

TRAFFICKING IN WOMEN AND GIRLS IN THE CONTEXT OF GLOBAL MIGRATION

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN THE CONTEXT OF THE DRAFT GENERAL RECOMMENDATION

Amnesty International welcomes the call for comments on the Committee on the Elimination of Discrimination against Women (CEDAW) Draft General Recommendation on trafficking in women and girls in the context of global migration. The comments below focus on specific provisions in relation to criminal justice interventions, the adverse effects of anti-trafficking measures, the inclusion of affected persons in decision-making, and trafficking in conflict contexts. It should not be seen as an exhaustive list of concerns or suggestions. Amnesty International, as part of the Sex Worker Inclusive Feminist Alliance (SWIFA), submitted a separate set of comments pertaining to sex workers' rights more broadly.

STATES MUST MOVE AWAY FROM RELIANCE SOLELY ON CRIMINAL JUSTICE INTERVENTIONS THAT PRIORITIZE CRIMINAL PROSECUTION AND INSTEAD ENSURE A COMPREHENSIVE RESPONSE FOR SURVIVORS OF TRAFFICKING

States must 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. Nevertheless, as recognized in the draft, states must not rely solely on criminal justice interventions to address trafficking. They must not prioritize criminal prosecution over provision of tailored support to survivors,¹ and other means to prevent trafficking such as addressing the structural conditions which enable and perpetuate trafficking, which include lack of safe and legal routes for refugees and migrants, massive human rights violations in countries of origin, and poverty and lack of employment opportunities.

While Amnesty International welcomes the recommendation in para. 29e that states should have specific provisions in legislation addressing the prevention of trafficking, states should also allocate sufficient budgets to guarantee adequate protection, assistance and reparation, which includes accommodation, food, healthcare and psychological support.

It is also important that survivors of trafficking be given authorization to work, as recommended in para. 76, so they can regain their economic independence and overcome the socially imposed marginalization

¹ In January 2020, Amnesty International conducted field research in Trinidad and interviewed dozens of women; some of whom had been trafficked into Trinidad from Venezuela and had been forced to sell sex, and others who had arrived and consented to sell sex. Some women who had been trafficked and later provided with temporary safe housing by the authorities reported not being supported with enough food, had not received healthcare, or counselling, and did not have permission to work.

they might face as migrants or refugees in host countries. Authorization to work should not be conditional on survivors cooperating with criminal proceedings.

Victims/survivors of trafficking have a right to healthcare, including sexual and reproductive healthcare, and access to contraception (including emergency contraception) and safe abortion, which is hindered by prohibition and denial of access to abortion and/or refusals of care on grounds of private beliefs of providers. As such, Amnesty International recommends ensuring that victims of trafficking can access comprehensive sexual and reproductive healthcare, including safe abortion.

Finally, while many victims/survivors of trafficking will want alleged perpetrators to be prosecuted, this should not be assumed in all instances (for example in cases where family members are involved). The views of victims/survivors of crimes should be given consideration at all stages of the criminal justice process.² This would include decisions as to whether suspects are charged or prosecuted. As such, Amnesty International recommends para. 88d reflects that victims of trafficking should have their views considered at all stages of the criminal justice response. Likewise, states must ensure that victims are not coerced or pressured to cooperate with criminal justice processes or provide witness testimony at trial of those accused of trafficking them, through detention, threats of detention, or any other form of sanction.

STATES MUST ADDRESS THE POTENTIAL CONFLATION OF SEX WORK AND TRAFFICKING, AND CLARIFY EXPLICITLY THAT ANTI-TRAFFICKING INITIATIVES SHOULD NOT BE USED TO JUSTIFY CRIMINALISING SEX WORK

The conflation of human trafficking and sex work³ creates numerous problems in both law and in practice. Where anti-trafficking initiatives are used to justify criminalising sex work, this leads to serious adverse human rights outcomes for sex workers.⁴ Likewise, anti-trafficking initiatives that involve coercive interventions, such as raids or “rescues” solely on the basis that commercial sex is conducted, have resulted in sex workers facing arrest, theft of property, evictions and other adverse outcomes.⁵

Amnesty international recommends para. 92a reflects that anti-trafficking measures are never used to justify criminalising sex work or otherwise enabling punishment or violence against sex workers. Criminalisation of sex work can also prevent victims of trafficking, even if they have escaped, from reporting to law enforcement out of fear that they will be returned back to their traffickers, and/or be criminally charged for sex work-related offences. Where states also criminalise irregular entry, migrants and refugees who have been trafficked into a country may fear being charged for both selling sex and irregular entry, leading to detention, and deportation.⁶

Extending the definition of trafficking in persons to include sex work risks undermining initiatives to combat the egregious abuses this general recommendation seeks to address, and allows states arresting and prosecuting those involved in sex work to count these as anti-trafficking efforts.

² UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 6

³ The term “sex work” is used to mean the exchange of sexual services (involving sexual acts) 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.

⁴ Amnesty International, Argentina: ‘What I’m doing is not a crime’ (AMR 13/4042/2016).

