



**“IF THEY CAN HAVE HER,  
WHY CAN’T WE?”**

GENDER-BASED TORTURE AND OTHER ILL-TREATMENT OF WOMEN  
ENGAGED IN SEX WORK IN THE DOMINICAN REPUBLIC

**AMNESTY**  
INTERNATIONAL



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# GLOSSARY

WORD	DESCRIPTION
<b>CISGENDER</b>	Cisgender people are individuals whose gender expression and/or gender identity accords with conventional expectations based on the physical sex they were assigned at birth. In broad terms, “cisgender” is the opposite of “transgender”.
<b>GENDER IDENTITY</b>	One’s deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth.
<b>HUMAN TRAFFICKING</b>	The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as the UN Trafficking Protocol) provides the internationally accepted definition of trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.” Human trafficking for the purpose of sexual exploitation is not the same as sex work.
<b>INTERSECTIONAL DISCRIMINATION</b>	Intersectional discrimination is discrimination on a number of grounds that combine to produce disadvantages distinct from any one ground of discrimination standing alone.
<b>SEX WORK</b>	<p>The exchange of sexual services (involving sexual acts) between consenting adults (18 years of age and above) for some form of remuneration, with the terms agreed between the seller and the buyer.</p> <p>Sex work takes different forms, and varies between and within countries and communities. Sex work may vary in the degree to which it is more or less “formal” or organized.</p> <p>The term “sex work” is used to describe situations where adults who are engaging in commercial sex have consented to do so. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse which must be treated as a criminal offence.</p>
<b>SEX WORKERS</b>	<p>Adults (persons who are 18 years of age and older) of all genders who receive money or goods in exchange for the consensual provision of sexual services, either regularly or occasionally.</p> <p>Amnesty International recognizes that the terms used to refer to sex work and sex workers vary across contexts and according to individual preference and that not all people who do sex work identify as “sex workers”. Where possible, Amnesty International will employ the terminology used by rights holders or rights claimants themselves. However, generally Amnesty International uses the terms “sex work” and “sex worker”. These terms are not applicable to children.</p>

WORD	DESCRIPTION
<b>TRANSGENDER</b>	Individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. A transgender woman is a woman who was assigned the male sex at birth but has a female gender identity; a transgender man is a man who was assigned the female sex at birth but has a male gender identity. Not all transgender individuals identify as male or female; transgender is a term that includes members of third genders, as well as individuals who identify as more than one gender or no gender at all. Transgender individuals may or may not choose to undergo gender reassignment treatment.
<b>WOMEN</b>	In this report, 'woman' is an umbrella term used to refer to both cisgender and transgender women unless there is reason to disaggregate the information further. In those cases, "cisgender woman" or "transgender woman" is used.
<b>CRIMINALIZATION OF SEX WORK</b>	<p>The process of prohibiting consensual adult sex work and attaching punishments in law. Criminalization of consensual adult sex work generally takes three different forms which are applied in a variety of combinations across countries. These can be summarized as:</p> <ul style="list-style-type: none"> <li>• Laws which make the sale of sex by consenting adults a criminal offence, including for example laws on solicitation, and under which penalties are imposed upon sex workers themselves;</li> <li>• Laws which make the organization of adult consensual sex work a criminal offence. These include, but are not limited to, laws against keeping a brothel; promotion of prostitution; renting premises for the purposes of prostitution; living off the proceeds of sex work; and facilitating sex work through the provision of information or assistance. These laws can result in the imposition of penalties against sex workers themselves for organizing their own sex work and against anyone who assists them; and</li> <li>• Laws which make the buying of sex from consenting adults a criminal offence and under which penalties are imposed on buyers.</li> </ul> <p>Criminalization also refers to other laws not specific to sex work. Such laws could include those on vagrancy and loitering which are either applied in a discriminatory way against people involved in sex work, and/or have a disproportionate impact on sex workers which can in practice work as a de facto prohibition. Similarly, immigration laws can be applied in a discriminatory way against sex workers as a de facto prohibition on sex work by migrants. The criminalization of irregular (sometimes called "illegal") entry or residence may give rise to – or exacerbate – the penalization of sex work by migrants, as engaging in this type of work may make them more visible and liable to being targeted by state authorities.</p>
<b>DECriminalIZATION OF SEX WORK</b>	The removal of the above-mentioned criminalization measures. It does not refer to the decriminalization of human trafficking, forced labour or any other exploitative practices; violence against sex workers; rape and sexual abuse; or the sexual exploitation and abuse of children.

