

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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INCLUDE SEX WORKERS IN THE COVID-19 RESPONSE

As the world has been shaken by COVID-19, those most marginalized, stigmatized, and criminalized have been pushed further into poverty, to the grave detriment of their health and human rights. Sex workers have not only been seriously impacted by the COVID-19 pandemic, but also by governments' emergency responses that, in many contexts, have been punitive, overbroad, and/or discriminatory.

Sex workers are among some of the most oppressed people in the world, facing multiple and intersecting forms of discrimination and structural inequalities, including on the basis of their gender, sexual orientation, gender identity, race, caste, ethnicity, Indigenous identity, migrant or other status. Those who lack adequate housing, live in poverty, use drugs and/or lack continued access to healthcare, HIV treatment, as well as prevention and harm reduction measures,¹ can be at higher risk of contracting COVID-19 and of being negatively affected by it. For some, compliance with public health regulations is increasingly difficult when they lack adequate housing, access to food and water, resources to manage their personal hygiene and are excluded from government financial support schemes. In addition to serious physical and mental health impacts, sex workers are also being subjected to increasing stigma, discrimination, police abuses and criminalization during the pandemic.²

Amnesty International urges governments to take targeted action to address the disparate impact of COVID-19 on sex workers and to protect their health and other human rights, including through tackling the key issues of concern that sex workers have raised since the outbreak of COVID-19, such as their exclusion from social and economic support schemes, increased criminalization and lack of protection from violence, and diminished access to health services.

EXCLUSION FROM SOCIAL AND ECONOMIC SUPPORT SCHEMES

The onset of the COVID-19 pandemic saw government action to reduce and slow transmission, including by restricting human rights and sometimes adopting emergency legislation. Some states have provided social and economic support amidst job losses, rising gender-based violence³ and school closures. However, sex workers have largely been left out of such support programmes, particularly in countries where sex work is criminalized.⁴

Many governments have resorted to policing and penalties as a way to enforce COVID-19 regulations, including by criminalizing those who violate public health orders and/or criminalizing the exposure and transmission of the novel coronavirus.⁵ Penalties for non-compliance with restrictive COVID-19 control measures are having a disproportionate impact on marginalized groups.⁶ Sex workers and other criminalized populations, including people who use drugs, LGBTI individuals and refugees and migrants, have suffered a compounded human rights impact under states' punitive public health orders.

¹ Outright Action International, *Vulnerability Amplified: The Impact of the COVID-19 Pandemic on LGBTIQ People*, 2020, https://outrightinternational.org/sites/default/files/COVIDsReportDesign_FINAL_LR_0.pdf

² Outright Action International, *Vulnerability Amplified: The Impact of the COVID-19 Pandemic on LGBTIQ People*, 2020, https://outrightinternational.org/sites/default/files/COVIDsReportDesign_FINAL_LR_0.pdf

³ CREA, *Submission to the Special Rapporteur on Violence against Women, "COVID-19 and the Increase of Domestic Violence against Women"*, https://creaworld.org/sites/default/files/SRVAW_COVID-19_CREA%20Full%20submission.pdf

⁴ NSWP and UNAIDS, *Sex Workers Must Not be Left Behind in the Response to COVID-19* (Press Statement), 8 April 2020, www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200408_sex-workers-covid-19

⁵ See also Nina Sun and Livio Zilli, *COVID-19 symposium: the use of criminal sanctions in COVID-19 responses—exposure and transmission—Part I*, *OPINIO JURIS*, 3 April 2020, <https://opiniojuris.org/2020/04/03/covid-19-symposium-the-use-of-criminal-sanctions-in-covid-19-responses-exposure-and-transmission-part-i/>, and *Part II*, *OPINIO JURIS*, 3 April 2020, <https://opiniojuris.org/2020/04/03/covid-19-symposium-the-use-of-criminal-sanctions-in-covid-19-responses-enforcement-of-public-health-measures-part-ii/>

⁶ Pius Maundu, *Covid-19: 24 sex workers arrested, to be quarantined*, 21 April 2020, www.nation.co.ke/counties/makueni/Covid-19--24-sex-workers-to-be-quarantined/1183294-5530086-9sjiqz/index.html (Twenty-four sex workers were arrested in Kenya, as well as six of their clients, for violating COVID-19 directives).

