the diversity of individuals and experiences of those we represent.
- **Taking an intersectional approach.** We understand that much of the violence, stigmatisation and discrimination sex workers face stems from, and is compounded by, connected issues of gender, race, class, sexuality, disability and religion. Countering these divisive and counter-productive dynamics, we fight alongside movements for feminist and racial justice and centre the voice of women in all their diversity, trans, migrant and racialised sex workers in our work and organisation.
- **Building a culture of dialogue and mutual solidarity.** As an organisation, we are open to dialogue with all those who wish to meaningfully engage with us, and welcome the chance to expand, reflect on and challenge our own thinking and that of others.
- **Prioritising mental health and well-being.** We recognise that many individuals within our community have faced and live with the effects of violence, trauma and discrimination. The impact of this experience cannot be underestimated, and it is important that we recognise, centre and raise the voice of victims and survivors - and that we deliver programmes that prioritise and promote the mental health and well-being of our membership community, staff, volunteers and partners.

Introduction

Sex workers have been repeatedly depicted as anti-social because they deviated from stereotypical female roles and the gender order, given their considerable sexual and economic independence. On the other hand, postwar feminists considerably shifted discourses around sex work, arguing that sex workers are not offenders but victims of the patriarchal system, coerced into economic and sexual

dependency on men, with their social value reduced to sexual attractiveness. These different social images are present in public discourse and social media, and inform everyday attitudes towards sex workers. It is crucial to note that **they are created with no regard to what sex workers feel and think about themselves**. In this way sex workers are caught in a vicious (social) circle: since they are deemed 'unfit' members of society, or, at best, passive victims of male violence, **they are excluded from the process of developing these images**¹.

Such images and identities ascribed to sex workers encourage their discrediting as potential partners in social debates about their situation and status in society. When they try to engage in these debates, they are disqualified and denied their right to speak and represent themselves. The consequence is the silencing and exclusion from political participation of people concerned because, according to this approach, they are unable to assess their own situation correctly due to their pathologisation. This is especially true if sex workers oppose the dominant narrative of being victims due to their engagement in the sex work. If opposing the narrative of being victim of male violence, the people concerned are framed as complicit with pimps and traffickers, as it is believed that no one could agree with payment for sex. Thus, decisions about sex work laws, policies and interventions (such as those concerning HIV programming for sex workers, anti-violence or exit programmes) are made on behalf of sex workers or behind their backs.

ESWA is very concerned about the language and framing of the UN SR on VAW Call for input, as the call itself perpetuates stereotypes, stigma and contributes to silencing and exclusion of our community. Particularly the term "prostituted women" is extremely disrespectful and disempowering and denotes lack of agency and control above once life. We therefore urge the mandate holder to address the systematic oppression sex workers with respect to our community, to our experience and with a truly intersectional feminist lens and to stop promoting legal frameworks that have been shown to be detrimental to sex workers' rights. We also urge the mandate holder to take into account the previous work and conclusion of the other UN Special procedure, and not to oppose their conclusions and recommendations.

Secondly, we are concerned that the Call treats the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others ('the 1949 Convention') and the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime ('the 2000 Trafficking Protocol'), as if they were identically authoritative sources of law, and as if they addressed prostitution law and sex work the same way. We would like to remind the current mandate holder that previous mandate holder condemned the 1949 Convention as **1) it does not take a human rights approach; 2) it does not regard women as independent actors endowed with rights and reason; and 3) it does very little to protect women from and provide remedies for human rights violations committed in the course of trafficking**.² We are therefore worried that the prepared report will bring more confusion and unclarity, instead of guidance and human rights standards.

Consent

Consenting to sex or to sell sex does not mean consenting to violence. An inherent element of agency is the capacity to give or withhold consent. While there are many systemic factors and personal circumstances such as poverty, discrimination and gender inequality contributing to an individual's decision to engage in sex work, **such conditions do not inevitably render individuals incapable of exercising agency in these contexts**, and more specifically to consenting to engage in sex work. Denying a particular group of women (women who sell sex) agency to give or withhold consent and denying their bodily autonomy is not only utterly patriarchal, but it also actively disempowers sex workers and leads to severe violation of their human rights. According to [Amnesty International](#) such approaches are problematic from a human rights perspective, as they deny agency and decision-making to an entire group of people (most of whom are women) and place the power to make decisions about their lives in