# EXECUTIVE SUMMARY

In the small offices of Otrasex, a sex worker-led non-governmental organization (NGO) in the Dominican Republic, a cisgender woman told Amnesty International she was raped late one night in October 2017, on a dark street corner, in the back of a police vehicle.

“There were three of them. I was on a corner waiting for clients... and they abused me,” she said. “They pulled me onto the (police) van... They saw that the area was empty... They started to grope me, take off my clothes. They ripped my blouse... One after the other.”

“I am first’ (one said) and the other waited his turn.... From then on, they mistreated me. They forced me to do something I didn’t want to.”

“I was afraid. I was alone. I couldn’t defend myself. I had to let them do what they wanted with me... They threatened me, that if I wasn’t with them they would kill me. They (said) that I was a whore, and so why not with them?”

“They called me a “bitch” and used many offensive words.... They saw me, I guess, and they thought ‘Well, if they (clients) can have her, why can’t we?’”

Across Latin America and the Caribbean, gender-based violence is considered an epidemic. In the Dominican Republic, in 2018 alone, the General Prosecutors Office reported having received over 71,000 reports of gender-based and intra-family violence, and more than 6,300 reports of sexual offenses, including 1,290 reports of rape. According to the UN Gender Equality Observatory for Latin America and the Caribbean, the Dominican Republic has one of the highest rates of femicide (murders of women for gender-based motive) in the region, with more than 100 femicides recorded in 2017. Similarly, according to TRANSSA (transgender-led NGO Trans Siempre Amigas), 47 transgender women have been killed since 2006. The brutal killing of Jessica Rubi Mori in 2017, whose body was found dismembered in a wasteland, highlights the extreme hatred and violence faced by many transgender women in the country.

Almost fifteen years ago, a ground-breaking report by Human Rights Watch, *Hated to Death*, revealed how human rights violations against gay and bisexual men, lesbians and sex workers was driving the HIV epidemic in Jamaica. For years, Caribbean sex worker-led collectives have mobilized and consistently identified violence by the police and stigma and discrimination as among their main challenges and have also called on Caribbean governments to repeal laws that criminalize sex work and therefore encourage police violence.

In the Dominican Republic, public health experts estimate that there are between 87,000 and 97,000 cisgender women sex workers, representing approximately 3.4% of all adult females, and between 3,900 and 9,000 transgender women, many of who engage in sex work.

Amnesty International recognizes that the subject of people selling sex provokes intense debate. Too often, however, in the tense back-and-forth between well-meaning people on both sides of the discussion, women sex workers themselves are side-lined or denied agency. This research intentionally places the voices of sex workers at its core, shares the nuanced reality of their lives, and highlights their views on how to effect change.

For this report, Amnesty International interviewed 46 Dominican cisgender and transgender women sex workers in April and July 2018 and conducted focus groups which included an additional 18 sex workers. They were asked about their lives, education, childhood, personal and professional aspirations and achievements, family relationships, working conditions, their views on selling sex, societies’ views on sex work, and their experiences of violence and other human rights violations. Researchers also held two focus groups with other women sex workers, and interviewed government representatives, including the police, prosecutors, women’s organisations, NGOs, academics, and lawyers.

International and regional law clearly establishes rape by a state official as a form of torture. This report gathers strong evidence which suggests that women sex workers in the Dominican Republic are frequent targets for sexual torture and other ill-treatment by police, as punishment for transgressing socially constructed views about femininity, acceptable sexuality, and gender identity and expression, in violation of both Dominican constitutional and criminal law, and international human rights law.

Although the sale and purchase of sex between consenting adults is not a criminal offence in the Dominican Republic, aspects of the organization of sex work are. Even criminalizing aspects of sex work has a punitive effect on sex workers by imposing a criminalized status on them, which in turn, fuels arbitrary detentions by police (which are commonplace among stigmatized groups in the country) and enables violence and discrimination against sex workers, with impunity.