While governments are permitted to restrict human rights in some circumstances, including to protect public health, their power is not unlimited. COVID-19-related restrictions must have a legitimate purpose and be strictly necessary and proportionate to achieve that aim. They must also be limited in duration, reviewable by a court and non-discriminatory.⁷ Research from previous health emergencies has shown that criminalizing people who violate public health regulations does more harm than good and can have a detrimental human rights impact.⁸ Therefore, states should implement measures that aim to empower and support people to comply with the restrictions, including by ensuring access to public health information and by enabling people who are marginalised to satisfy their essential needs.⁹

Many sex workers have attempted to comply with physical distancing and other public health orders and, when they have been left out of government support programs, have engaged in advocacy and innovated varying forms of peer and community support.¹⁰ However, many sex workers have been compelled to continue working in precarious conditions to earn money to support themselves and their families, despite restrictions on movement, including lockdown and stay at home orders, and the risks to their health, lives and safety. In some cases, sex workers have transitioned their work to online platforms, which has brought new risks and challenges to their activities.¹¹ Some sex workers have reported evictions, police raids, and a lack of housing, putting them at risk of violence and penalties for violating lockdown restrictions.¹²

Access to emergency funds often requires proof of citizenship or legal residency, formal employment and/or proof of lost income, which automatically excludes the large majority of sex workers,¹³ particularly those who work in countries that criminalize sex work or otherwise fail to legally recognize it. In other cases, there is an explicit exemption preventing people involved in the sex industry from applying for federal disaster relief funding.¹⁴ By contrast, in countries where sex work is decriminalized and treated as work, sex workers have been able to access emergency wage subsidies during the pandemic (available to all by providing a national identity number and basic personal information) and are immediately eligible for jobseekers' benefits.¹⁵ Although some sex workers in these countries have reported needing help with obtaining identity numbers and bank accounts, officials have provided assistance.¹⁶

⁷ Amnesty International, *Body Politics: Criminalization of Sexuality and Reproduction*, Primer, 2018, www.amnesty.org/en/documents/pol40/7763/2018/en/

⁸ UNAIDS, "Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response". March, 2020, www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf; Umberto Pellicchia et al., *Social Consequences of Ebola Containment Measures in Liberia* Plos One Volume 10, Issue 12, December 2015; Patrick M Eba, *Ebola and human rights in west Africa*, *The Lancet*, Volume 384, Issue 9960, 2091 – 2093, [https://doi.org/10.1016/S0140-6736\(14\)61412-4](https://doi.org/10.1016/S0140-6736(14)61412-4); Global Commission on HIV and the Law, *Risks, Rights & Health*, 2012, www.hivlawcommission.org/report; Robyn Martin, *The Exercise of Public Health Powers in Cases of Infectious Disease: Human Rights Implications* *Medical Law Review*, Volume 14, Issue 1, 1 March 2006, Pages 132–143, <https://academic.oup.com/medlaw/article/14/1/132/990506>

⁹ UNAIDS, *Rights in the Time of COVID-19 Lessons from HIV for an Effective, Community-led Response*, 2020, p. 1, www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf

¹⁰ UNAIDS, *Sex workers in Bangladesh: building resilience during the COVID-19 pandemic*, 2020, www.unaids.org/en/resources/presscentre/featurestories/2020/may/20200513_sex-workers-bangladesh; UNAIDS, *Ensuring access to livelihoods for sex workers in Bangladesh*, 2020, www.unaids.org/en/resources/covid-blog#node-53955; Carl Collison, *How Covid-19 affects South Africa's sex workers*, *New Frame*, www.newframe.com/how-covid-19-affects-south-africas-sex-workers/

¹¹ Sex workers' protections under international human rights law are not relinquished by the moving of sex work online. Partner organizations that have reported some sex workers working online during the pandemic are worried about other human rights violations, including to their right to privacy because of the risk of their images being captured and shared without their consent, among others.