⁵ Amnesty International, Argentina: ‘What I’m doing is not a crime’ (AMR 13/4042/2016), page 27-31

⁶ In Hong Kong, where sex work is de facto criminalized by the wide range of limitations on the operational aspects of sex work and irregular entry is an offence under the immigration Ordinance, Amnesty International found some evidence that the use of immigration laws to punish sex workers also potentially impedes the identification and provision of support to victims of trafficking. See: Amnesty International, *Criminalizing Sex Work in Hong Kong* (ASA 17/4032/2016), page 41. Additionally, Amnesty International received testimony from multiple Venezuelan refugee women in Trinidad that they regularly saw police visit their traffickers. Additionally, some reported that their traffickers had explained to them that “prostitution” is illegal in the country. Most also understood that they had entered the country irregularly. This combination of police involvement in trafficking, coupled with criminalization of sex work and irregular entry, created a climate of fear which resulted in almost none of the women Amnesty International interviewed reporting their traffickers, even after they had escaped.

Amnesty International welcomes the call on states in para. 45e to assess the impact of national legal and policy frameworks to ensure that they do not have harmful consequences on victims of trafficking. However, we also recommend that the Committee explicitly call on states to review their laws which criminalise sex work, 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 criminalise sex work and otherwise punish sex work is a key component to create an enabling environment to effectively combat trafficking.⁷

The decriminalisation of irregular entry for *all* (not only trafficked women and girls, as currently phrased at para. 57(e)(b)), is another important step towards protecting the rights of migrants and asylum-seekers and reducing their vulnerability to multiple forms of exploitation.

Additionally, while para. 71 specifically recognizes that “prosecution for offences committed as a result of being trafficked or deportation for immigration offences such as irregular entry into a country or working without a work permit” can re-traumatized the victims, Amnesty International recommends adjusting the text to explicitly state that trafficking victims should not be prosecuted for “prostitution” offences or under other laws that are used to punish or discriminate against people engaged in the sale of sex, such as loitering or vagrancy laws.⁸

TO EFFECTIVELY RESPOND TO TRAFFICKING, STATES MUST PROTECT SEX WORKERS FROM TORTURE AND OTHER ILL-TREATMENT AND ADDRESS LAW ENFORCEMENT COMPLICITY IN TRAFFICKING

Amnesty International welcomes the call in para. 89 for states to address “complicity of public officials” in trafficking and to ensure that “alleged corruption of government officials or their agents, are investigated, prosecuted and adequately punished.” However, Amnesty International recommends that human rights violations by law enforcement officials, which include complicity and involvement in trafficking of persons compelled to sell sex against their will,⁹ as well as well-documented torture and other ill-treatment of sex workers, which is often targeted against them on the basis of gender,¹⁰ be more comprehensively addressed in para. 85 and 89.

Criminalization of sex work creates an environment enabling law enforcement and other officials to perpetrate gender-based violence which may amount to torture — against sex workers with impunity,¹¹ and this undermines state responses to trafficking. As frequent victims of grave human rights violations themselves at the hands of the police, sex workers may be afraid to report trafficking.

⁷ For more detail on human rights concerns of sex workers associated with the criminalisation of the purchase of sex, see Explanatory note on the Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the rights of Sex Workers, pages 16-21.

⁸ Refer to Amnesty International, Policy on state obligations to respect, protect, and fulfil the human rights of sex workers, (POL 30/4062/2016)

⁹ For decades Amnesty International has documented police complicity in trafficking. See: Amnesty International, Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo, (EUR 70/010/2004); Based on multiple testimonies of women who had been trafficked from Venezuela to Trinidad, law enforcement officials there are directly involved in trafficking. See also: Newsday, Human trafficking, growing trend among corrupt police, 22 March 2019, Available at: <https://newsday.co.tt/2019/03/22/human-trafficking-growing-trend-among-corrupt-police/>

¹⁰ Amnesty International’s research, and a significant body of evidence from the field of public health, demonstrates that law enforcement officials across the globe are routinely involved in violence, especially sexual violence, including rape at gunpoint, beatings, humiliation and verbal abuse, towards women in the sex industry. This type of violence, which is facilitated by criminalization of sex work, can amount to torture and other ill-treatment, carried out with the purpose of punishing sex workers for transgressing socially constructed norms about femininity and sexuality, and as a form of social control. See: Amnesty International, Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea (ASA 34/4030/2016); Amnesty International, Criminalizing Sex Work in Hong Kong (ASA 17/4032/2016); Amnesty International, “Welcome to hell fire”: Torture and other ill-treatment in Nigeria (AFR 44/011/2014); Amnesty International, “I feel scared all the time.” A Jamaican sex worker tells her story, Available at: <https://www.amnesty.org/en/latest/news/2016/05/apple-sex-worker-testimony-jamaica/>; Amnesty International, ‘If they can have her, why can’t we?’: Gender-based torture and other ill-treatment of women engaged in sex work in the Dominican Republic, (AMR 27/0030/2019)

¹¹ See Amnesty International, Policy on state obligations to respect, protect, and fulfil the human rights of sex workers, (POL 30/4062/2016)

The recommendation should set out specific measures and steps that states can take to address law enforcement complicity in trafficking. For example, to ensure “early identification and protection of presumed victims of human trafficking” as set out in para. 68, states should ensure mechanisms are in place to protect people who report instances of alleged trafficking from retaliation from traffickers, and from state officials complicit in the trafficking.

