

### HUMAN TRAFFICKING AND SEX WORKERS<sup>1</sup> RIGHTS

*Updated April 2015*

Sex workers have lived on the margins of society through most of history. Stereotypes, derogatory names, stigma and general indifference to their humanity prevail worldwide. The human rights of sex workers are routinely abused in countries around the globe. One extreme form of abuse sex workers suffer is human trafficking. Protecting the rights of all sex workers, promoting their health and safety, and teaching sex workers about human trafficking are some ways to prevent human trafficking. However, many laws and policies are based on misunderstandings about sex work and human trafficking.

#### **Not all people who work in the commercial sex industry are trafficked**

Some choose to do sex work, while others find sex work to be the only way of supporting themselves and their families given their circumstances. Many sex workers work independently or in peer networks, without anyone exerting force or confiscating their money. Poverty, gender inequality, and lack of economically viable job options contribute to people entering into sex work. Trafficking is an issue that affects sex workers, but people can be trafficked into any kind of work. In fact, more people are trafficked into labor sectors than into commercial sex.<sup>2</sup>

#### **Sex workers are human beings and are entitled to human rights**

The rights to life, safety, free speech, political action, health, and education are as important to sex workers as to anyone else.<sup>3</sup> However, because sex work is stigmatized and criminalized, sex workers often face violence, discrimination and abuses of their rights. For example, studies show that sex workers have a hard time accessing even basic health care, even though they may be at higher risk for sexually transmitted infections and other health problems. Sex workers are at a high risk of sexual assault, physical assault, theft, trafficking and murder, but when they report crimes against them, they are often not taken seriously by police. Sex workers experience discrimination by the legal system when trying to assert their rights as parents, as workers, as tenants, as immigrants, as victims of crime, or as defendants.

#### **Human rights violations of sex workers create an environment where trafficking can flourish**

When sex workers are afraid of law enforcement and afraid to organize in defense of their safety and rights, dangerous working conditions result. Intensive campaigns to arrest and convict sex workers push the commercial sex industry further underground, and the most vulnerable further from help. Street-based workers who are afraid of police violence will begin working in more isolated locations where stranger or client assaults are more likely to occur. Sex workers who cannot rely on one another or the police for protection are more likely to become involved with abusive third-parties such as traffickers. Sex workers who are afraid of the police will be unlikely to report crimes, like trafficking, that they experience or observe.

#### **Sex workers who are foreign nationals are especially vulnerable to abuses and human trafficking**

Those who do not have a route to status or a legal way to work often find themselves trapped in illegal or informal work, including sex work. They may be especially afraid to report violence, for fear of being detained or deported, meaning separation from their families, economic hardship and homelessness. Those fleeing persecution in their

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<sup>1</sup> The terms “sex work” and “sex worker” were coined in 1978 by activist Carol Leigh at a conference organized by Women Against Violence in Pornography and Media. It has since become accepted and used by researchers, service providers, journalists, governmental agencies, and activists. Carol Leigh, “Inventing Sex Work” in *Whores and Other Feminists*, New York: Routledge Press, 1997; see Ronald Weitzer *Sex For Sale: Prostitution, Pornography, and the Sex Industry* (New York: Routledge Press) 2000.

<sup>2</sup> Office To Monitor and Combat Trafficking in Persons, “Introduction: 10 Years of Fighting Modern Slavery” and “Country Report on United States of America” in *Trafficking in Persons Report 2010*.

<sup>3</sup> See the Universal Declaration of Human Rights and the International Covenant on Economic and Social Rights. Also see *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*; Lim, Lin Lean (ed.). International Labour Organization, 1998 (calling for policies that would extend labor rights and benefits to sex workers and improve working conditions) and UNFPA IAC Briefing Note on HIV and Sex Work, 2006 (establishing UN-wide rights-based approach to sex work and HIV, promoting “universal access to HIV prevention, treatment and care).

home countries, including LGBT individuals, are especially afraid of these outcomes, and may be especially likely to have no other option but sex work. They may be likely to plead guilty to crimes they did not commit, out of fear of further interaction with the criminal justice or immigration systems. What's more, foreign nationals also are often assumed to be sex workers when they are not because they fit a racial stereotype.

### **Consequences of anti-trafficking laws and policies that do not respect the rights of sex workers**

- Some anti-trafficking groups claim all sex work is human trafficking and that abolishing the sex industry is the only way to eliminate human trafficking. In attempts to eradicate sex work, policymakers, law enforcement officials and others often overlook or even violate the basic human rights of sex workers. Laws that raise penalties for prostitution make it harder for sex workers to leave the sex industry.
- Even some laws intended to penalize patrons, pimps and traffickers can negatively impact sex workers. For example, laws may criminalize certain measures sex workers take to keep themselves and their peers safe, like sharing clients, space, or resources, as trafficking.
- Enforcement actions aimed at trafficking at minimum only result in protections for persons identified as sex trafficked. Most service providers will tell you that many trafficked people do not self-identify as victim, or do not naturally trust law enforcement. These trafficked persons can be subject to deportation, trauma, incarceration, or other criminal penalties, because they are considered criminal sex workers.
- The Anti-Prostitution Pledge, a condition on funding for anti-trafficking work, restricts funding for programs that work with sex workers in support of their health, safety and empowerment, reducing the risk of trafficking.
- If service providers expect that all sex workers are being trafficked, they may ignore the needs of those who do not fit the profile of a victim. A rights-based approach meets the needs that clients' identify, instead of treating clients as victims who should be grateful for rescue.

### **Sex workers are an underused resource in locating and helping victims of trafficking**

Many trafficked persons escape not through the intervention of law enforcement, but through the help of bystanders, including other sex workers. Non-trafficked sex workers may have more access to potential trafficking victims than anyone else, but the anti-trafficking movement has rarely seen them as allies. When sex workers are not afraid of arrest, abuse and misconduct by police, they can report unsafe situations, exploitation, and trafficking to law enforcement or NGO's, and potentially save lives.

### **Recommendations**

1. Support legislation to protect the rights of sex workers and trafficked people.
2. Support restitution for victims trafficking into the sex trade, even if the work they did under trafficking was illegal.
3. Oppose legislation that increases penalties for prostitution or makes it easier for police to harass sex workers: like "loitering for the purpose of prostitution" statutes, "prostitution-free zones," mandatory sentencing, and legislation that raises prostitution to a higher level offense.
4. Support legislation that makes it easier for trafficked people and sex workers to vacate their records, enabling them to find better jobs and housing.
5. Set up programs at criminal courts to screen those arrested for prostitution for "red flags" and offer services to those who are in trafficking situations, or need other kinds of help.
6. Advocate for accurate criminal laws against trafficking that do not include activities sex workers engage in to protect themselves, like sharing resources and space or working together.
7. Support the efforts of sex workers to organize for their rights. Partner with sex workers in efforts to locate and help trafficked people.
8. Increase resources to NGOs that provide services to sex workers, like healthcare, counseling and legal help.
9. Eliminate the prostitution ground of inadmissibility under immigration law, and the bar on adjustment for trafficking victims who have done sex work after escape.
10. Re-examine "End Demand" policies that heavily penalize purchasers of commercial sex in an effort to end trafficking – demand research on whether these policies actually reduce trafficking or improve the lives of sex workers or trafficking victims.
11. Eliminate the Anti-Prostitution Pledge tied to U.S. anti-trafficking funds.