



December 17, 2016

Dr. Phumzile Mlambo-Ngcuka
Executive Director
UN Women
405 East 42nd Street
New York, NY 10017

Dear Dr. Mlambo-Ngcuka:

Re: UN Women's approach to sex work

On the occasion of the International Day to End Violence Against Sex Workers, we write to you on behalf of the UNAIDS Reference Group on HIV and Human Rights, a body of independent experts established in 2002 to advise the Joint United Nations Programme on HIV/AIDS (UNAIDS) on all matters related to HIV and human rights.

As you know, UNAIDS produced a Guidance Note on HIV and sex work (updated in April 2012). This document was the result of extensive consultation and input from our group as well as the Global Working Group on HIV and Sex Work Policy, and was informed by a series of regional consultations in Latin America, the Caribbean and southern Africa, as well as national consultations in China, Malawi, Peru, Thailand and Zimbabwe. Further consultations were held in Kenya, Nepal, Pacific Island Countries and southern Eastern Europe. The document was developed to provide the UNAIDS Cosponsors and Secretariat with a coordinated human-rights-based approach to ensuring universal access to HIV prevention, treatment, care and support in the context of sex work.

A key conclusion of the report was that:

*"States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work."*¹

We are writing to you today because we are concerned about a perception that UN Women's development of a policy on sex work may contradict the well-established policy already developed by and for the UNAIDS Cosponsors and Secretariat, and that the process has not been adequately transparent or enabled the meaningful participation of sex workers, particularly from the global South. We understand that UN Women has committed to posting

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publicly all submissions and comments received, and hope that this will indeed be done without delay and before any final UN Women policy position is finalised.

We welcome the commitment by UN Women that the development of its sex work policy will be grounded in an international human rights framework and the 2030 Agenda for Sustainable Development. The Reference Group fully endorses and shares UN Women's goals of eliminating discrimination against women and girls, empowering women, and achieving women's equality. These objectives must form an integral part of our response to HIV and AIDS. As UN Women has stated: "the single most important strategy in dealing with the HIV epidemic is empowering women and guaranteeing their rights—so that they can protect themselves from infection, overcome stigma and gain greater access to treatment and care."²

The Reference Group agrees wholeheartedly that empowering and guaranteeing the rights of women is both a matter of principle and is essential to an effective HIV response. This commitment must include the rights of women (and others) who sell or trade sexual services: protecting and promoting the human rights of sex workers (of all genders and sexualities) is essential in responding to HIV.³ We remain convinced that the health and safety of sex workers is undermined by the continued criminalization of sex workers, and of their clients and the organization of their work, as well as the repressive use of other kinds of laws (e.g., anti-trafficking and immigration laws that lead to raids, detention and deportation of sex workers ostensibly in the name of protection; administrative offences penalizing sex work; vagrancy or loitering laws that target sex workers and/or their clients; etc.) Such punitive legal environments and practices lead to multiple violations of sex workers' rights, including the rights to life, liberty, security of the person, safe working conditions, privacy, equality, freedom from torture and other cruel, inhuman or degrading treatment, and the highest attainable standard of health.⁴

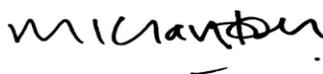
The Reference Group also takes this opportunity to underscore the importance of avoiding the conflation of human trafficking, sexual exploitation and sex work. Such a conflation is inaccurate: trafficking of persons into forced or coerced labour (including sexual exploitation) cannot be equated with consensual sex work. Such a conflation also contributes to human rights violations against sex workers, who end up further policed and abused despite being characterized as "victims" of trafficking.⁵ By way of example, we recall the report of the UN Special Rapporteur on violence against women regarding her 2013 mission to India, in which she "noted a tendency to conflate sex work with trafficking in persons, and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs."⁶ The Special Rapporteur included specific recommendations to review the country's statute on "immoral traffic" that *de facto* criminalizes sex work and to "ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers."⁷

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The need to decriminalise sex workers – and their clients, their work settings and third parties – in order to protect their health and other human rights has been outlined by the Global Network of Sex Work Projects.⁸ In addition to the specific UNAIDS guidance cited above, the earlier *International Guidelines on HIV/AIDS and Human Rights*, issued by UNAIDS and the Office of the UN High Commissioner for Human Rights, call on States to review criminal laws regarding sex work “with the aim of decriminalizing,” and to ensure that criminal law does not impede provision of HIV prevention and care services to sex workers and their clients.⁹ Recommendations for decriminalization have also come from, among others, the Global Commission on HIV and the Law,¹⁰ the Global Alliance Against the Traffic in Women (GAATW),¹¹ the UN Special Rapporteur on the right to health,¹² WHO and UNFPA (other cosponsors of UNAIDS alongside UN Women),¹³ and major international human rights NGOs such as Human Rights Watch¹⁴ and Amnesty International.¹⁵

