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**RESPONSE TO THE UN WOMEN'S CALL ON:  
"CONSULTATION SEEKING VIEWS ON UN WOMEN APPROACH TO SEX WORK, THE SEX TRADE  
AND PROSTITUTION"**

We write this letter in response to UN Women's call for submissions in an online consultation seeking views on the UN Women's approach to sex work, and prostitution law. We are a group of academics and scholars who have extensively researched the regulation of sexuality through criminal law, including the exchange of sex for money, in both developed and developing countries. Our research addresses women, men and transpersons in sex work. We support research and policy reforms which can more effectively counteract trafficking of under-age persons and adults into any sector: for the purposes of this letter we specifically emphasize our work regarding the sex sector. We base our recommendations on scholarship and research: on our own research as well as on empirically sound and analytically rigorous global research on sex work, sex sectors, prostitution law, trafficking, and human rights law.

We believe that UN Women's human rights goals would be best served by a policy decriminalizing the un-coerced selling and buying of sex, and allowing the range of activities (such as voluntarily forming groups, living or working together, advertising services, etc.) that support the rights of the people in sex work and empowers them.

We also believe that the full participation of the most important stakeholders – persons engaged in selling or exchanging sex, whether they identify as sex workers or not, whose interests lie at the heart of this discussion – will be crucial to the success of UN Women's initiative. In this light, we first wish to express our concern that the ongoing online consultation, central to UN Women's efforts, is a flawed and inadequate vehicle, which will not enable such participation. The process is rushed and raises glaring issues of access for many persons in various sex sectors, across different communities, issues that cannot be fully remedied in the limited time allowed. These issues range from lack of linguistic and Internet access to lack of familiarity with UN principles and other human rights instruments. Sex workers and people in sex work belong to many different communities and have diverse experiences. Global interventions should undertake to reflect as many of these experiences as possible; a hurried and restricted consultation process risks representing only a limited number, constrained and to some degree self-selected by access and expertise. A process that does not fully reflect the needs of diverse persons engaged in selling sex will not successfully promote their rights. We strongly urge UN Women both to slow down the consultation, and to open it up through non-online opportunities for discussion, in order to create a more inclusive and participatory process enabling sex workers across different communities and identities (classes, races, sexes, genders, ethnicities, health status, ages, nationalities, citizenships, languages, education levels, disabilities, and other factors) to engage meaningfully on policies that most affect them.

We recognize that the criminal law plays an important role with respect to sex work: to ensure the rights of persons affected by violence or by other harms such as wage theft. In all cases, the

application of the criminal law must be assessed in light of whether it provides equal and accessible justice for the victim and the accused.

In this context, and in light of the questions raised by the e-consultation, we focus our statement on the following issues:

1. The understanding of gender identity and its implications for UN Women's human rights goals while framing a policy position with regard to sex work which is "gendered";
2. Why existing credible research supports the rejection of the so-called Nordic model (decriminalizing the seller of sex while penalizing the buyer);
3. Why rigorous studies on the relationship between human trafficking and the sex sector support total decriminalization of un-coerced buying and selling of sex and related activities.

In particular, we note empirically and analytically sound research that debunks the Nordic model, and refutes claims that legalization or decriminalization of sex work will 'increase' the risk of trafficking into the sex sector.<sup>1</sup>

### **Understanding of Gender Identity and its Implications for UN Women's policy position**

The UN's 2030 Sustainable Development Agenda commits to universality, human rights and leaving nobody behind.<sup>2</sup> We believe that this requires an inclusive approach to gender that will minimize protection gaps and enable human rights developments responsive to the full range of gender-based human rights abuses. It is imperative to acknowledge that the concept of gender -- including how people come to have gendered identities -- must be understood as pertaining to *everyone*, and applied so as to identify *all* forms of gender-related violence and discrimination.<sup>3</sup>

Everyone is subject to the gender stereotypes that are culturally and socially dominant in their particular context. This means that everyone, irrespective of whether they are privileged or marginalized subjects of rights, has a gender identity, including those who identify as women, men, trans\*, third gender, intersex and gender non-specific.

