



**Submission to the UN Special Rapporteur on the human rights of migrants, Mr. Felipe González Morales, on the Rights to Freedom of Association of Migrants**

**Office of the High Commissioner, United Nations**

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## **I. Introduction**

Butterfly: Asian and Migrant Sex Workers Network (“Butterfly”)<sup>1</sup> is the only migrant sex worker-led organization in Canada, formed by migrant sex workers, social workers, and legal and health professionals who advocate for the rights of Asian and migrant sex workers. Butterfly has built strong networks and leadership in the community. Over the past five years in Canada, we have provided a 24/7 hotline and outreach services, and offered crisis, emotional, social, and legal support to more than 5000 migrant sex workers of varying immigration status. We also offer crisis support, information resources, and workshops for migrant workers, while helping them to build networks of support and conducted consultations and community-based empirical research in order to understand the realities and the working conditions of migrant sex workers. This research enables us to identify sex workers’ needs and problems, such as violence, discrimination, isolation, exploitation, and adverse encounters with law enforcement.

The Canadian HIV/AIDS Legal Network (“HIV Legal Network”) promotes the human rights of people living with and vulnerable to HIV and AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization. The Legal Network’s guiding values are rooted in a focus on the human rights of marginalized populations such as sex workers and migrant communities, and their meaningful participation in policies and programs that affect them.

We make this submission to the UN Special Rapporteur on the human rights of migrants, Mr. Felipe González Morales, to describe laws and policies that inhibit migrant sex workers and other marginalized communities from enjoying their right to freedom of association, as well as concrete steps that States, international organizations and the UN can take to uphold this right.

## **II. Background**

Migrant sex workers in Canada have reduced access to the right to freedom of association. Canadian and international policies, outlined below, have created restrictions and barriers for migrant sex workers to movement and migration, collective collaboration, joining or forming organizations and trade unions, and other forms of organizing. The criminalization of sex work, immigration restrictions on migrant sex work, and anti-trafficking enforcement efforts compromise the health and safety of marginalized groups (especially poorer, racialized, Indigenous and im/migrant women) and violate their right to freedom of association.

The *Protection of Communities and Exploited Persons Act (PCEPA)*, Canada’s sex work-related criminal law, is a repressive regime that serves to undermine the safety and rights of sex workers, particularly racialized migrant and immigrant sex workers. In addition to criminalizing clients and the advertising of sex work, sex workers and third parties (including co-workers, managers, friends and family members) continue to be criminalized and are consequently vulnerable to arrest or to coming into contact with the criminal justice system. To avoid problems associated with the criminalization of their work, sex workers may opt to work in isolated and clandestine locations, decreasing their ability to organize and to access support

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<sup>1</sup> Butterfly works with a number of allies and coalitions to support and advocate for migrant sex workers, including as a member of the Canadian Alliance for Sex Work Law Reform (CASWLR) and the Migrant Workers Alliance for Change (MWAC).

services. Exacerbating this state-perpetuated isolation are the conflation of sex work and trafficking, the prohibition on temporary and migrant workers in sex-related businesses (e.g. strip clubs and massage parlours), and the racial profiling of migrant sex workers as trafficking victims — thus breaching the rights of migrant sex workers to associate with third parties and their communities more broadly, and to access labour protections and other supports, including joining and forming unions.

### III. Specific Policy Issues in the Canadian Context

#### ***Criminalization of sex work***

In Canada, current sex work–specific criminal offences, including those introduced in December 2014, prohibit:

- impeding traffic or pedestrians or communicating in a public place next to a school ground, playground or daycare centre, for the purpose of offering, providing or obtaining sexual services (s. 213 of the *Criminal Code*);
- purchasing or attempting to purchase sex in any place and at any time (s. 286.1 of the *Criminal Code*);
- materially benefitting from sexual services (s. 286.2 of the *Criminal Code*);
- procuring sexual services (s. 286.3 of the *Criminal Code*); and
- advertising sexual services (s. 286.4 of the *Criminal Code*).<sup>2</sup>