¹² Amnesty International, www.amnesty.org/en/latest/news/2020/06/lockdown-sex-workers-day-interview/?fbclid=IwAR3HFv8YLsKoR6ObntVlbGAqsS9qFlux7INEBPYKO4hqZamRa3ViXzg_RX8

¹³ Amnesty International, www.amnesty.org/en/latest/news/2020/06/lockdown-sex-workers-day-interview/?fbclid=IwAR3HFv8YLsKoR6ObntVlbGAqsS9qFlux7INEBPYKO4hqZamRa3ViXzg_RX8

¹⁴ Global Network of Sex Work Projects, *COVID-19-Impact- United States*, www.nswp.org/news/covid-19-impact-united-states; U.S. Small Business Administration *Disaster Loan Assistance COVID-19 Economic Injury Disaster Application*, states the exclusion "Applicant does not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature", <https://covid19relief.sba.gov/#/>

¹⁵ Anna Louie Sussman, "Don't have to fight for pennies": New Zealand safety net helps sex workers in lockdown, *the Guardian*, 27 April 2020, <https://www.theguardian.com/world/2020/apr/28/dont-have-to-fight-for-pennies-new-zealand-safety-net-helps-sex-workers-in-lockdown>

¹⁶ Anna Louie Sussman, "Don't have to fight for pennies": New Zealand safety net helps sex workers in lockdown, *the Guardian*, 27 April 2020, <https://www.theguardian.com/world/2020/apr/28/dont-have-to-fight-for-pennies-new-zealand-safety-net-helps-sex-workers-in-lockdown>

KEY RECOMMENDATIONS TO GOVERNMENTS:

- Ensure that sex workers are not excluded or discriminated against amidst COVID-19 responses and recovery efforts, in line with international obligations to ensure that all state action is non-discriminatory and to effectively combat COVID-19 in line with human rights law and standards.
- Include sex workers, as well as all self-employed and informal workers, without discrimination, in unemployment assistance and other financial and social support programmes.
- Urgently consider the implementation of regularization programmes and other measures to protect the human rights of migrants, such as firewalls between service-providers and immigration authorities, and the extension of visas during the global crisis triggered by COVID-19, as a means to protect human rights and public health.
- Halt all evictions¹⁷ and ensure access to appropriate emergency housing for any who need it, including sex workers.

INCREASING CRIMINALIZATION AND LACK OF PROTECTION FROM VIOLENCE

Sex workers were already facing multiple forms of policing and punishment in their daily lives before the outbreak of COVID-19. Over-policing and criminalization deter sex workers and other marginalized people from obtaining COVID-19 testing and treatment, essential sexual and reproductive health care and/or harm reduction services. As an already over-criminalized population, sex workers may be more visible and targeted by officials enforcing COVID-19 control measures (in the forms of fines and arrest), which can disparately impact those already living in poverty. Laws that criminalize the buying of sex or general organizational aspects of sex work, such as laws regulating brothel-keeping or solicitation, often force sex workers to work in ways that compromise their safety. Street-based sex workers are particularly subject to violence and criminalization.¹⁸ The stigmatized and criminalized status that sex workers experience gives law enforcement officials in many countries the scope to harass, extort and perpetrate physical and sexual violence against them, also with impunity.

Widespread criminalization of sex work already magnifies sex workers' precarious situations worldwide. However, amidst the COVID-19 pandemic, sex workers are reporting increased discrimination, harassment, and punitive crackdowns, resulting in violence, the raiding of their homes, compulsory COVID-19 testing, arrest and threatened deportation of migrant sex workers.¹⁹ There have also been reports of increasing use of criminal penalties for HIV transmission, exposure and non-disclosure and policing of sex workers, people who use drugs, people living with HIV and LGBTI people since the outbreak began.²⁰ In the context of COVID-19, groups that have historically been stigmatized and blamed for contagion and disease are at increased risk of violence and intersecting forms of discrimination.²¹

The imposition of criminal and other regulatory penalties for failure to comply with COVID-19 orders should, therefore, be a last resort after other alternatives have proven unsuccessful or if it becomes clear that the objective cannot be achieved by those other means. Given that sex workers are largely being left out of government emergency support measures, thus making it extremely difficult for them to comply with COVID-19 orders, states should rather ensure sex workers' access to healthcare, information and support, and empower them in a way that allows them to comply with the restrictions as opposed to punitive measures.