UN Women's efforts to address "gendered sex trade" must recognize that the gender identities/expressions that are conventionally regarded as fixed and those that are treated as variable are nonetheless equally culturally determined. Further, the Sustainable Development Goals (SDGs)

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<sup>1</sup> For discussion purposes, we are using the word 'trafficking' as it is defined in the UN Palermo Protocol, See United Nations Convention against Transnational Organized Crime. New York: United Nations Treaty Resolutions 55, no. 25 (2000): 1, available from

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

We note that 'trafficking' includes trafficking into all types of work and all types of people (men, women, and children). We remain concerned about policy debates that focus exclusively or disproportionately on trafficking into the sex sector or trafficking involving women and girls

<sup>2</sup> See [Transforming our world: the 2030 Agenda for Sustainable Development](https://sustainabledevelopment.un.org/post2015/transformingourworld) at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

<sup>3</sup> Miller, Alice and Otto, Dianne et al. "Why the U.N. needs a broader concept of gender to ensure universal protection of human rights." Global Health Justice Partnership: June 2016. Accessed on October 14, 2016. <http://www.yaleghjp.org/un-needs-a-broad-concept-of-gender>

that are set out to achieve gender equality and building peaceful and inclusive societies can only be fulfilled by changing the systems that privilege certain gender identities as well as promoting the full humanity of stigmatized gender identities/expressions.<sup>4</sup> While the specifics of the human rights violations suffered by marginalized gender identities must be directly and immediately addressed, clear links must be made between these violations and the mainstream institutions, practices and customs that reinforce generally applicable gender stereotypes, in order to ensure equal enjoyment of human rights for all.

We believe that every individual's gender self-determination must be valued and recognized, free from coercion, violence and discrimination. The capacity for self-determination needs to be located and examined within its social context, so that social constraints and limits can also be identified and addressed. This means that human rights work needs not only to promote self-determination, but also promote social change that expands the space of freedom for self-determination. In practice, this means significant attention to, and documentation of, the economic, social, political and cultural conditions that promote or constrain gender identities.<sup>5</sup>

There are several practical consequences to such an understanding of gender.

1. UN Women must work to advance the rights of its primary constituency of women, with a definition of 'women' that includes transgender and intersex people;
2. UN Women's work in gender equality necessarily entails interventions into 'gendered environments' such as sex work; these must recognize the effects of marginalization and abuse on the rights and health of men as well;
3. Any UN Women policy on appropriate use of the law must recognize that different gender identities exist in different relations to criminal law, the criminal justice system and the police. Many communities experience the power of police as a threat to their well-being and lives; harms arising from excessive and abusive policing, especially in their gendered contexts and implications, must be identified and addressed even as the police perform their appropriate roles in responding to crime and violence.<sup>6</sup>

### **Decriminalization of sex work protects sex workers from HIV and violence**

Evidence shows that people in sex work face heightened risks for human rights violations, including HIV exposure and serious violence -- particularly from state agents -- as well as discrimination in housing and access to healthcare, education, and other rights. We work at the intersections of health, law and human rights; we are familiar with or have carried out research

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<sup>4</sup> "Discussion Paper Transgender Health and Human Rights." New York: United Nations Development Programme: December 2013. Accessed on October 14, 2016. <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/discussion-paper-on-transgender-health---human-rights.html>

<sup>5</sup> Miller, Alice M, Otto, Dianne et al. "Why the U.N. needs a broader concept of gender to ensure universal protection of human rights." Global Health Justice Partnership: June 2016. Accessed on October 14, 2016. <http://www.yaleghjip>

<sup>6</sup> "Discussion Paper Transgender Health and Human Rights." New York: United Nations Development Programme: December 2013. Accessed on October 14, 2016. <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/discussion-paper-on-transgender-health---human-rights.html>; "Report of the Office of the United Nations High Commissioner for Human Rights on Discrimination and Violence against individuals based on their Sexual Orientation and Gender Identity." United Nations Human Rights Council, May 2015. Accessed on October 14, 2016. [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E)

cited in these debates: we draw on recent well-documented investigations cited by UNDP,<sup>7</sup> WHO,<sup>8</sup> the UN Special Rapporteur on the Right to Health,<sup>9</sup> Human Rights Watch<sup>10</sup> and Amnesty International,<sup>11</sup> among others.