¹ ESWA: Community report on Structural violence. 2015. [Community Report on Structural Violence - European Sex Workers' Rights Alliance \(eswalliance.org\)](#)

² Violence against women, its causes and consequences - Report of the Special Rapporteur, E/CN.4/2000/68, 29 February 2000, "[the Convention] does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason... the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights violations."

the hands of the state. For sex workers, consent is a key concept through which they exercise their agency in their work which means agreed upon terms and conditions, under which sexual services are provided. If these consented terms and conditions are violated, the incident should be treated as a criminal offence. Framing the entirety of the sex industry as abusive obscures the harm and the rights abuses that sex workers may face, and can lead to dangerous assumption that women who sell sex cannot be raped, because they have already agreed to be raped. There is a consensus under the international law about instances that negate consent- these are force or coercion. Increasing number of human rights bodies and international organisations³, human rights experts and CSOs⁴ recognize that individuals have the capacity to consent to sell sex, and critique criminalization of sex work as a matter of human rights.

Violence Against Sex Workers

Access to justice for sex workers in Europe is a considerable challenge and a key area of work of ESWA and our membership. In November 2020, ESWA published community research '[Undeserving victims?](#)' on migrant sex workers victims of crime. The report clearly reveals that there is a significant lack of implementation of the victims' rights laws and international standards in practice, mainly by front-line police officers and documented the impact of criminalisation of sex work on their ability to access justice. Sex workers bear a high burden of violence in Europe and globally, including physical, sexual, and psychological violence. Criminalisation of sex work, whether direct or indirect, creates an environment in which violence against sex workers is common or even tolerated. It is reported that in many European countries, repressive legal measures against sex workers trigger high levels of police-driven violence and harassment against them. During police raids and sweeps, sex workers are not only detained and arrested (not always on legal grounds), but also intimidated, humiliated, and subjected to extortion and physical and sexual violence. Particularly the Nordic model which aims to abolish prostitution as such has been criticized for increasing the capacity of police and immigration authorities (of relevance to sex work because the estimated majority of sex workers in Western Europe are migrants), which has led to increased profiling, surveillance and harassment of sex workers as documented by various research.⁵ Police surveillance as well as gender and racial profiling are daily realities for many sex workers, especially for migrant, trans, Roma and street-based sex workers as well as sex workers of colour. Police harassment usually leads to a complete loss of trust towards the institution of the police and has a significant impact on safety, wellbeing, and ability to access justice. As a result, these policies reduce the safety of sex workers significantly. In this setting, which claims to give an incentive to sex workers not to be directly criminalised for sale of sex, they continue in practice to be criminalised through pimping laws for working together (brothel keeping) and municipal by-laws. Working together is one of the key strategies by sex workers on how to keep themselves safe. Instead the pimping laws which target and criminalise sex workers working together⁶ exacerbate isolation and consequently vulnerability of sex workers. It also leads to under-reporting and inability to rely on the justice system as reporting crime can lead to prosecution of sex workers themselves for working together.

As soon as the men left, I called the police. When they arrived, officers asked questions about how many clients we had. A few days later I received a letter threatening me with prosecution for brothel-keeping. I tried to give a formal statement about the attack lots of times but was ignored by police until a journalist, organised by the English Collective of Prostitutes (ECP), started asking questions. Police have refused to take photographic and other evidence. Five weeks after the attack I received a deportation letter on the grounds that I was 'not a genuine visitor to the UK'. My deportation order was only stopped after the ECP campaigned with me. Sex Worker, UK⁷.

Migrants make up the majority of sex workers (up to 70%)⁸ in Western Europe and a significant segment in Central and Eastern Europe. Although Nordic model policies claim to decriminalise the sale of sex work, these countries regulate it through immigration enforcement policies that thus intersect with the

³ [UN Working Group on discrimination against women and girls](#), UNAIDS, UNODC

⁴ [International Commission of Jurists](#), [Amnesty International](#), Global Alliance Against Traffic in Women (GAATW), [International Women's Rights Action Watch Asia Pacific \(IWRAP-AP\)](#), Count Me In! Consortium, [Counting Sex Workers In](#)

⁵ Vuolajärvi, N. (2022), [Le Bail H. et al.](#) (2019), Amnesty International (2022)

⁶ [Law change urged as migrant women overwhelmingly convicted of brothel keeping | Independent.ie](#)

⁷ Underserving Victims? Community report on sex workers access to justice. ICRSE/ESWA, 2020

⁸ TAMPEP (2009), Vuolajärvi, N. (2022)

policing of commercial sex.⁹ In Sweden and Finland, selling sex is grounds for deportation and denial of entry for migrants outside EU/EEA. Sweden has also deported EU citizens for selling sex. Similarly, Norway's immigration laws give police the authority to question, deport and control migrant sex workers. Because of the threat of deportation, foreigners feared contact with the police even if they were in the country legally and could not rely on the police for help if they became victims of crime. The Swedish laws disproportionately affect migrant sex workers.