States need to take sufficient steps to make sure the public is aware of the reasons for the restrictions and the need to comply with them before resorting to punitive measures of enforcement. However, sex workers are reported to have been

¹⁷ Although international law only prohibits forced evictions and not evictions that follow due process, in the COVID-19 context, the UN Special Rapporteur on adequate housing has called for a moratorium on all evictions, "Housing, the front line defence against the COVID-19 outbreak," says UN expert. 18 March 2020

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E

¹⁸ Ground Up, Kimberly Mutandiro, Covid-19: Sex workers accuse police of beating people on the street, 2 April 2020, www.groundup.org.za/article/much-i-am-afraid-covid-19-i-need-money-says-sex-worker/ ; Health Gap, Uganda's COVID-19 Response is Terrorizing Women with Arbitrary Detention, Blackmail, and Violence (Press Release), 30 April 2020, <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/>

¹⁹ UNAIDS, Sex workers must not be left behind in the response to COVID-19, 8 April 2020,

https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200409_laws-covid19

²⁰ UNAIDS condemns misuse and abuse of emergency powers to target marginalized and vulnerable populations, 9 April 2020, www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200409_laws-covid19

²¹ CREA, Submission to the Special Rapporteur on Violence against Women, "COVID-19 and the Increase of Domestic Violence against Women", https://creaworld.org/sites/default/files/SRVAW_COVID-19_CREA%20Full%20submission.pdf

disproportionately impacted by coercive enforcement, including fines and enforced quarantines.²² People must be sufficiently supported to comply, including by providing information on all restrictions imposed and the potential penalties for non-compliance. Sex workers who are migrants face additional challenges accessing information.²³ Along these lines, states must implement measures to enable people to comply with any restrictions on rights, including by enabling them to satisfy their essential needs, and take into account the situation of marginalized groups who may require support to be in a position to comply with the restrictions.

Research conducted before COVID-19 has already shown that criminalization and policing triples sex workers' chances of experiencing sexual or physical violence.²⁴ Sex workers have reported increased risk of violence, from clients attacking sex workers, the police and other community members who blame them for spreading the coronavirus.²⁵ The precarious situation that many sex workers around the world face, which is only worsened by COVID-19 and governments' responses to it, are likely to increase these challenges. Despite this, the stigmatized and criminalized status of sex workers inhibits their ability to report and seek protection from violence.²⁶

KEY RECOMMENDATIONS TO GOVERNMENTS:

- Ensure that all restrictions on human rights for the specific aim of containing the COVID-19 pandemic are provided by law, are necessary and proportionate to that aim or another legitimate purpose under international human rights law, non-arbitrary, and evidence-informed. Such restrictions must also be non-discriminatory, limited in duration and reviewable by a court.
- Implement measures to enable people to comply with any restrictions on human rights, including by enabling them to satisfy their essential needs, and take into account the situation of marginalized groups who may require support to be in a position to comply with the restrictions.
- Guarantee that the imposition of penalties as enforcement of COVID-19-related measures are the last resort. In considering the application of penalties for violating the conditions of any restrictions imposed, authorities must consider the circumstances of groups at risk who may be disproportionately affected and consider alternatives to alleviate the disproportionate impact of these penalties.
- Repeal existing laws and/or refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration.
- Refrain from enforcing laws that criminalize sex work and other forms of consensual sexual activity, gender expression, use and possession of drugs for personal use, and HIV exposure, non-disclosure, and transmission, as such punitive laws serve as a deterrent to seeking healthcare and protection from violence. Rather, law enforcement measures should be refocused on ensuring public safety and promoting public health.
- Ensure meaningful engagement with sex workers in the development and implementation of responses to COVID-19, including by working in partnership with sex worker rights organizations and groups.

²² UNAIDS, Kenyan sex workers abandoned and vulnerable during COVID-19, 20 MAY 2020, noting more than "50 sex workers have been forcefully quarantined"; In Uganda, "117 arrests of sex workers over a two-week period" was reported, www.businesslive.co.za/bd/world/africa/2020-06-04-africas-sex-workers-are-being-battered-by-lockdowns-clients-and-even-the-police/

²³ France 24, Life under lockdown ups precarity for France's prostitutes, 25 March 2020, www.france24.com/en/20200325-life-under-lockdown-ups-precariety-for-france-s-prostitutes

²⁴ Lucy Platt, *et al*, Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies, *PLoS Med.* 2018 Dec; 15(12), www.ncbi.nlm.nih.gov/pmc/articles/PMC6289426/

²⁵ Nita Bhalla, Business Day, Africa's sex workers are being battered by lockdowns, clients and even the police, 04 June 2020, www.businesslive.co.za/bd/world/africa/2020-06-04-africas-sex-workers-are-being-battered-by-lockdowns-clients-and-even-the-police/

²⁶ See Amnesty International, Policy on State Obligations to Respect, Protect and Fulfill the Human Rights of Sex Workers, 2016 (Index number: POL 30/4062/2016), www.amnesty.org/en/documents/pol30/4062/2016/en/; Sex Workers at Risk: A Research Summary on Human Rights Abuses against Sex Workers, 2016, (Index number: POL 40/4061/2016), www.amnesty.org/en/documents/pol40/4061/2016/en/; WHO and Global Coalition on Women and AIDS, Violence against sex workers and HIV prevention, Violence against women and HIV/AIDS: Critical intersections, Information Bulletin Series, Number 3, 2005; M. Rekart, "Sex-work harm reduction", *The Lancet*, 2005, pp. 2123-2134.