The testimonies collected detail how law enforcement officials routinely rape, beat, and humiliate women engaged in sex work. At least 10 out of the 24 cisgender women interviewed for this research described having been raped by police officials, often at gunpoint. Most of the transgender women had been subjected to discriminatory and violent actions by the police that could amount to torture or other ill-treatment, typically focused on their gender-identity or expression.

The interviews reveal how a deeply engrained culture of machismo within the National Police, coupled with intense societal stigma and discrimination and conservative religious values, embolden law enforcement officials to unlawfully abuse their powers and punish women who engage in sex work as a form of social control.

Amnesty International intentionally included transgender women in this research. Like in many countries globally, Dominican transgender women are heavily represented in sex work, due to extreme stigma and discrimination which limits their access to formal employment. Historically marginalized from some feminist and women's organisations, like their cisgender counterparts, transgender women engaged in sex work experience extreme violence linked to their gender-identity.

This research finds that women sex workers who live with multiple discriminated identities – such as transgender women – experience even more pronounced exclusion and are at greater risk of torture from the state and individuals.

Transgender women reported being called “fags” and “devils” by police officials, and said they believed they were viewed as “aliens” or “animals.” Multiple transgender women reported that police had also burnt their wigs or forced them to clean prison cells covered in excrement.

Such violations leave many women engaged in sex work feeling that the government and wider society see them as less than human, and therefore “deserving” of the violence they experience daily.

By contributing to this kind of “otherizing” and demonization of women involved in sex work, the state not only fails to fulfil its due diligence obligations to safeguard women from violence by clients and wider society, but it becomes a direct perpetrator.

Impunity for these grave human rights violations is typical, resulting in the normalization of gender-based torture and other ill-treatment by the authorities, as well as sometimes by victims themselves.

Sex worker's complaints are rarely taken seriously by authorities. For example, one woman told Amnesty International, “If you go to the police station to make a complaint, they treat you like a whore. They ignore you. They don't pay you any attention.” Another woman who told Amnesty International that she was raped by two police officers who forced her onto a patrol car and made her give them oral and vaginal sex, said “Accusing a police (officer) is to do nothing, because they (the authorities) don't do anything.”

To make matters worse, the Dominican authorities fail to properly investigate and provide remedies for these potential cases of torture or other ill-treatment as required by international law.





Since the mid-1980s, Dominican sex work-led organizations have emerged largely in response to the concentrated HIV epidemic in their community and have specifically called for greater protection from human rights violations.

The Dominican Republic has also taken steps to address the co-existing epidemics of violence against women and HIV, by investing heavily in its response to HIV, and taking some measures to reduce gender-based violence. But it has stopped short at carrying out the legislative, policy, and policing reforms sorely needed to protect women engaged in sex work – often women with multiple discriminated identities - from the extreme violence, often amounting to torture and other ill-treatment, that they face.

Following decades of rights-based mobilizing by sex workers, and strong research documenting the impact of human rights violations on public health, the Dominican Republic can no longer deny the existence of this torture and ill-treatment of sex workers and must make the structural reforms needed to stop it.

By implementing such reforms to protect some of the country’s most marginalized women from sexual torture, it could in turn, make important strides to address its wider epidemic of gender-based violence, which continues to find its roots in discrimination, hatred, and machismo.

## KEY RECOMMENDATIONS

### To the President

- Publicly recognize and condemn the use of rape, as a form of torture, and other forms of gender-based violence by the National Police and make clear that all those suspected of criminal responsibility will be brought to justice in fair trials before ordinary civilian courts.

### To Parliament

- Pass the comprehensive anti-discrimination legislation drafted by CONAVIHSIDA, consulted with Dominican civil society, and consistent with international human rights standards, to protect against institutionalized and societal discrimination of socially marginalized groups.

### To the Prosecutor General’s Office

- Ensure that a prompt and impartial investigation is carried out when there are “reasonable grounds” to believe that sexual violence, gender-specific forms of torture or ill-treatment have been carried out by law enforcement officers, and that suspected perpetrators are prosecuted in proceedings that meet international standards of fairness.
- Consistent with the jurisprudence of the Inter-American Court on Human Rights, recognize that in cases of alleged rape, the victim’s testimony constitutes “fundamental evidence of the act.”
- Carry out investigations into sexual violence, gender-based torture or other ill-treatment carried out by state agents in accordance with the Istanbul Protocol, and develop a national protocol for the investigation of potential cases of torture and other ill-treatment.