Sex workers remain vulnerable to arrest pursuant to the prohibition on communication, and since 2014 there has also been an absolute prohibition on the purchase of sex, predicated on the theory that ending the demand for sexual services will eliminate sex work more broadly. The prohibitions on material benefit, procuring and advertising capture “third parties,” or the people who work, provide services to or associate with sex workers including drivers, security, bookers, webmasters, business owners, receptionists of outcall agencies (e.g. escort agencies) or in-call establishments (i.e. residential or commercial locations from which sex workers work such as massage parlours). **These infractions do not require any instance of exploitation.** As the Canadian Alliance for Sex Work Law Reform has clarified, “Third parties in the sex industry are often referred to as ‘pimps’; however, this does not accurately reflect the range of relationships sex workers have with third parties” and the fact that many “sex workers are also third parties.”<sup>3</sup>

While Canadian law exonerates sex workers who materially benefit from or advertise their own sexual services, in practice sex workers rely on several third parties (whether a manager or online advertising venue) in order to work. As a result, sex workers are not able to work together with other sex workers or with third parties. Sex workers, particularly migrant sex workers, are consequently pushed by the criminal law and structural circumstances to work in isolated and precarious working conditions.

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<sup>2</sup> For a more detailed discussion of these laws, see Canadian Alliance for Sex Work Law Reform, *Sex Work and Changes to the Criminal Code After Bill C-36: What Does the Evidence Say?*, June 2015. Available at <http://sexworklawreform.com/infosheets-impacts-of-c-36/>.

<sup>3</sup> Canadian Alliance for Sex Work Law Reform, *Criminalizing Third Parties in the Sex Industry: Impacts and Consequences*, June 2015. Available at <http://sexworklawreform.com/infosheets-impacts-of-c-36/>.

Canada's *Criminal Code* also includes prohibitions against "**trafficking in persons.**" The offence is committed when a person "recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation."<sup>4</sup> "Exploitation" is broadly defined to encompass causing another person "to provide, or offer to provide, labour or a service by engaging in conduct that ...could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service."<sup>5</sup> While the human trafficking laws may appear coherent on paper, sex workers have described how these laws have led to unjustified criminal charges, particularly within migrant and Indigenous sex work communities. As Butterfly has observed, human trafficking laws are "often used against people who work in the sex industry due to the conflation of sex work and trafficking. Since clients and third parties of sex workers themselves are criminalized by sex work and trafficking laws, the implementation of collaboration and safety measures are often against the law, resulting in criminal investigations."<sup>6</sup> The "rescue and raid" approach, a common approach in anti-trafficking enforcement, also separates migrant sex workers from their support networks:

*"Daniel has a temporary work permit and works in the field of construction. He is the boyfriend of Susan who is a migrant sex worker and who works in an apartment. Daniel was arrested by police as suspected trafficker; he was ordered to leave Canada because he is living with Susan who uses money earned in sex work to support their household. Law enforcement made Susan share all the contacts she has in Canada for the investigation. All her friends are now afraid to contact her because they do not want to get into trouble."* [Testimony of Susan, a member of Butterfly, 2019]

### ***Prohibition of sex work in immigration law***

Canada's **immigration laws** (i.e. the *Immigration and Refugee Protection Act* and *Immigration and Refugee Protection Regulations*) prohibit everyone without Canadian citizenship or permanent resident status from working in the sex industry, including individuals who are otherwise authorized to work in Canada. In particular, the *Immigration and Refugee Protection Regulations* prohibit temporary residents from legally working for employers who offer "striptease, erotic dance, escort services or erotic massages"<sup>7</sup> while all work permits stipulate that they are "[n]ot valid for employment in businesses related to the sex trade such as strip clubs, massage parlours or escort services."<sup>8</sup> An individual employing someone to work in any of

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<sup>4</sup> Section 279.01 of the *Criminal Code* prohibits "trafficking in persons," Section 279.02 prohibits receiving a "financial or other material benefit" from trafficking and Section 279.03 prohibits "withholding or destroying documents to facilitate trafficking."

<sup>5</sup> Section 279.04 of the *Criminal Code*.

<sup>6</sup> See, for example, Butterfly: Asian and Migrant Sex Workers Network, *Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers*, June 2018.

<sup>7</sup> *Immigration and Refugee Protection Regulations* (SOR/2002-227), sections 183(1)(b.1), 196.1(a), 200(3)(g.1), and 203(2)(a).