DIMINISHED ACCESS TO HEALTH SERVICES

Sex workers often suffer compromised health due to poverty, criminalization, multiple and intersecting forms of discrimination, stigma and discrimination within healthcare settings. The COVID-19 pandemic is further impacting sex workers' health and access to essential health information and services, including sexual and reproductive health information and services, HIV prevention and treatment, harm reduction services, and gender-affirming healthcare for transgender and gender non-conforming individuals.²⁷ Many sex workers also lack access to COVID-19 prevention information and supplies, as criminalization of sex work and high levels of stigma hinders sex workers from participating in some community-level health information initiatives. Since the outbreak of COVID-19, sex worker rights networks have independently collectivized to share COVID-19 prevention strategies and fill gaps where the state has been unable or unwilling to act, sometimes providing food, money, and personal protective equipment to those in need.²⁸

The multiple layers of criminalization that sex workers face can further deter them from seeking critical healthcare services.²⁹ For those who may seek services, they may not share their full health and/or gender history due to the stigmatization and fear of punishment, mistreatment and/or deportation. Disruptions in supply chains for anti-retroviral treatment, condoms, contraception, and abortion medication is also impacting sex workers, impeding their ability to protect their health, avoid unwanted pregnancies, and prevent and/or manage HIV and other STIs. Lack of contraception combined with movement restrictions and clinic closures, can lead sex workers to undergo unsafe abortions and, in turn, face preventable maternal mortality and morbidity.³⁰

KEY RECOMMENDATIONS TO GOVERNMENTS:

- Provide COVID-19-related information, prevention, and healthcare for all people without discrimination, through accessible means, giving particular attention to those most marginalized.
- Explicitly prohibit discrimination and mistreatment by healthcare and law enforcement professionals, and refrain from employing immigration detention and punishment against those who seek health services.
- Prohibit providing law enforcement officials with individualized medical data collected as part of exceptional public health measures. Medical data must generally be protected as confidential and private in order to ensure that people can seek medical support and care without any fear of negative repercussions.
- Make a targeted effort to reach out to those most marginalized, including sex workers, refugees and migrants, people living with HIV, people experiencing homelessness and people who use drugs, who may have compromised health and need specific treatment and protection from COVID-19.
- Designate sexual and reproductive health care—including equal access to HIV and STI prevention, diagnosis and treatment, such as condoms, PrEP, PEP, ART,³¹ safe abortion, contraception, maternal and new-born care, and gender-affirming care as essential care for all people, and ensure ongoing access to such care during the pandemic.

FURTHER INFORMATION

Amnesty International Body Politics: [Criminalization of Sexuality and Reproduction Primer](#)

²⁷ ICRSE, <http://redlightcovidEurope.org/>

²⁸ See, e.g., Butterfly Asian and Migrant Sex Workers Support Network and Maggie's Toronto Sex Workers Action Project, *Sex Work and COVID-19: Guidelines for Sex Workers, Clients, Third Parties, and Allies*, <https://drive.google.com/file/d/1ymJ5motdh0zh453-wFs1p4syL3koC2dD/view>

²⁹ Amnesty International, *Body Politics: A Primer on Criminalization of Sexuality and Reproduction*, POL 40/7763/2018, www.amnesty.org/en/documents/pol40/7763/2018/en/

³⁰ Maternal Health Task Force, Bethany Kotlar, *Amidst the COVID-19 Pandemic, We Must Remember Maternal* 18 April 2020, www.mhtf.org/2020/04/18/amidst-the-covid-19-pandemic-we-must-remember-maternal-health/

³¹ Pre-exposure prophylaxis (PrEP) is the use of an antiretroviral medication to prevent the acquisition of HIV infection by uninfected persons. Post-exposure prophylaxis (PEP) is short-term antiretroviral treatment (ART) to reduce the likelihood of HIV infection after potential exposure.