### To the General Director of the National Police

- Publicly condemn the use of rape and other forms of torture and other ill-treatment by members of the national police and make it clear that any police officer who commits such human rights violations will be criminally charged, prosecuted, and tried in proceedings that meet international standards of fairness.
- Immediately suspend any police officer suspected of perpetrating sexual violence, or gender-based torture or other ill-treatment until an independent, impartial, and prompt investigation is concluded.



# METHODOLOGY

Amnesty International recognizes that the subject of women engaging in sex work provokes intense debates between people who often have polarized views about how to best protect sex workers rights. Women engaged in sex work should be leading these discussions and debates. Instead, they are most often treated as “victims” who are too “damaged” to have agency, autonomy, or a voice in their own lives.

This research intentionally places the voices of sex workers at its core, shares the nuanced reality of their lives, and highlights their views on how to effect change.

This report is based primarily on research conducted from April 2018 to January 2019, including field visits to the Dominican Republic in April and July 2018 and in-depth review of existing literature on sex work and international and regional jurisprudence. Amnesty International researchers conducted 46 in-depth interviews with cisgender and transgender women sex workers and two focus groups with an additional 18 cisgender and transgender women sex workers mostly in Santo Domingo.<sup>1</sup>

To reach a diverse range of sex workers, Amnesty International worked closely with three Dominican sex worker-led organizations – Otrasex (Organización de Trabajadoras Sexuales de la Republica Dominicana), Modemu (Movimiento de Mujeres Unidas), and CONTRAVETD (Comunidad de Trans, Travesti Trabajadoras Sexuales de República Dominicana) – as well as with TRANSSA (Trans Siempre Amigas), a transgender-led NGO.

Informed consent was recorded for each interview and all participants were explained the ways in which the information could be used. All were told that they could stop the interview at any point, change the topic or refrain from answering particular questions. Pseudonyms were used for all women named in this report in order to protect their privacy, confidentiality and safety.

Researchers met with four government offices, including representatives from CONAVIHSIDA - the National HIV/AIDS prevention program; the Ombudsman; the Director General of the National Police; the Prosecutor General's Office and the Directors of its Gender, Counter-Trafficking and Human Rights Units. A meeting was requested with the Minister of Women, but at time of publication, a response had not been received.

Researchers also met with civil society organizations working on women's rights, and consulted with public health experts, Dominican lawyers, academics, and a trade union.

As with any research, the organization sought to corroborate testimonies received from women with forensic and other official documentation, however, in a context of institutionalized discrimination towards sex workers resulting in heavy under-reporting of rape and sexual violence the women interviewed had largely not accessed services which could help them recover such evidence or documentation.

To strengthen the analysis of the interviews gathered, verbatim transcripts of the interviews were made and then coded using Nvivo software. This allowed for careful exploration and comparison of emerging themes.

The fact that women were interviewed individually, given no incentive for telling their stories, and nevertheless revealed consistent trends, is an additional indicator of the credibility of their testimonies.

In June 2018, Amnesty International made an access to information request to the Prosecutor General's office. Under Dominican law, the office initially has 15 days to respond. In August and September 2018, Amnesty International sent follow-up letters requesting the information and submitted further access to information requests to the Director General of the Police and Prosecutor General's Office in January 2019. In February 2019, Amnesty International received limited responses to our requests for information, which has been detailed in this report.

Amnesty International would like to thank the many women sex workers who agreed to tell their stories to us and to the Dominican organizations who facilitated our access to them. We hope this research will contribute to highlighting and addressing the grave problem of sexual violence, gender-based torture and other ill-treatment for all Dominican women.