The above-noted UNAIDS Guidance Note already sets out a policy on sex work that is rooted in international human rights standards and was developed following a meaningful consultation process with sex workers and other stakeholders. We respectfully request that UN Women, as a cosponsor of UNAIDS, ensure that its policy on sex work aligns with that existing position. UN Women should add its voice, alongside many other human rights organizations and health experts, to the call for the repeal of all laws criminalizing or penalizing consensual sex work and the recognition of sex work as a form of labour, with full protection for the rights of sex workers, as well as dedicated funding and other concrete support for programs and services by and for sex workers to protect their health and human rights. We also note that such an approach is what sex workers themselves have urged, following an extensive global consultation, as part of achieving gender equality and combating social exclusion.¹⁶ In this regard, we commend to you the NSWP’s draft framework for a human rights approach to sex work,¹⁷ and hope that it will be reflected in the position and work of UN Women.

In solidarity,



Michaela Clayton
Co-Chair



Joseph Amon
Co-Chair

Cc: Dr. Michel Sidibé, Executive Director, UNAIDS

¹ UNAIDS, *Guidance Note on HIV and Sex Work* (2012), online: http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.

² *UNAIDS Cosponsor: UN Women – United Nations Entity for Gender Equality and the Empowerment of Women* (2015), online: http://www.unaids.org/sites/default/files/media_asset/20150501_UNWomen_en.pdf.

³ See, e.g., “Prevention for Key Affected Populations: Female Sex Workers” in J. Gay, M. Croce-Galis & K. Hardee, *What Works for Women and Girls: Evidence for HIV/AIDS Interventions* (Washington, DC: Population Council, The Evidence Project and What Works Association, Inc.), online: www.whatworksforwomen.org.

⁴ M. Decker et al., “Human rights violations against sex workers: burden and effect on HIV,” *Lancet* 2015; 385: 186-199; K. Shannon et al., “Global epidemiology of HIV among female sex workers: influence of structural determinants,” *Lancet* 2015; 385: 55-71.

⁵ For a more detailed discussion, see this resource on the UN Women website: *Human Trafficking, HIV/AIDS, and the Sex Sector: Human Rights for All* (Center for Health and Gender Equity & the Center for Human Rights and Humanitarian Law at American University Washington College of Law, 2010), online: http://www.genderhealth.org/files/uploads/change/publications/Human_Trafficking_HIVAIDS_and_the_Sex_Sector.pdf.

⁶ *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo – Addendum: Mission to India* (2013), UN Doc. A/HRC/26/38/Add.1 (2014), para 20, online: <http://bit.ly/2hjt0QK>.

⁷ *Ibid.*, para. 78.

⁸ Global Network of Sex Work Projects, *Consensus Statement on Sex Work, Human Rights, and the Law* (2013), online: <http://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law>. The Global Network of Sex Work Projects (NSWP) has also outlined why the decriminalization of “third parties” is important for sex workers’ health and human rights, and has specified that: “The term ‘third parties’ includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work”: NSWP, *Statement: Criminalisation of Third Parties and its Impact on Sex Workers’ Human Rights* (23 May 2016), online: <http://www.nswp.org/resource/criminalisation-third-parties-and-its-impact-sex-workers-human-rights>.

⁹ *International Guidelines on HIV/AIDS and Human Rights* (2006 Consolidated Version), Guideline 4, paras. 21(b)-(c), online: http://data.unaids.org/Publications/IRC-pub07/JC1252-InternGuidelines_en.pdf.

¹⁰ Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (July 2012), online: www.hivlawcommission.org.

¹¹ Global Alliance Against the Traffic of Women (GAATW), *Statement to the Human Rights Council*, 2012, online: www.gaatw.org/statements/GAATWStatement_05.2013.pdf.

¹² UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/HRC/14/20 (2010), online: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>,

¹³ WHO, UNAIDS, UNFPA & NSWP, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach* (2012), online: http://www.who.int/hiv/pub/guidelines/sex_worker/en/.

¹⁴ See, e.g., J. Amon, *Canada’s prostitution bill a step in the wrong direction*, Human Rights Watch (2014), online: www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction; Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities* (July 2012), online: <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities>.

¹⁵ *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers* (May 2016), AI Index POL 30/4062/2016, online: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

¹⁶ NSWP, *Consensus Statement on Sex Work, Human Rights, and the Law* (2013), *supra*.

¹⁷ Global Network of Sex Work Projects, *Draft framework for a UN Women Human Rights Affirming Approach to Sex Work in response to UN Women e-consultation* (2016), online: <http://www.nswp.org/resource/draft-framework-un-women-human-rights-affirming-approach-sex-work-response-un-women-e>.