Public health research supports the conclusion that criminalization of the buying and selling of sex and related activities prevents sex workers from having equal access to health services, including HIV-related services.<sup>12</sup> A 2015 *Lancet* modeling study found that decriminalization could avert 33-46% of new HIV infections in the next decade.<sup>13</sup> Available research also shows that criminalization impairs sex workers' ability to negotiate better living and working conditions, increases mental health stresses,<sup>14</sup> and renders them vulnerable to a range of human rights abuses, especially violence.<sup>15</sup> Studies have also shown that criminalization reduces the ability of people in sex work to organize, be visible, participate in public life as full citizens, and be treated with dignity.<sup>16</sup> It increases stigma; it closes pathways toward participation in public life. Decriminalization, by contrast, allows States to direct resources toward sex workers' health and well-being, enables and empowers sex workers themselves, and makes it easier for them to report violence, access social services, and find employment outside the sex trade without the burden of a criminal record.<sup>17</sup>

### **Criminalizing buyers and not sellers does not protect sex workers' rights**

Supporters of the different policies and practices encompassed by the 'Nordic model' promote it as an ideal package: the simultaneous, so-called 'decriminalization' of sex work and the criminalization of buyers, synchronized so as to 'end demand.' This model is irresistible to some at first glance. Yet it relies on two false assumptions that undermine its goals: 1) an ideological position that selling sex is always victimizing and buying sex is always exploitative; 2) an unsupported confidence that the Nordic model protects the seller from harm.

<sup>7</sup> Godwin, John. "Sex Work and the Law in Asia and the Pacific." Thailand: UNDP, 2012. Accessed October 14, 2016. <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf>

<sup>8</sup> Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions. Geneva: World Health Organization, 2013. Accessed October 14, 2016. [http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf?ua=1)

<sup>9</sup> Anand Grover. "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." New York: UN General Assembly Human Rights Council 14, no. 3 (2010): A/HRC/14/20. Accessed October 14, 2016, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

<sup>10</sup> Human Rights Watch. "World Report 2014." New York: Human Rights Watch, 2014. Accessed October 14, 2016. [https://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/wr2014_web_0.pdf)

<sup>11</sup> Amnesty International. "Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers POL30/4062/2016". New York: Amnesty International, May 2016. Accessed October 14, 2016. <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

<sup>12</sup> Gruskin S, Williams G, Ferguson L. "Realigning Government Action with Public Health Evidence: The Legal and Policy Environment Affecting Sex Work and HIV in Asia." *Journal of Culture, Health and Sexuality* 16, no. 1 (2014):14-29.

<sup>13</sup> Shannon, Kate, Steffanie A. Strathdee, Shira M. Goldenberg, Putu Duff, Peninah Mwangi, Maia Rusakova, Sushena Reza-Paul et al. "Global epidemiology of HIV among female sex workers: influence of structural determinants." *The Lancet* 385, no. 9962 (2015): 55-71.

<sup>14</sup> Seib, C. et al. "The health of female sex workers from three industry sectors in Queensland, Australia", *Social Science & Medicine* 68, no. 3 (2009): 476-477.

<sup>15</sup> Removing laws criminalizing sex work and related activities can help create empowering environments that allow sex workers to access HIV and other health services, to report violence and abuse (including by police and third parties), and to take steps to mitigate the impact of HIV. In addition, removing criminal prohibitions enables persons in sex work to become more visible and public (if they choose), organize politically, demand better treatment, and counter stigma. See Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act of 2003. Wellington: Government of New Zealand, 2008. Accessed October 14, 2016. <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.

<sup>16</sup> Rekart, Michael L. "Sex-work harm reduction." *The Lancet* 366, no. 9503 (2006): 2123-2134.

<sup>17</sup> Biko, Chernob, Hickey, Darby et al "Meaningful Work Transgender Experiences in the Sex Trade December 2015." Best Practices Policy Project, National Centre for Transgender Equality and Red Umbrella Project. Accessed on October 14, 2016. [http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report\\_FINAL\\_3.pdf](http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf)

First: Supporters of the ideology that sex work is inherently degrading argue that prostitution should be eliminated through criminal law. This comports with their view that *all women* are *always* sexually subjected to men. Yet many female-identified sex workers vocally reject this assumption, arguing that while stigma and persecution generate negative *responses to* and *conditions for* the work they do, the work itself is not inherently degrading.<sup>18</sup>

Since the nineteenth century, social-purity movements have fostered stereotypes of female sex workers as exploited victims, and men as sexual predators. These are expressly gendered stereotypes – they pre-conceive ‘seller’ and ‘buyer’ as mapped onto ‘female’ and ‘male’; and they treat gender as an extreme power dynamic, a permanent and irreconcilable conflict. They do not acknowledge that sellers include multiple gender identities, among them men and transgender people; they do not recognize that the landscape of sex work encompasses very diverse conditions of work irreducible to simple moral binaries, and that one key power dynamic shaping it is the fact of criminalization itself.