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<sup>1</sup> Amnesty International also interviewed 4 Venezuelan women who were working in a city in the southeast of the island. Amnesty International believes some of the women may have been subjected to smuggling and/or trafficking. Trafficking is a serious human rights abuse. As this report focuses on sex work, these interviews have not been included in the report. All were given referrals to organizations that could provide support. Venezuelan women have worked across the Caribbean as sex workers for some years. For example, a 2012 survey of 60 Spanish-speaking sex workers in Trinidad found that about one-thirds were Venezuelan women. (See, Hasbún, J. et al, 'Focus right: diversity and commonality – a look at female and transgender sex workers in three Caribbean countries', Santo Domingo, CVC/COIN, PANCAP, CARICOM, 2012.) Since then, the number of Venezuelan migrants and refugees fleeing the humanitarian and human rights crisis in their home country has increased, with an estimated 3 million Venezuelans now overseas. (See UNHCR, 'Number of refugees and migrants from Venezuela reaches 3 million,' Press Release, 8 November 2018.) Amnesty International recognizes that migrant and refugee women are particularly vulnerable to smuggling, trafficking, and exploitative work conditions in the sex work industry. Forced labour and human trafficking (within any country or across borders, including for the purpose of sexual activity) constitute serious human rights abuses and must be criminalized. Under international law, states have a range of obligations to prevent, suppress and punish trafficking in persons, especially women and children, and to protect the human rights of victims of trafficking. The Dominican Prosecutor General's Office, which has a special department dedicated to smuggling and trafficking of persons, told Amnesty International that they are increasingly identifying cases of Venezuelan women trafficked for purposes of sexual exploitation. According to information provided by the Prosecutor General's Office in the past 5 years they had secured 28 convictions for cases of trafficking of persons.

# 1 GENDER-BASED VIOLENCE IN THE DOMINICAN REPUBLIC



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*“Right now in the country there is a lot of violence, in general. If it’s in general, imagine what it’s like with us.”<sup>2</sup>*

<sup>2</sup> Interview 3, Day 2 (2)

Across Latin America and the Caribbean, gender-based violence is so widespread it is considered both a human rights problem and public health challenge by global health organizations.<sup>3</sup>

Intimate partner violence against women is pervasive, and ranges from occasional experiences of abuse to chronic ‘battering’.<sup>4</sup> Notably, many young women and girls are forced into sex at an early age, and exposure to violence in childhood increases the risk for other forms of violence later in life.<sup>5</sup> Many women in the region report experiencing sexual violence in their lifetime, mostly carried out by men known to them.<sup>6</sup>

In the Dominican Republic, in 2018 alone, the General Prosecutors Office reported having received over 71,000 reports of gender-based and intra-family violence, and more than 6,300 reports of sexual offenses, including 1,290 reports of rape.<sup>7</sup> According to the UN Gender Equality Observatory for Latin America and the Caribbean, the Dominican Republic has one of the highest rates of femicide in the region, with more than 100 femicides recorded in 2017.<sup>8</sup>

According to a 2013 Demographic and Health (DHS) survey, 26% of cisgender women in the Dominican Republic between ages 15-29 have experienced physical violence at one point in their lives.<sup>9</sup> One in ten women had been a victim of sexual violence at some point in her life.<sup>10</sup> Of those women who had experienced sexual violence by their husband or partner, 19% expressed having experienced deep wounds, broken bones and teeth and other similar injuries.<sup>11</sup>

Transgender women in the Dominican Republic face extreme cycles of structural discrimination and violence due to societal rejection of their gender identities and expression.<sup>12</sup> While transgender women are also at significant risk for violence, hate crimes, and murder in the Dominican Republic, they are typically not included in government research conducted on gender-based violence. However, TRANSSA has documented 47 cases of killings of transgender women since 2006, only 5 of which have resulted in convictions.<sup>13</sup> The brutal killing of Jessica Rubi Mori in 2017, whose body was found dismembered in a wasteland, highlights the extreme hatred and violence faced by many transgender women in the country.<sup>14</sup>

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<sup>3</sup> See World Health Organisation, ‘Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and nonpartner sexual violence,’ 2013

<sup>4</sup> Pan American Health Organization and Centre for Disease Control, *Violence Against Women in Latin America and the Caribbean: A comparative analysis of population-based data from 12 countries*, 2012, page xvi (Hereinafter: Pan American Health Organization and Centre for Disease Control, *Violence Against Women in Latin America and the Caribbean*, 2012)

<sup>5</sup> Pan American Health Organization and Centre for Disease Control, *Violence Against Women in Latin America and the Caribbean*, 2012, page xviii

