



Guidance on preparing a submission to the UN Special Rapporteur on violence against women and girls to the Human Rights Council on “prostitution and violence against women and girls”

See the call for submissions at: <https://www.ohchr.org/en/calls-for-input/2024/call-input-report-special-rapporteur-violence-against-women-and-girls-human>

The Sex Worker Inclusive Feminist Alliance (SWIFA)¹ has prepared these guidelines to support sex workers’ rights-based submissions to the UN Special Rapporteur on violence against women and girls (SRVAW). We provide suggestions and background information about the kind of information, analysis, data, and arguments that your group (as allied with SWIFA) might be interested in making.

We understand that the SRVAW has chosen to focus on a specific range and ideological approach to sex work and prostitution law with which many of us do not agree. However, we are encouraging submissions for at least two reasons: First, the SRVAW may, in fact, include some information that runs counter to her argument, as she has stated that she is aware of advocates with differing views. We have no way to control the way that submissions are or are not used (and we may feel our submissions are misrepresented/taken out of context); second, any of us are free to make public what we send to the SRVAW.

¹ SWIFA was formed as part of a long-term strategy of building alliances across the sex workers’ rights and women’s rights movements to ensure alignment of a rights-affirming position on sex work throughout the UN system, to expand the understanding and knowledge within UN agencies about the relationship between realizing human rights and decriminalization of sex work, to ensure that the diverse experiences and expertise of sex workers inform UN policy and positions on sex work, and to generate and sustain strong cross-movement alliances between sex workers’ rights and women’s rights movements. SWIFA is composed of the African Women's Development & Communications Network (FEMNET), Amnesty International, CREA, Global Alliance Against Traffic in Women (GAATW), Global Network of Sex Work Project (NSWP), International Planned Parenthood Federation (IPPF), International Women's Rights Action Watch Asia Pacific (IWRAW-AP), and Women's Global Network for Reproductive Rights (WGNRR).

Please let us know if you are submitting and would like to publicize your submission. Several groups are in discussion about offering a space to receive and make public the sex workers' right-based submissions. We will make this information available once we have it.

1. Terminology of the call

The language of the call conveys the perspective of the SRVAW, using the framework of *prostitution* and *prostituted women and girls*, rather than *sex work* and *sex workers*. It is important to remember that this is ideologically-driven language that submissions may either choose to address or not, including the frame of the call which elides and conflates trafficking and prostitution.

2. "Sex work" and "sex workers"

We recognize 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 sell sex or who use sex work as a form of livelihood identify as "sex workers" and not all sex workers identify as women. When possible, we advise using the same language as that used by rights holders or rights claimants themselves.

Often, the term "sex work" is used by sex workers' rights activists to resist the dominant representation of sex work/prostitution as an illegal, immoral, and dangerous activity and emphasize the labour aspect" of sex workers' work. Many people who sell sexual services prefer the term "sex worker" and find "prostitute" demeaning and stigmatizing, which contributes to their exclusion from health, legal, and social services.

3. Who are sex workers?

The SRVAW call focuses solely and explicitly on women and girls, noting that they constitute the majority of those in the sex sector. As we note, (in contrast to the SRVAW) persons involved in sex work are diverse and include women and girls, cis and trans, in all their diversity, as well as cis and trans men and non-binary people. We recommend using inclusive language that reflects different experiences of diverse women, girls, and other persons in sex work, capturing the various sectors and the ways that race and racism, religion, caste, ethnic, linguistic, citizenship, migrant or health status, sex characteristics, disability, and other formal and informal structures of communities create distinct experiences of sex work.

You may wish to note in your submission that while the SRVAW's mandate focuses on the category of 'women and girls', this category is itself expansive, and that prostitution law and

criminal law more generally affect a wide range of differently gendered persons who sell or trade sex—be they transwomen, non-binary or cis men.

Emphasizing the many different contexts in which sex is exchanged—street-based, brothel, apartment, on-line, escort services, and other long- and short-term arrangements—is also important. **Recognizing the diverse experiences of sex workers of different genders and sexualities will allow for a more wide-ranging analysis of the rights and interests affected and, therefore, a more comprehensive response to the SRVAW’s questions pertaining to a range of experiences of violence in the context of sex work and “hidden” forms of “prostitution”.**

4. Trafficking, exploitation, and sex work

The call from the SRVAW sets up a background framework which confusingly elides both past and present international law on trafficking with contemporary sex work and prostitution law, seeking to seamlessly link sex work to trafficking, or trafficking, coercion, and violence, rather than build on decades of international human rights work that has carried out the quite useful task of disentangling them.²

Careful analysis of the law and its rights effects requires a clear distinction between sex work (or 'prostitution') and human trafficking. Sex work is an income-generating activity and a sector of work; human trafficking is an individual human rights violation and criminal act that encompasses exploited labor across all sectors—agricultural, domestic, construction, sex, fisheries, begging, etc.

