

31 January 2024

Input for 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

By SWAN Vancouver Society

Background

SWAN Vancouver Society (SWAN) promotes the rights, health, and safety of newcomer migrant and immigrant (hereinafter im/migrant) women engaged in sex work through front-line services and systemic advocacy. An intersectional approach informs all of SWAN's work, and we take into consideration that the lived realities of the women we support are not only shaped by gender, but are also influenced by race, age, class, ability, immigration status, and occupation.

SWAN has over 20 years of experience providing multilingual, culturally safe, and low barrier services to racialized, im/migrant women engaged in sex work in massage businesses, private residences, and other indoor sites. As such, we are uniquely positioned to provide support to both im/migrant sex workers and victims of trafficking and/or exploitation.

Concern over the language and framing of the Call

We would like to express our serious concern over the language and framing of this Call for input. There has been a move in recent years, even within the UN, to shift language away from terms like “prostitution”, “prostituted women and girls”, “victims and survivors of prostitution”, to “sex work” and “sex worker”. This has been the approach of many UN bodies, such as UNAIDS, WHO, UN Women, UNDP, UNFPA, who recognize the term “prostitution” denotes immorality, illegality, and other negative and stigmatizing connotations.¹

SWAN is also alarmed by the premise that “international law has recognized that prostitution is incompatible with the dignity and the worth of the human person.” The idea that sex work is inherently exploitative has been highly contested by many human rights and sex work organizations, as well as sex workers themselves.²

The problematic conflation of sex work and trafficking is also troubling. SWAN has routinely seen this conflation manifest in ineffective and punitive anti-trafficking efforts that ultimately target sex workers and violate their human and labour rights. In 2020, the Special Rapporteur on trafficking in persons released a report, noting that “in many countries, anti-trafficking laws have

¹ See UNAIDS, UNDP, UNFPA, “[Joint submission to CEDAW on trafficking in women and girls in the context of global migration](#)” (2019); UNAIDS, “[Terminology Guidelines](#)” (2015).

² See Amnesty International, “[Explanatory note on Amnesty International’s policy on state obligations to respect, protect and fulfil the human rights of sex workers](#)” (2016); Global Network of Sex Work Projects, “[Briefing note: Sex work is not sexual exploitation](#)” (2019).

been used to repress sex work and have resulted in further violations of women's rights, including restrictions on their freedom of movement and migration.”³

Submission of input

SWAN Vancouver submits the following input in response to the Special Rapporteur on violence against women and girls (SR VAWG)'s questions on the relationship between 'prostitution' and violence against women.

Im/migrant women engaged in sex work in Canada

The individuals SWAN supports are often perceived to be victims of trafficking or exploitation, especially as they may exhibit many 'trafficking indicators' commonly touted by anti-trafficking organizations, that are often rooted in racist stereotypes. Due to mainstream misinformation about trafficking, im/migrant sex workers are often assumed to be forced or coerced into doing sex work. This is not what SWAN sees on the ground. We have learned that these women make the choice to engage in sex work for a myriad of reasons, and though they do experience exploitation and/or violence in their work, this is a result of the criminalization of sex work, rather than the work itself. The narrative that sex work is inextricably linked to exploitation is problematic and causes more harm than good to im/migrant sex workers and trafficking victims alike.

The women that SWAN supports are primarily 30-40 years old on average and have migrated from East Asia, although we are aware of many other cultural communities represented among im/migrant sex workers. Most arrived in the country legally (on temporary student or visitor visas), but some have become non-status due to Canada's restrictive immigration policies. Most choose sex work instead of a range of low-wage job options available to im/migrants who don't have transferable education credentials, professional qualifications, or work experience in Canada. Many of the women have done different kinds of work, but find sex work pays well and offers flexibility, which is especially important for mothers. The majority of the women we support do not self-identify as sex workers – sex work is simply a job, and only one aspect of their life.

There is a diversity of individuals who solicit the services of women engaged in sex work, and we have been told that the majority of clients are not dangerous or violent. However, due to criminalization and stigma, sex work in Canada continues to operate in the shadows, which allows for predators to target more systemically marginalized sex workers, including racialized, newcomer, and Indigenous sex workers.

The framing that 'prostitution' is inherently exploitative is problematic. For the women we support, they would not see themselves as victims or survivors, but simply as individuals doing a

³ United Nations, General Assembly, *Trafficking in persons, especially women and children*, [A/75/169](#) (17 July 2020), para. 41.

job to earn money and support their families. The biggest obstacles we face at SWAN are misinformation and moral panic about sex work, and the resulting stigma and ineffective laws and policies that actually create the harm they aim to prevent.

Current legal context

Criminalization of sex work, including the “end demand” model (or partial decriminalization), is a violation of the human and Charter rights of sex workers. The Working Group on discrimination against women and girls stated in their recent position paper that partial decriminalization “intensifies the surveillance and harassment of sex workers by the police, leading to increases in arrests and detentions, as well as to the deportation of migrant sex workers, while simultaneously undermining sex workers’ access to justice.”⁴ SWAN can attest that this is the reality for im/migrant sex workers in Canada.

Im/migrant sex workers in Canada currently experience multi-layered criminalization through the Protection of Exploited Persons and Communities Act (PCEPA)⁵, the Immigration and Refugee Protection Regulations (IRPR)⁶, anti-trafficking legislation and enforcement, and repressive municipal bylaws. Despite PCEPA’s intentions to protect people by emulating the “end demand” model of sex work, criminalizing any aspect of sex work to fight trafficking is not only ineffective, it in fact creates situations where violence, exploitation, and trafficking can thrive. Combined with the IRPR prohibition on sex work, the result is that the most marginalized women in the sex industry are not protected but put at greater risk of harm.