<sup>6</sup> Pan American Health Organization and Centre for Disease Control, *Violence Against Women in Latin America and the Caribbean*, 2012, pages xvi-xx

<sup>7</sup> Procuraría General de la Republica, ‘Informe Preliminar Violencia de Genero, Intrafamiliar y delitos sexuales en la Republica Dominicana,’ enero-diciembre 2018, Available at: <https://transparencia.pgr.gob.do/Inicio/VisualizarDocumento?DocumentId=17784>

<sup>8</sup> See Gender Equality Observatory for Latin America and the Caribbean, ‘Femicide or Feminicide’, Available at: <https://oig.cepal.org/en/indicators/femicide-or-feminicide>; and Procuraría General de la Republica, ‘Informe Preliminar de Homicidios de Mujeres y Femicidios en la Republica Dominicana: enero-diciembre 2017,’ Available at: <https://transparencia.pgr.gob.do/Inicio/VisualizarDocumento?DocumentId=17721>

<sup>9</sup> Centro de Estudios Sociales y Demográficos - CESDEM/República Dominicana and ICF International, ‘Encuesta Demográfica y de Salud’ Santo Domingo, República Dominicana: CESDEM/República Dominicana and ICF International, p. 318, Available at: <https://dhsprogram.com/pubs/pdf/FR292/FR292.pdf> (Hereinafter: ‘Encuesta Demográfica y de Salud’, 2013)

<sup>10</sup> Encuesta Demográfica y de Salud, 2013, pág. 323.

<sup>11</sup> Encuesta Demográfica y de Salud, 2013, pág. 336.

<sup>12</sup> See for example, Astrea Lesbian Foundation for Justice, ‘Dominican Republic LGBTI Landscape Analysis of Political, Economic and Social Conditions, 2017

<sup>13</sup> TRANSSA, emails 8 January 2019

<sup>14</sup> Amnesty International, Dominican Republic: Horrifying killing of transgender woman highlights need for protection against discrimination, News, 6 June 2017, Available at: <https://www.amnesty.org/en/latest/news/2017/06/dominican-republic-horrifying-killing-of-transgender-woman-highlights-need-for-protection-against-discrimination/>

# SEX WORKERS AS TARGETS FOR GENDER-BASED VIOLENCE BY STATE OFFICIALS AND PRIVATE ACTORS

Multiple global studies,<sup>15</sup> including a body of evidence from the WHO<sup>16</sup>, the Global Commission on HIV and the Law,<sup>17</sup> UNAIDS<sup>18</sup> and public health specialists,<sup>19</sup> as well as Amnesty International,<sup>20</sup> have shown that women engaged in sex work are at high risk for violence both from state agents and individuals and have recommended de-criminalization of all aspects of adult consensual sex work as an essential strategy for reducing human rights violations.

While there is no specific data on the prevalence of gender-based violence amongst women sex workers in the Dominican Republic, various studies with large sample sizes have shown sex workers to be at particularly high risk for human rights abuses, including as targets of violence by the police.



<sup>15</sup> One paper which analyzed correlates of violence against sex workers based on findings from 41 peer-reviewed articles covering various geographic locations found consistent evidence of high levels of violence against sex workers globally. It also found a clear link between policing practices (e.g. arrests, coercion, and bribes) and elevated rates of physical and sexual violence against sex workers. It also found that street-based sex workers are at highest risk for violence, and that gender or sexual identity is a key factor influencing violence against sex workers. See: Kathleen N. Deering PhD, Avni Amin PhD, Jean Shoveller PhD, Ariel Nesbitt MPH, Claudia Garcia-Moreno MD, MSc, Putu Duff MSc, Elena Argento MPH, and Kate Shannon PhD, 'A Systematic Review of the Correlates of Violence Against Sex Workers', American Journal of Public Health, May 2014, e50

<sup>16</sup> See <http://www.who.int/hiv/topics/sexwork/en/>

<sup>17</sup> Global Commission on HIV and the Law: 'Rights, Risks and Health', July 2012, Available at: <https://hivlawcommission.org/report/>