Effectively responding to trafficking requires that UN mechanisms and states address the specific conditions that give rise to the harm and explicitly disentangle sex work and trafficking: **A rights-based response can help clarify explicitly that anti-trafficking initiatives should not be used to justify criminalizing sex work, especially since, as noted above, trafficking and labor exploitation take place across a range of sectors and contexts.**

Migrant women in particular experience rights violations through the conflation of sex work and human trafficking, which enables the persecution (including the exclusion of and limitation of rights to movement) of migrant women to be carried out under the guise of anti-trafficking. **Rather than being due to a genuine concern with the wellbeing of women in sex work, so-called "anti-trafficking operations" are used to fine, detain, prosecute, and deport migrant sex workers.**³

² NSWP, 2019, "[Sex Work is not Sexual Exploitation.](#)"

³ NSWP, 2022, "[Briefing Paper: Migration and Sex Work.](#)"

Rather than collapsing the rights concerns connected to sex work, trafficking, violence, and forced labor, **we encourage submissions to present careful analyses (with both data and narratives) to show the impact of national legal and policy frameworks on rights, including the rights of victims of trafficking, violence, or other forms of coerced or forced labor across all sectors.** Relevant laws and policies may be called ‘anti-trafficking’ or may be found in health regulations, zoning or housing codes, vagrancy laws, or labor regulations, including organization or union laws, or migration laws. **It is similarly important to reflect on the impact of laws that criminalize sex work and push the sex industry underground and away from monitoring the range of human rights violations that may occur, including trafficking, debt bondage, and labour exploitation. Repealing laws that criminalize sex work and otherwise punish sex work is a key component of creating an enabling environment to effectively combat trafficking.**

We recognize and call attention to the fact that sex work, like any other work sector, can still involve situations of harassment, violence, and trafficking. However, there is a clear distinction between sex work as a sector of work and instances of trafficking in persons and violence, which are human rights violations. The two must not be conflated. Indeed, **submissions might usefully show how this conflation of sex work, trafficking, harassment, and forced labor often makes it more difficult to identify and take action to address this range of distinct human rights violations.**

5. Applicable International Law

The call for inputs borrows from international law, but overall presents an unreliable legal framework. It 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.

The 1949 Convention has also been rejected by previous mandate holders of the Special Rapporteur on Violence against Women and Girls on the basis that 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.⁴

⁴ 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

Many international law scholars and anti-trafficking advocates believe that the 1949 Convention has been superseded in practice by the 2000 Protocol: Under international law (Art. 30 of the Vienna Convention) an earlier treaty only applies to the extent that is compatible with a later treaty. The 1949 Convention (82 states parties) is incompatible with the 2000 Trafficking Protocol (180 states parties) because it deems all ‘prostitution’ [its term] to be a form of trafficking, whereas the 2000 Trafficking Protocol makes clear that trafficking can be in all labor sectors and that only forced prostitution amounts to a form of trafficking for sexual exploitation under the Protocol.⁵

6. Criminalization of sex work

Submissions can present an analysis of links between the criminalization of sex work and the violation of the human rights of women. Rights violations arise when sex work is criminalized and stigmatized, which can lead to discrimination affecting the right to healthcare, housing, a family life, and liberty, as well as violations of the labour rights of sex workers.

The exchange of sex for money arising between adults able to make decisions (consent) is not inherently violent. **The consequences of criminalizing *any* aspect of sex work is that sex workers (those selling sex) become criminals, and the criminalization subjects them to a range of indignities, penalties, harassment, extortion, and limitations on their rights.** This increases sex workers’ fear of authorities, which means that sex workers are less likely to report crimes, seek support, or access services.

In those models/frameworks where the sellers of sex are formally de-criminalized, submissions can seek to address how sellers are in fact treated: what are their rights during prosecutions of buyers? Has stigma been reduced, and how does this affect the right to family, freedom from arbitrary arrest, housing, education, etc.? ⁶

Submissions can also seek to address how, in regimes where selling and buying sex are criminal, sex workers are not afforded the protection of the law. For example, sex workers who want to report rape to authorities are often turned away because of the belief that they cannot be raped or that they do not deserve social services or justice. Submissions can address the practices and

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.”