I didn't know anyone, I didn't speak French well enough. I was afraid to call the police because I didn't have papers. It was really a very difficult situation, with a lot of aggression and in the middle of winter. People told me not to call the police because they could arrest me. So when I was attacked, my only chance was to run away, or sometimes, someone would defend me. Sex worker, France¹⁰

While we recognize that many sex workers are facing severe exploitation and human trafficking in the sex industry, the current approach that uses criminal justice excessively has resulted in broad and overreaching crackdowns against sex workers - especially migrant, racialized or trans workers. There is no credible evidence to suggest that punitive criminal justice approaches help identify or protect victims or prosecute traffickers¹¹. Rather, they facilitate excessive policing and profiling of migrant sex workers that leads to their increased isolation, dispersal, and rapid deportation that harms sex workers as well as trafficked and exploited persons. Evidence shows that police raids and rescue operations often result in evictions, rendering migrant sex workers particularly vulnerable to exploitation and abuse. In some of the European countries¹², third party laws are routinely used to evict sex workers from their homes and working spaces, since landlords and hotels are at risk of being prosecuted for facilitating prostitution.

The police arrived with the idea that we are victims of pimping. They took us to the station for an interview, and the police want[ed] us to leave the apartment. For them it is an offense for an owner to let us do sex work in her apartment. ... They blackmail the person who rented us the apartment, because if she does not ask us to leave the place they will prosecute her for pimping charges. But those who are harmed are us. Because the landlord will be able to rent to someone else with a normal contract, and the police will have done their job. Sex worker, France¹³

In a criminalised context, in which the policy goal aims at abolishing prostitution, neither the nationals who sell sex do not escape from the fear of being evicted. Further the fact that a person provides paid sexual services may have implications for their parental rights¹⁴. They can become targets of punitivist social welfare measures where their children can be taken into custody if their engagement with commercial sex is exposed. The risk of losing custody of one child as a result of being paid for sex has been stressed by ESWA community research as a factor that prevents sex workers from reporting crime committed against them.

Council of Europe, Gender Equality Commission: [Study on the impact of Covid-19 on women's access to justice](#) notes that the stigmatisation and discriminatory treatment of sex workers, including by law enforcement officers, is based on their transgression of gendered social and sexual norms and/or for not conforming to gender roles specifically because they are sex workers. The report also states that the treatment of sex workers throughout the criminal justice chain in countries around the world, including in Europe, constituted a serious pre-existing cause for concern.

The [meta-analysis](#) by London School of Hygiene and Tropical Medicine (LSHTM) of 40 quantitative and 94 qualitative studies spanning a period of 28 years found that women selling sex who had been exposed to repressive policing had a three times higher chance of experiencing sexual or physical violence by anyone.

Services

⁹ Vuolajärvi, N. (2022)

¹⁰ Underserving Victims? Community report on sex workers access to justice. ICRSE/ESWA, 2020

¹¹ See UN SR on Trafficking 2020 report [A/77/163](#), para. 46.

¹² See Amnesty International reports: [Human Costs of Crushing the Market](#), ["We live within a violent system": Structural violence against sex workers in Ireland](#)

¹³ Underserving Victims? Community report on sex workers access to justice. ICRSE/ESWA, 2020

¹⁴ <https://www.opendemocracy.net/en/5050/sex-work-social-services-mothers-children/> , Eva Marree Kullander Smith - Wikipedia

Community-led services, in which sex workers take the lead have demonstrated significant benefits in terms of health outcomes. They also enable sex workers to address structural barriers to their rights, and empower them to change social norms to achieve a sustained reduction in their vulnerability that goes beyond health¹⁵. International organisations, including UNAIDS, the World Health Organisation (WHO), the United Nations Population Fund (UNFPA), and the United Nations Development Programme (UNDP), have called for the decriminalisation of sex work and elimination of unjust non-criminal laws and regulations against sex workers.¹⁶ They have also recognised that violence against sex workers must be prevented and addressed in partnership with sex workers and their organisations, and that sex workers and their organisations should be meaningfully included in policy making. Similarly, [ESWA members](#), sex workers and their collectives do life-saving work that experts in human trafficking identify as anti-trafficking work in Europe and globally¹⁷.