Amnesty International further notes that survivors of trafficking are not only “reluctant to engage with law enforcement officials... due to uncertainty about legal processes” or because “their experience of trauma may also impede their ability to seek help” (as set out in para. 66). Rather, survivors may fear violence from law enforcement officials themselves.

STATES SHOULD MEANINGFULLY INVOLVE SURVIVORS OF TRAFFICKING, SEX WORKERS, MIGRANTS AND REFUGEES, LGBTI PEOPLE AND OTHER KEY STAKEHOLDERS IN THE IDENTIFICATION OF TRAFFICKING VICTIMS AND THE DESIGN, MONITORING AND EVALUATION OF ANTI-TRAFFICKING MEASURES

Human trafficking is a criminal activity, which makes it hard to accurately estimate the number of victims of trafficking, and the locations where victims are hidden. If sex work and/or irregular entry are also criminalised, migrants and refugees, and sex workers would go underground, making it even harder to identify victims of trafficking among them.

Sex workers and sex-worker led organizations, migrants and refugees and organizations working with them, women’s and LGBTI organizations, are often best placed to help identify victims of trafficking and to differentiate them from people consenting to sell sex.¹²

These groups should be fully involved in helping states to identify victims of trafficking for the purposes of sexual exploitation, in designing and implementing screening mechanism (para. 68c) and in supporting inspections for the identification of trafficking victims in workplaces (para. 68e).

Amnesty International welcomes the recommendation in para. 32 to ensure victims’ meaningful participation and to ensure their voices are heard in efforts to prevent and combat trafficking. However, Amnesty International also recommends specifically guaranteeing the meaningful participation of sex workers, migrants and refugees, LGBTI people, and other groups/communities/stakeholders who are commonly targeted for trafficking or are affected by anti-trafficking policies.

STRENGTHEN ANTI-TRAFFICKING INITIATIVES IN CONFLICT AND HUMANITARIAN CONTEXTS, INCLUDING BY IMPROVING VICTIM IDENTIFICATION AND REQUIRING STATES TO REPATRIATE NATIONALS TRAFFICKED ABROAD

People who have been trafficked into armed groups or trafficked into the areas under the control of armed groups risk not being identified as having been trafficked when they come (back) under the control of state authorities. Instead they are in danger of being denied their rights to assistance, protection and reparation, and in some cases risk detention or other adverse consequences on the basis they are assumed to be willing

¹² See GAATW, *Sex Workers Organising for Change: Self-representation, community mobilization, and working conditions*, Available at: <https://gaatw.org/resources/publications/941-sex-workers-organising-for-change>

members of the armed group.¹³ Security Council Resolution 2331 calls for robust identification measures of victims and potential victims of trafficking in armed conflict, and affirms that victims of trafficking and sexual violence committed by terrorist groups should be treated as victims and not as “terrorists”, and should be able to access assistance, protection and reparations.¹⁴ Amnesty International therefore recommends para. 68c calls for identification measures to be established in conflict contexts to identify possible trafficking victims, including victims suspected of being associated with non-state armed groups or returning from territory under the control of non-state armed groups.

In addition, para. 17 already recognizes that state parties have obligations towards their nationals and permanent residents who are trafficked abroad. However, the language could be strengthened by clarifying the nature of these obligations. This should include a duty on states to accept and facilitate the voluntary return of their nationals trafficked abroad, including in conflict contexts.¹⁵

In light of this, Amnesty International recommends that para. 42 refers to the cooperation of governments of receiving states to ensure the voluntary repatriation of citizens and permanent residents who have been trafficked abroad where they wish to return.

Finally, women are at increased situation of vulnerability to gender-based violence including trafficking when they are not able to meet their basic livelihood needs or face economic desperation which may be exacerbated in conflict and displacement contexts.¹⁶ Amnesty International recommends para. 34 address increased barriers to access basic goods and services in situations of conflict.

¹³ For example, Amnesty International has documented that women trafficked by Boko Haram have been imprisoned by the Nigerian authorities who failed to correctly screen and identify them and instead considered them members of the armed group after finding them in Boko Haram strongholds during military operations; likewise Nigerian women and girls survivors of trafficking who made their own way to camps in government controlled areas were not identified as such and not given the assistance they needed in displacement. The UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups sets out that “there must be individual assessment and screening to appropriately assess each case and determine each person’s affiliation and/or victimhood, while taking into account age and gender considerations.” https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf.

¹⁴ UNSCR 2331 paras 2d and 10. The UN Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups also sets out that “there must be individual assessment and screening to appropriately assess each case and determine each person’s affiliation and/or victimhood, while taking into account age and gender considerations.” https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf.

¹⁵ Article 8.1 of the Palermo Protocol provides that: “The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.”

¹⁶ UN SG 2017 report on Sexual Violence in Conflict paras. 12 and 13.