<sup>18</sup> UNAIDS, 'Guidance Note on HIV and Sex Work', UNAIDS/09.09E / JC1696E (Last updated April 2012), Available at: [http://www.unaids.org/sites/default/files/mediaasset/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en\\_0.pdf](http://www.unaids.org/sites/default/files/mediaasset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf); also see Joint United Nations Statement on Ending Discrimination in Healthcare settings, Available at: [http://www.unaids.org/sites/default/files/media\\_asset/ending-discrimination-healthcare-settings\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf)

<sup>19</sup> The Lancet, 'HIV and sex workers', 23 July 2014, Available at: <https://www.thelancet.com/series/HIV-and-sex-workers> and Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, et al. 'Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies'. PLoS Med 15(12): e1002680., December 2018, Available at: <https://doi.org/10.1371/journal.pmed.1002680>

<sup>20</sup> See: Amnesty International, China: Harmfully Isolated: Criminalizing Sex Work in Hong Kong (Index: ASA 17/4032/2016), Available at: <https://www.amnesty.org/en/documents/asa17/4032/2016/en/> and Amnesty International, Argentina: "What I'm doing is not a crime" (AMR 13/4042/2016), Available at: <https://www.amnesty.org/en/documents/amr13/4042/2016/en/>

For example, in 2017, RedTraSex (Red de Mujeres Trabajadoras Sexuales de Latinoamérica y el Caribe), together with its national partner organization, Otrasex, conducted a survey of 400 cisgender women sex workers in the Dominican Republic. They found that more than 86% of cisgender women sex workers in the Dominican Republic had been forced to have sex with police in exchange for not being arrested, and more than 30% had had sex with a police official out of fear. Nearly half had been pushed or thrown to the floor by law enforcement officials, 56% had been groped and 34% threatened with a weapon by the police. The majority of the sex workers surveyed (75%), had been verbally threatened by police.<sup>21</sup>

Another study conducted by public health academics found that over 18% of female sex workers who live with HIV in the Dominican Republic had experienced violence from a sexual partner in the past six months.<sup>22</sup>

Violence against transgender women sex workers in the Dominican Republic is also significantly high.<sup>23</sup> In a study of 90 transgender women, 36% reported having exchanged sexual favours with the police to avoid arrest, and 80% had been arrested or detained at least once. Thirty-three per cent had experienced physical violence in their workplace, 36% walking on the streets, 21% from their partner, and 42% by clients.<sup>24</sup>

Such data, collected by NGOs and public health specialists, reflects the scale of the problem of gender-based violence against sex workers in the Dominican Republic, by both state officials and private actors.

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<sup>21</sup> Retrasex/Otrasex, "Informe nacional sobre violencia institucional de las fuerzas de seguridad hacia las trabajadoras sexuales en Republica Dominicana, 2017, page: 12 and 13

<sup>22</sup> Carlisdania Mendoza, Clare Barrington, Yeycy Donastorg, Martha Gonzalez Perez, Paul J. Fleming, Michele R. Decker, and Deanna Kerrigan, 'Violence from a sexual partner is significantly associated with poor HIV care and treatment outcomes among female sex worker in the Dominican Republic,' *JAIDS Journal of Acquired Immune Deficiency Syndromes* 74(3), November 2016

<sup>23</sup> Henna Budhwani, Bulent Turan, Julia Hasbun, Santo Rosario, Louise Tillotson, Elaine McGlaughlin and John Waters, 'Association between violence exposure and condom non-use among transgender sex workers in the Dominican Republic: the mediating role of trust', July 2016.

<sup>24</sup> Hasbún, J.; Waters, J.; Tillotson, L.; Contreras, C.; Thomas, M.; Kantum, A.; Cruickshank, I; Martin, A.; Brown, C., 'Focus right: diversity and commonality – a look at female and transgender sex workers in three Caribbean countries', Santo Domingo, The Caribbean Vulnerable Communities Coalition (CVC), El Centro de Orientación e Investigación Integral (COIN), Pan Caribbean Partnership Against HIV and AIDS (PANCAP), CARICOM Community Secretariat, 2012 (Hereinafter: Hasbún, J. et al, 'Focus right: diversity and commonality – a look at female and transgender sex workers in three Caribbean countries', Santo Domingo, CVC/COIN/PANCAP/CARICOM, 2012)