Second: The assumption that ‘decriminalization’ of the seller frees him or her of all of the harms of state surveillance and the criminal justice system defies reality. As demonstrated by research in countries adopting the so-called Nordic model, police surveillance of transactions and the continual arrest and prosecution of clients drive transactional sex underground. These policing actions diminish safety, depriving the sex worker of time or space to screen clients. Policing clients thus actually places sex workers in increased risk from client violence.<sup>19</sup> This policing also places sex workers under continuous state scrutiny – and that only permits and perpetuates documented patterns of police exploitation, violence, and abuse. It cannot be forgotten that, for sex workers around the world, as for many other stigmatized communities and identities, police as coercive state agents are *key perpetrators* of human rights violations -- not trusted agents of protection.<sup>20</sup>

The Nordic model makes assumptions about the ‘inherent degradation’ of sex work and does little to address the continued violence associated with criminalization, or to support alternatives suggested by sex workers to improve their working conditions.

### **The relationship between prostitution and trafficking**

UN Women seeks to end the trafficking of women in accordance with the Sustainable Development Goals (SDGs). Proponents of the Nordic model assert that decriminalization of sex work will increase trafficking. We believe this is too simplistic, as well as improbable. Trafficking is the result of multiple factors that promote vulnerability, not the result of the labor sector *per se*. For example, both domestic work and fisheries are within the legal sector, yet trafficking into them is rampant in many countries – the variables that lead to trafficking work

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<sup>18</sup> See Bromberg, Sarah. "Feminist issues in prostitution." International Conference on Prostitution 10 (1997): 2008; also Ahmed, Aziza. "Feminism, Power and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health." Harvard Journal of Law and Gender 34, no. 226 (2011); Nagle, Jill. Whores and other feminists. London: Routledge, 2013.

<sup>19</sup> Deering, Kathleen N., Avni Amin, Jean Shoveller, Ariel Nesbitt, Claudia Garcia-Moreno, Putu Duff, Elena Argento, and Kate Shannon. "A systematic review of the correlates of violence against sex workers." American Journal of Public Health 104, no. 5 (2014): e42-e54.

<sup>20</sup> See Peters, Alicia W. W. Responding to human trafficking: sex, gender, and culture in the law. Philadelphia: University of Pennsylvania Press, 2015. Cheng, Sealing. On the move for love: Migrant entertainers and the US military in South Korea. Philadelphia: University of Pennsylvania Press, 2011; Saunders, Penelope, and Jennifer Kirby. "Move Along: Community-based Research into the Policing of Sex Work in Washington, DC." *Sexuality, Criminalization and Social Control Action Research* (2011): 107-127.

through vulnerability and coercion, the inability to migrate legally, harsh border controls, a lack of state accountability, and police corruption. The criminal or legal status of the work in question remains but one feature in a complex landscape.

Advocates (as well as much of the media, and many governments) often argue that “[w]here prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.”<sup>21</sup> In keeping with persistent efforts to distinguish prostitution from trafficking, our review of the research literature still does not find convincing evidence to support the claim that legalized prostitution *causes* or *increases* trafficking.<sup>22</sup>

Statistics about trafficking are notoriously unreliable. Research by UNESCO- Bangkok on trafficking,<sup>23</sup> for instance, noted that available statistics are rendered suspect in part by the variability of the definitions used to identify who is a ‘trafficked person.’ Another significant problem is the lack of social science research meaningfully comparing trafficking (as defined in international law) and prostitution under different legal regimes (i.e., legalization, criminalization and “tolerance”). The impossibility of ‘proving’ what many opponents of prostitution passionately believe bedevils many of the arguments they make.<sup>24</sup> It is in fact simple logic to note that decriminalization of buying and selling sex can encourage victims of trafficking to come forward and seek protection. In addition, any apparent increase in the identification of trafficked persons in the wake of decriminalization may thus very plausibly be due to the opening decriminalization provides for *more accountable* and *more effective* interventions against trafficking, by civil society as well as state actors.