If sex work were decriminalized (in the context of Canada, we mean the repealing of both prostitution laws and immigration laws that prohibit temporary residents from engaging in sex work), there would be swifter recourse and increased access to justice for sex workers. Additionally, im/migrant sex workers would experience fewer systemic barriers to accessing healthcare, family support, settlement services, etc.

Fear of law enforcement and lack of access to justice

It is often assumed that the most common perpetration of violence occurs at the hands of pimps or traffickers, but the reality is that the most common source of violence that women we support experience is from law enforcement or the Canadian Border Services Agency. Women routinely tell us that they fear law enforcement more than predators. This institutionalized violence may surprise the public, but it is a routine experience for women engaged in sex work.

⁴ United Nations, General Assembly, *Eliminating discrimination against sex workers and securing their human rights*, [A/HRC/WG.11/39/1](#) (7 December 2023), para. 13.

⁵ See SWAN Vancouver, “[Protection of Communities and Exploited Persons Act: Background](#)” (2022) and “[Protection of Communities and Exploited Persons Act: Analysis](#)” (2022)

⁶ See SWAN Vancouver, “[Immigration and Refugee Protection Regulations Sex Work Prohibition: Background](#)” (2022), “[Immigration and Refugee Protection Regulations Sex Work Prohibition: Analysis](#)” (2022), “[Immigration and Refugee Protection Regulations Sex Work Prohibition: Charter Violations](#)” (2022).

Although SWAN works with women who are often perceived to be trafficked (i.e., Asian women engaged in sex work), we very rarely come across any cases with the hallmarks of trafficking. Instead, we find that the women we support face a spectrum of exploitation and/or violence in their work, most often directly because of the stigma and criminalization they face. In particular, migrant sex workers are often targeted by perpetrators who capitalize on their lack of access to recourse or justice.

In efforts to avoid the enforcement of these laws, the women we support often work in hidden and isolated spaces, which increases their vulnerabilities to predators. When migrant sex workers have chosen to report violence or crime, they have often been arrested, detained, and/or deported. In this context, we have found that the women who access our services avoid law enforcement at all costs - even when they experience violence, exploitation, and trafficking.

Links between sex work and the violation of the human rights of women and girls

It is important to point out again that sex work is not inherently exploitative, violent, or in and of itself a violation the human rights of women and girls. The human rights violations that are experienced by sex workers occur as a result of stigma and criminalization of their occupation. The Working Group on the discrimination against women and girls stated that “sex workers worldwide suffer widespread discrimination and violations of their human rights, including arbitrary arrest and detention, violence by State agents and private actors, lack of access to health-care and social services, impeded access to justice, interference with private and family life and exclusion from civil, political and cultural life.”⁷ This statement aligns with what SWAN sees on the ground in our work.

The Working Group also posits that the “enforcement of punitive provisions to regulate women’s control over their own bodies generated stigma and discrimination and violated women’s human rights, which had infringed women’s dignity and bodily integrity by restricting their autonomy to make decisions about their own lives and health.”⁸ Last year, over 75% of calls to SWAN were related to difficulties in accessing routine healthcare.

SWAN believes that sex workers should be guaranteed all human and labour rights. We support and advocate for safe and non-exploitative work environments for sex workers, including via occupational health and safety measures.

Recommendations

SWAN urges the Special Rapporteur on violence against women and girls to:

1. **Cease the harmful conflation of sex work and trafficking** and shift away from the premise that sex work is inherently exploitative. Recognize that sex work is work.

⁷ [A/HRC/WG.11/39/1](#), para. 1.

⁸ [A/HRC/WG.11/39/1](#), para. 19.

2. **Adopt a human and labour rights approach to sex work**, which was espoused within the Working Group's recent paper:

In examining sex work from a human rights perspective, the Working Group focuses on the principles of equality and non-discrimination, agency, bodily autonomy, privacy and free decision-making while also stressing the need to ensure that sex workers' human rights, including the right to equality and the highest standards of health and freedom from violence, are fully respected. Taking this approach, based on self-determination, does not obscure the fact that deciding to practise sex work, like so much informal labour, is exercised in the context of gender-based and other forms of discrimination, including gender-based and antitransgender violence, racism, socioeconomic marginalization, exclusionary migration policies and the severe disparities inflicted by neoliberal capitalism. As one sex worker said during the consultations: "If I had had other opportunities, I would not have chosen sex work. But it was my choice, and it should be respected."⁹

3. **Support the decriminalization of sex work.** Decriminalization would ensure sex workers have access to their basic human rights including health and social services and access to legal and labour protections. If sex work were decriminalized and labour protections were introduced, sex workers would be able to leave the industry if they wished to. They would have access to law enforcement and recourse if they experience exploitation or violence. They would also have increased access to healthcare, social services, justice, and opportunities for civic engagement.

SWAN asserts that addressing trafficking or exploitation and upholding sex workers' rights are not mutually exclusive. Decriminalization of sex work does not mean that States would no longer be able to address exploitation and trafficking through other criminal law provisions, including child sexual exploitation and anti-trafficking laws. It would, however, ensure that the rights of sex workers are protected.

4. **Support the removal of restrictive migration policies that prohibit migrants from engaging in sex work.** Laws that explicitly prohibit the participation of migrants in the sex industry render them more vulnerable to exploitation. We urge the SR VAWG to acknowledge that the threat of deportation under such policies is a significant contributing factor to the widespread fear of law enforcement and subsequently, the underreporting of violence, exploitation, and trafficking.

⁹ [A/HRC/WG.11/39/1](#), para. 7.