⁵ Please see UNAIDS Guidance Note on HIV and Sex Work at https://www.unodc.org/documents/hiv-aids/publications/guidance_note_English.pdf; UNODC, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons at <https://www.unodc.org/unodc/en/human-trafficking/protocol.html>

⁶ European Sex Workers’ Rights Alliance, 2017, “Professed Protection, Pointless Provisions – Overview of the German Prostitutes Protection Act (Prostituiertenschutzgesetz – ProstSchG)”.

implications of criminal law, reinforcing the stigma attached to sex work and legitimizing people's prejudices, abuse, and discriminatory treatment of sex workers and their clients. For example, are there cases where prosecution has left sex workers with a criminal record, preventing them from accessing other employment opportunities or services? How else might sex workers be excluded from laws designed to safeguard workers, such as occupational health and safety laws, labour laws, and unemployment benefits, as sex work is not regarded as a form of work.⁷

Submissions can demonstrate the ways that across different categories and sectors of sex work, it is less safe because of criminalization, and actions that sex workers take to protect themselves, including the use of condoms, can be turned against them. For instance, when authorities treat "condoms as evidence" of sex work by law enforcement, it can result in sex workers and their clients being less likely to carry condoms, thereby increasing the risk of STIs (including HIV) and ill-health.⁸

While the call assumes a direct link between pornography and violence and violence and sex work, submissions can seek to address a more nuanced or contextual story. Submissions can address how censorship or criminalization of pornography impacts sex workers' ability to operate online, which may be a more preferable space for some sex workers for whom the risks of in-person soliciting or working may be greater. Submissions can also address the way that government efforts to limit online sexual expression can also limit sex workers' ability to communicate with each other, to offer advice and guidance, and to organize. This increases the risk of violence and sexual exploitation.⁹

7. Violence against sex workers

While the SRVAW's call assumes both that "prostitution is violence against women" and that violence is inherent to the sex work industry, submissions can seek to document and analyze the ways in which the criminalization of sex workers and any other restrictions (such as immigration laws, gender inequality in access to housing, etc.) make violence more likely, particularly as they intersect with other axes of exclusion (including race, national status, age, health or migrant status, etc.).

Sex work is not inherently violent, but discrimination and stigma against sex workers generate violence and limit sex workers' access to justice. Globally, sex workers face a 45% to 75% chance of experiencing violence over their lifetime. Sex workers from structurally excluded groups, such

⁷ NSWP, 2022, "Smart Sex Worker's Guide to Social Protection."

⁸ NSWP, 2017, "[The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence.](#)"

⁹ NSWP, 2021, "[Smart Sex Worker's Guide to Digital Security](#)"

as LGBT individuals, migrants, people who use drugs, and the homeless, experience even higher levels of violence.

In countries where laws and policies conflate sex work and human trafficking, and in countries that criminalize sex work, sex workers and victims of sexual exploitation are subjected to violent raids by the police, who carry out physical and sexual assaults, impose prolonged detention, and subject women and girls to extortion. Such raids often fail to distinguish between sex workers and victims of trafficking for sexual exploitation, subjecting all women and girls to the same violent treatment. Submissions can seek to document the human rights violations arising from the actions of state authorities claiming to act for ‘victims’.

In other words, **in many cases, it is state actors who are directly responsible for the perpetration of violence against sex workers through violent raids of places of sex work.** In addition to violent raids of places of sex work, sex workers in many countries are subjected to harassment and extortion by the police on a daily basis, being forced to pay bribes or endure sexual assaults to avoid being criminalized.

Submissions can seek to demonstrate the ways that state actors are also indirectly responsible for violence against sex workers through laws that criminalize clients and third parties, which have been proven to increase the risk of violence for women sex workers rather than making them safe.¹⁰ These laws create a situation where women are unable to work together safely in brothels, are unable to report instances of abuse for fear of being criminalized or losing their housing, and are less able to assist women and girls who may be in a situation of exploitation for fear of being criminalized themselves (despite strong evidence that sex workers are exceptionally well positioned to detect and respond to cases of human trafficking within the industry).

8. Persons under 18 who sell sex¹¹

While SWIFA has focused our advocacy on sex workers and the rights of trafficked persons over 18 years of age, we know that some groups may feel that they have useful documentation and analysis to share with the SRVAW on the rights of persons under 18 in the sex sector.

Under international law and the law in force in most national contexts, anyone under the age of 18 who is moved into a position of exploitation is considered to be a victim of trafficking. It is undoubtedly the case that there are many young people who are exploited in the sex sector, including through coercion or misinformation. In other cases, young people make the decision to engage in sex work without coercion or misinformation: networks of queer and marginalized

¹⁰ NSWP, 2018, “Policy Brief: The Impact of ‘End Demand’ Legislation on Women Sex Workers.”