<sup>8</sup> Government of Canada, *Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation*, September 16, 2014. Available at

these sectors could thus be punished by a fine of up to \$50,000 or imprisonment for a term of up to two years.<sup>9</sup>

As a result, migrant sex workers are not able to identify or advocate for themselves because they risk losing their immigration status and/or being deported if they disclose they are working in a sex work-related business, even if they work in a municipally regulated part of the industry.<sup>10</sup>

*“Blue worked in a massage parlour with her colleague because she found it safer and because she can have more support. However, the bylaw enforcement officers came and told her that she is not allowed to work in massage parlours anymore because she has a work permit. She was forced to work by herself in apartment.”*  
(Behind of Recue: How the anti-trafficking investigation and polices harm migrant sex workers)

The criminalization of sex work and the restrictions imposed on temporary workers inhibit migrant sex workers from forming trade associations to advocate for their labour rights and protections.

#### **IV. Travel Restrictions<sup>11</sup>**

Discriminatory travel restrictions create barriers to sex workers’ abilities to move and migrate. Sex workers often experience discrimination from embassy and immigration officials. They are detained and refused entry at the border. In Canada, researchers have documented sex workers’ experiences of being interrogated and detained by U.S. border patrol authorities, who reported being subsequently banned from the United States.<sup>12</sup> Barriers to sex workers’ movement including difficulty obtaining passports and visas, arbitrarily being turned away at the point of departure, or being turned back at border crossings, impede sex workers’ right to associate and organize at the international level. There have been many documented cases where sex worker-activists have been unable to travel to UN meetings and International AIDS Conferences. This limits sex workers’ ability to meaningfully participate in discussion about their lives.

*“To obtain the visa, we had to make an appointment at the Belgium Embassy [in Rwanda]. [When we arrived,] they told us that they do not deal with those visas here but that we have to go to Kinshasa to the Embassy of Switzerland. Four days later we arrived*

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[www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/protecting-workers-abuse-exploitation.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/protecting-workers-abuse-exploitation.html).

<sup>9</sup> Ibid.

<sup>10</sup> Most municipalities license exotic dance and body rub (massage) services; some even license escort services.

<sup>11</sup> This section is comprised of a modified and truncated version of the following report: NSWP (Global Network of Sex Work Projects). (2019). *Sex workers and travel restrictions*. Retrieved from [https://www.nswp.org/sites/nswp.org/files/sex\\_workers\\_and\\_travel\\_restrictions\\_-\\_nswp\\_2019\\_0.pdf](https://www.nswp.org/sites/nswp.org/files/sex_workers_and_travel_restrictions_-_nswp_2019_0.pdf).

<sup>12</sup> Canadian HIV/AIDS Legal Network, *The Perils of “Protection”: Sex workers’ experiences of law enforcement in Ontario*, 2019. Accessible at <http://www.aidslaw.ca/site/the-perils-of-protection/?lang=en>.

*in Kinshasa, and to our surprise, our visa application was rejected without even talking with us. We called our contact from UNAIDS and he was able to intervene and advocate for us so we could participate in the 73rd Session of CEDAW where we were invited. Our request for a hearing was denied. An official from UN Women called to the Embassy of Switzerland, that's how we got an appointment to submit our visa application... One week after we returned, we were informed our visa had been denied because there was not enough proof we would not return to DRC."*

— Sex worker, Democratic Republic of Congo

Travel restrictions stop sex workers from being meaningfully involved in intergovernmental and international processes. Barriers to travel for advocacy work include both difficulty crossing borders (due to various obstacles like limited access to visas, passports, financial resources, etc.) and the heavy administrative burden that small organizations are unable to undertake on a sustained basis.

## **V. Recommendations**

If States are to guarantee the right to freedom of association of all migrants, including those who sell or trade sex, they must:

1. Decriminalize all aspects of sex work, which requires the repeal all sex work–specific criminal laws.
2. Repeal immigration regulations that prohibit migrant people from working in the sex industry and have led to the detention and deportation of migrant sex workers, and provide sex workers with access to safe, legal, and equitable channels for migration and travel.
3. Stop law enforcement activities including raids, detentions and deportations of sex workers that are justified through anti-trafficking and anti–sex work laws and policies.
4. Work to improve rights protections for migrants and migrant workers.

In addition, international organizations and the UN must ensure that travel barriers do not prevent sex workers and other marginalized groups from attending international civil society meetings that affect their lives and work. They must consider host country travel restrictions when selecting meeting locations and actively assist individuals who are impacted by these restrictions to overcome barriers to travel.