

To the CEDAW Committee: Sex work is work. It is not trafficking.



On 02 June, International Sex Workers' Day, the Count Me In! Consortium stands in solidarity with sex worker-led organisations and networks advocating for sex workers' rights and condemns the discriminatory and potentially harmful measures proposed in CEDAW's General Recommendation 38.

Sex workers' rights are central to human rights - particularly women's rights - and for achieving gender equality. Yet, there continues to be disagreement about how best to ensure that sex workers are free from violence and discrimination. The recent [CEDAW General Recommendation 38](#) on trafficking in women and girls in the context of migration adds to misunderstanding of the

distinction between sex work and trafficking and may increase discrimination against sex workers.

Our critique of the General Recommendation is wide-ranging. Expressing disappointment in the General Recommendation, the Global Network of Sex Work Projects (NSWP) highlighted the failure of the General Recommendation to distinguish between trafficking, sexual exploitation, and sex work. They note: "By habitually linking these three distinct phenomena, along with the poorly defined concept of "the exploitation of prostitution¹," this General Recommendation reinforces erroneous connotations of sex work and trafficking which fuel harmful legislation, policies and practices, including an overly broad application of anti-trafficking measures." Noting how anti-trafficking laws and policies frequently cause harm to sex workers and result in human rights violations, Amnesty International noted that "The general recommendation has not only failed to adequately address this, but risks writing this harsh reality further into the normative framework governing trafficking.²" The wide-ranging and detailed critique of the General Recommendation by International Women's Rights Action Watch Asia Pacific (IWRAP AP) noted that the problems in the General Recommendation range from start to finish. They identify challenges even at the level of the legal framework upon which it relies, commenting on its regressiveness because "it not only situates the legal basis of the GR (General Recommendation) in the anti-human-rights, racist, colonial, patriarchal and archaic 1949 Convention on Trafficking, but also vitiates 51 years of progress on legal standard setting on trafficking achieved by the Palermo Protocol which, despite its shortcomings, recognises that trafficking occurs for a wide variety of purposes not limited to exploitation of prostitution or other forms of sexual exploitation.³"

Inequality, discrimination and violence targeted toward sex workers of all genders is sustained through laws, policies and practices that criminalize some or all aspects of sex work⁴. All too

¹ See NSWP's Statement on CEDAW committee general recommendation no. 38 accessible at <https://www.nswp.org/resource/nswp-statements/nswp-statement-cedaw-committee-general-recommendation-no-38-2020>

² See Amnesty International's Research on the CEDAW Committee New General Recommendation on Human Trafficking accessible at <https://www.amnesty.org/en/documents/ior40/3755/2021/en/>

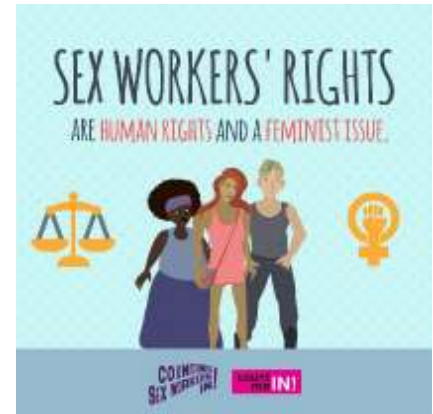
³ See IWRAP Asia Pacific's Thematic Paper on A Critique of CEDAW General Recommendation No. 38 accessible at <https://www.iwrap-ap.org/resources/critique-of-cedaw-gr38/>

⁴ See CMI's Factsheet on Sex Work and the Law accessible <https://www.mamacash.org/en/counting-sex-workers-in-campaign>

frequently, anti-trafficking laws and policies directly and indirectly result in real harms for sex workers and individuals perceived to be sex workers⁵. While we commend and appreciate the efforts being advanced in trying to curb trafficking, such broad legislative and normative frameworks seldom address the structural root causes of trafficking but rather perpetuates the invisible networks that structurally exclude sex workers. Understanding the difference between sex work and trafficking is an essential step for effective anti-trafficking campaigns that both address trafficking and respect and safeguard sex workers' rights.

The difference between sex work and trafficking

- Worldwide, sex workers and sex workers' rights advocates contend that as consenting adults, sex workers *choose* to sell sexual services. Sex work is work, and not a 'social' or 'psychological' condition that requires solving. Rather, it is the conditions resulting from stigma and criminalisation of sex work – *not the work* itself – that can be exploitative. The risks faced by sex workers are created by punitive laws, policies and practices creating unequal power relationship between ill-intentioned clients, law enforcement or third parties (such as brothel-keepers, managers or anyone else who facilitates sex work) on one side, and sex workers on the other.



Understanding the difference between sex work and trafficking⁶ is an essential step for effective anti-trafficking campaigns that both address trafficking and respect sex workers' rights. Evidence confirms that poorly designed anti-trafficking interventions, such as those elements suggested by General Recommendation 38 inaccurately portray sex workers as inevitable victims and add to the stigma attached to sex work⁷. Indeed, such laws often miss actual trafficking victims who urgently require assistance. Resources are focused on “rescuing” sex workers who do not seek interventions or rescue instead of rights-based funding. An overemphasis on trafficking for the purposes of sexual exploitation also means less attention is paid to other sectors where trafficking is prevalent – such as the labour or domestic work sector. Finally, such misguided laws and policies discourage sex workers and clients from seeking access to health, justice and reporting abuse in the sex industry or incidences of trafficking because of fears of arrest, persecution or “rescue”.

⁵ See NSW's Policy Brief on The Impact of Anti-Trafficking Legislation and Initiatives on Sex Workers accessible at <https://www.nswp.org/resource/nswp-policy-briefs/policy-brief-the-impact-anti-trafficking-legislation-and-initiatives-sex>

⁶ Please see CMI fact sheet on sex work and trafficking at https://www.mamacash.org/media/cmi_factsheets/cmi_trafficking_final.pdf

⁷ See GAATW's report on Sex Workers Organising for Change accessible at <https://www.gaatw.org/resources/publications/941-sex-workers-organising-for-change>

Bringing about social justice in relation to sex work requires that sex work is regarded as work and legally recognised as such. This means repealing the civil and criminal laws that are used to sanction sex work or penalise sex workers. It means bringing sex work under appropriate labour frameworks. It also requires an intersectional lens and incremental approach that challenges stigma as well as social, political and economic exclusion. This will help ensure that sex work is approached in a rights-based manner, make the sex work context safer, increase sex workers' access to services and the protection of the law, while affirming sex workers' dignity and rights.⁸

Sex work is work. It is not trafficking.



⁸ See CMI fact sheet on sex work and the law at https://www.mamacash.org/media/cmi/factsheets/cmi_law_final.pdf