¹¹ NSWP, 2016, “[Policy Brief: Guidance on Young Sex Workers.](#)”

youth, for example, have been known to share information amongst each other about how to survive on sex exchanged for money in many settings.¹²

It is important in the submissions to the SRVAW on responding to violations of the rights of persons under 18 in the sex sector to distinguish here between “protection” (or protection of rights) and “protectionism.” While protectionist approaches often negate the autonomy of those to be ‘protected’, an approach to protecting rights is based on the premise that protection, education, and autonomy mutually reinforce each other. Protection is essential to developing autonomy, and autonomy is necessary to ensure that protection enhances rights rather than limiting them.¹³ It is important to protect young people who are vulnerable to harm and rights violations (especially in contexts in which they may not be aware of the risks they face). Submissions can highlight **how policies and systems can enable the rights of young people to non-punitive approaches, non-discrimination and health in relation to legal and health positive protections and negative obligations.**

9. Laws, policies, and practices to highlight

Submissions can highlight laws, policies, and practices that are obstacles to sex workers’ rights and/or that increase GBV against persons in the sex sector:

- Laws that criminalize sex work and which directly or indirectly prevent sex workers from being able to organize and provide frontline services to women and girls in situations of violence and exploitation.¹⁴
- Anti-trafficking organizations face further obstacles in their prevention of violence due to repressive funding requirements from donors (such as the US Government) that prevent organizations from working directly with sex workers. **It is impossible for anti-trafficking organizations to develop effective strategies to protect the rights of sex workers if they are unable to involve sex workers in the development of those strategies.**
- **Public health laws** that make it compulsory for sex workers to be tested for STIs or to register with authorities. Such laws put sex workers’ human rights at risk, especially their rights to privacy and bodily autonomy, and reduce access to health services for undocumented migrant sex workers.

¹² See for instance, Matthen P, Lyons T, Taylor M, Jennex J, Anderson S, Jollimore J, Shannon K. "I walked into the industry for survival and came out of a closet": How gender and sexual identities shape sex work experiences among men, two spirit, and trans people in Vancouver. *Men Masc.* 2018 Oct;21(4):479-500. Epub 2016 Sep 13. PMID: 30636865; PMCID: PMC6326376.

¹³ See Gerison Lansdown and Marie Wernham, 2021, Chapter 3: Understanding young people’s right to decide, in International Planned Parenthood Federation, “[Are protection and autonomy opposing concepts?](#)”

¹⁴ NSWP, 2017, “[The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence.](#)”

- **Public morality and public order laws** that focus on “vagrancy”, “loitering”, “anti-social behavior,” or “indecentcy” are used to harass, penalize, and persecute sex workers.
- **Traditional, customary, and religious laws** that include wide and punitive prohibitions against adultery or same-sex relationships that are applied to sex workers.
- **Migration laws** that regulate people’s mobility, movement, and livelihood strategies and are used to control and target migrant sex workers.
- **Drug-related laws** that criminalize drug use are used to compound the violence experienced by sex workers.
- **Homophobic laws** that target the lesbian, gay, bisexual, and transgender communities. These laws discriminate on the basis of sexual orientation and gender identity, and they have an impact on non-gender conforming sex workers.

Submissions can address the evidence that decriminalization of sex work helps, rather than hinders, the work of anti-trafficking organizations and frontline service providers.

It also helps protect sex workers’ health: According to UNAIDS and UNODC, criminalization has been proven to impede access to health-care services, including effective HIV prevention, treatment, care and support services.¹⁵ A study in 10 countries in sub-Saharan Africa found that the odds of living with HIV were 7.17 times higher for a sex worker in a country that criminalizes sex work compared with a country that partially legalized sex work¹⁶

Useful references

- [Amnesty International](#)
- Count Me In! Consortium, [Counting Sex Workers In](#)
- Global Alliance Against Traffic in Women ([GAATW](#))
- [Global Network of Sex Work Projects \(NSWP\)](#)
- [International Commission of Jurists](#)
- [International Women's Rights Action Watch Asia Pacific \(IWRAP-AP\)](#)
- [UNAIDS](#)
- [UNODC](#)
- [UN Working Group on discrimination against women and girls](#)

¹⁵ UNAIDS, 2012, “[Guidance note on HIV and sex work](#)”.

¹⁶ Lyons CE, Schwartz SR, Murray SM, Shannon K, Diouf D, Mothopeng T, et al. The role of sex work laws and stigmas in increasing HIV risks among sex workers. *Nat Commun.* 2020;11(1):773.