Harm reduction- as one of the approaches aims to reduce the risks and harms that may accompany various activities such as sex work in the context of drug use. Effective harm reduction programs do not seek to discourage or reduce sex work but to reduce avoidable harm¹⁸. This understanding of harm reduction is critical, especially concerning the legal frameworks. In the European context, the so-called Swedish model seeks primarily to discourage and abolish sex work, which stands in firm opposition to what the harm reduction approach aims to do and discourage sex workers to organise and develop programmes. For instance in Sweden, the governmental subsidised organisations are prevented from cooperating with Red Umbrella Sweden. Such (sexual) humanitarian¹⁹ regimes of care or governing in the name of advancing higher moral principles have a particular resonance in countries which take pride in their welfare model and progressive humanitarian politics²⁰. The failure of the Swedish approach has been noticed for instance, by the Council of Europe GREVIO²¹ monitoring mechanism, which is concerned that the support provided by the social services and public health care sector to women victims of domestic and sexual violence who are in addiction and/or prostitution fails to focus on their victimisation. The exclusionary approach to services for sex workers has been documented in France. The French exit programme creates divisions between those who are considered as worthy of protection (because they want to stop sex work) and those who prefer to continue, who would then be considered as the collateral damage of a political objective that does not take into account their choices and their rights. In other words, sex workers, in more or less constructive terms, criticised the moral aspect underlying the new law.²²

Conclusion

A feminist approach that sees increased policing, prosecution, and imprisonment as the primary solution to violence against women has been described as 'carceral feminism'.²³ Carceral feminism fails to be intersectional and fails to recognise how increased policing and state power leaves certain women more vulnerable to violence in general, and that greater criminalisation often places these same women at risk of state violence.²⁴ ESWA rejects the so-called simple and obvious solutions, such as client's criminalisation, and in turn, through its membership, monitors how such policies contribute to vulnerability, create stigma, and create barriers to services. [Sex workers rights defenders](#) do very

¹⁵ [9789241506182_eng.pdf \(who.int\)](#)

¹⁶ UNAIDS (2012), WHO, UNFPA, UNAIDS, NSWP, The World Bank and UNDP (2013), WHO, UNFPA, UNAIDS and NSWP (2012), WHO (2016), Global Commission on HIV and the Law, HIV and the Law: Risks, Rights & Health, 2012, and 2018 supplement, ILO (2010)

¹⁷ https://www.frontlinedefenders.org/sites/default/files/fld_swrd_final_english.pdf <https://gaatw.org/resources/publications/941-sex-workers-organising-for-change>
https://www.eswalliance.org/launch_of_briefing_tackling_trafficking_under_a_decriminalisation_model

¹⁸ UNODC 2023 BRIEFING PAPER Addressing gender-based violence against women and people of diverse gender identity and expression who use drugs.

¹⁹ See the SEXHUM Project websites and outcomes: <https://sexhum.org> in which the concept of 'sexual humanitarianism', refers to the increasing way in which some migrant groups and individuals are understood and targeted by humanitarian concerns, policies and interventions as uniquely and specifically vulnerable in relation to their sexual behaviour, which often legitimises harmful anti-sex work and antiimmigration initiatives.

²⁰ Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell sex https://vuolajarvi.weebly.com/uploads/1/3/1/5/131576300/governinginthenameofcaringprintvuolaja_rvi2018.pdf

²¹ See: <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686> see para (15), (131), (211)

²² [Le Bail H. et al.](#) (2019),

²³ Bernstein, E. (2007)

²⁴ Bernstein, E (2012), see also: <https://transformharm.org/carceral-feminism/>

important anti-trafficking work; many of them are survivors of trafficking or different forms of violence themselves, however, they don't identify as anti-trafficking advocates as such. Often, they build very fragile ties with the most marginalised sex workers in which their identities as sex workers can help them to reach places traditional anti-trafficking advocates would hardly reach. In many cases, sex workers themselves associate anti-trafficking efforts with 'raids and rescue' operations that sex workers describe as imperialist, neo-colonial, racist, patriarchal and classist, and which they argue often have violent, harmful, and criminalising consequences for the sex workers and survivors they are supposed to 'rescue'.