Evidence on the decriminalization of buying and selling sex and related activities shows that it is an important part of interventions to combat trafficking into the sex sector. Legal prostitution, combined with effective rights-based anti-trafficking laws, makes it easier to identify trafficking victims; workers and clients in the legal sector can report trafficked or suspicious cases without fear of arrest.<sup>25</sup> Improved conditions for cooperation with authorities, and the ability of workers to claim rights, render the violence and exploitation of trafficked persons more visible. *Decriminalization makes clear what the crime of trafficking really stands for -- severe labor*

<sup>21</sup> The Link Between Prostitution and Sex Trafficking. Washington D.C.: Bureau of Public Affairs, 2004. Accessed October 14, 2016. <http://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.

<sup>22</sup> "UN Women's note on sex work sexual exploitation and trafficking." Geneva: UN Women, 2013. Accessed October 14, 2016. <http://bit.ly/1IU6KIT> ["The conflation of consensual sex work and sex trafficking leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights. Furthermore, failing to distinguish between these groups infringes on sex workers' right to health and self-determination and can impede efforts to prevent and prosecute trafficking."]

<sup>23</sup> See <http://www.unescobkk.org/culture/trafficking>. UNESCO's Trafficking Statistics Project is an ongoing project attempting to assess the scale of the problem, as well as the empirical validity of various estimates and guesstimates in wide circulation.

<sup>24</sup> One recent study (Cho et al. 2013), using non-comparable data criticized for its poor quality, claimed to find an association between “human trafficking inflows” and legalized prostitution, which the authors interpret as causality. They argue that legalized prostitution contributes to increases in trafficking. Cho et al. acknowledge that their correlational finding cannot demonstrate causality, so they turn to what they term ‘anecdotal evidence’ for 3 countries whose policies have changed, though data on ‘trafficking inflows’ are lacking for 2 of the 3 countries. Any association between more reported or prosecuted trafficking cases and decriminalized sex work regimes can equally, if not more plausibly, be explained by the practices of states, which have not only progressively reformed their prostitution law but also paired this with more effective, accountable interventions against trafficking. A parallel interpretive problem is posed by increased reports of violence against women. We question whether these are instances of increased occurrence or increased detection. For the full methodology, Seo-Young Cho and Axel Dreher and Eric Neumayer. “Does Legalized Prostitution Increase Human Trafficking?” *World Development* 41, no. 1 (2013): 67-82. For a thorough dismantling of this study see, Weitzer, Ronald. "New directions in research on human trafficking." *The Annals of the American Academy of Political Science and Social Science*, vol. 653 (May): no. 1 (2014): 6-24.

<sup>25</sup> "Human Trafficking and Sex Worker Rights." New York: The Freedom Network, 2015. Accessed October 14, 2016. <http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf>

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exploitation and coercion/deception, not simply the selling or buying of sex. This accords with the overall philosophy and innovation of the UN Palermo Protocol (2000), which observes that people who have been trafficked are not criminals, but crime victims.<sup>26</sup>

We encourage UN Women to recognize victims of sex trafficking within in the larger context of human trafficking. A single-issue focus on prostitution as the ‘cause’ of trafficking, rather than on the exploitation that operates in all of the different sectors in which trafficking occurs (such as agricultural work, domestic work, factory work and prostitution) would enable UN Women to “leave nobody behind” and respond to the needs of *all* trafficked persons with a coherent, inclusive, overall strategy.<sup>27</sup>

We look forward to engaging further with UN Women, during what we hope will become a more sustainable and open process.

Sincerely,

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<sup>26</sup> This is presented in the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” supplementing the United Nations Convention against Transnational Organized Crime. For full text see, United Nations Convention against Transnational Organized Crime. New York: United Nations Treaty Resolutions 55, no. 25 (2000): 1. Accessed October 14, 2016. <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

<sup>27</sup> Ann Jordan, Ali Miller, Carole Vance, Baerbel Heide Uhl, Bridget Anderson, Julia O’Connell Davidson, Audrey Macklin, Jodi Jacobson, and Sealing Cheng. Expert Letter to Ambassador John Miller, April 21, 2005. Letter. U.S. Department of the State. Accessed October 14, 2016. <http://www.nswp.org/sites/nswp.org/files/USSTATE-LETTER.pdf>