## 2 WHO ARE THE WOMEN ENGAGED IN SEX WORK?

Although the Dominican Republic's economy has grown in recent years, its poverty rate was almost 29% in 2016,<sup>25</sup> and in that same year 6.35% of women lived below the extreme poverty line.<sup>26</sup> Female unemployment was approximately 8% in 2017.<sup>27</sup>

Within this context, public health experts estimate that there are between 87,000 and 97,000 cisgender women sex workers in the Dominican Republic, representing approximately 3.4% of all adult females,<sup>28</sup> and between 3,900 and 9,000 transgender women, many of who engage in sex work.<sup>29</sup>

Women of diverse backgrounds and identities engage in sex work in the Dominican Republic. Some self-identify as sex workers, others do not. Some work in clubs or brothels. Others work independently, either as street-based sex workers, or through clients they meet online or socially.

By reaching sex workers through various established sex worker-led organizations, the researchers used a varied model of traditional "snowball sampling", where one sex worker refers another to the interviewer. This method has limited the sample interviewed for this research to cisgender and transgender women who predominantly self-identify as sex workers, and who rely on sex work as a main source of income or had at some point in their past.

The women interviewed for this report made the decision to engage in sex work for a variety of different reasons. For some, it offered flexibility and control over their working hours or higher pay compared with other alternatives and gave them financial independence. For others, sex work was one of the limited options they had to cover their basic needs.

In general terms, the majority of those interviewed are Afro-descendent women from low-income backgrounds who work independently either meeting clients on the street, by visiting bars, or using social media.

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<sup>25</sup> See <https://www.worldbank.org/en/country/dominicanrepublic/overview>

<sup>26</sup> Ministerio de Economía, Planificación y Desarrollo, '5to Informe anual de avance en la implementación de la Estrategia nacional de desarrollo 2030 y cumplimiento de los objetivos y metas del Plan plurianual del sector público.' Santo Domingo, República Dominicana, 2018, Table 1.12

<sup>27</sup> See World Bank figures available at: <https://data.worldbank.org/indicador/SU.UEM.TOTL.ZS?locations=DO>

<sup>28</sup> Several population size estimates have been carried out in the Dominican Republic, using different methodologies. According to PEPFAR, Strategic Technical Alignment for results (Star) process, Dominican Republic, Country Operational Plan, 2017: "The number of female SW is estimated at 91,171, representing 3.4% of all adult women (CONAVIHSIDA Experts Focus Group/2000, updated in 2014). This figure was supported by the 2016 PLACE Lite study that estimated 87,782 SW. SW HIV prevalence is estimated between 1.7-6.3% across five provinces." When Amnesty International interviewed representatives of CONAVIHSIDA in 2018, they indicated that plans were underway to repeat the population size estimate in 2019 to further validate and update the information. The National Strategic Plan for STIs, HIV and AIDS 2019-2023 puts the population of female sex workers at 97,758. (See: CONAVIHSIDA, 'Plan estratégico nacional para la prevención y el control de las ITS, VIH y el SIDA 2019-2023' Santo Domingo, enero 2019, p.26).

<sup>29</sup> Several studies have also been carried out to estimate the size of the transgender population. One study places the size of the transgender population at 5,169 (See: Measure Evaluation, USAID, Size of Key Populations in the Dominican Republic, 2016 Estimates, page: 8, Available at: <https://www.measureevaluation.org/resources/publications/tr-16-146>). The National Strategic Plan for STI's, HIV and AIDS 2019-2023 estimates the population at 3,900, and refers to another study in which the population was estimated at 9,221-9,428, (See CONAVIHSIDA, 'Plan estratégico nacional para la prevención y el control de las ITS, VIH y el SIDA 2019-2023' Santo Domingo, enero 2019, p.28)

## KEY CONCEPT: CONSENT

A key component of Amnesty International's definition of sex work is the focus on consent as a factor to distinguish sex work from human trafficking, sexual exploitation, sexual violence and gender-based violence.

There is no clear definition of "consent" to sex under international law. Amnesty International uses the term to mean the voluntary and ongoing agreement to engage in a particular sexual activity. Consenting to sex does not mean consenting to violence. Rather, sex workers, like other persons, can change or rescind their consent to have or sell sex at any point and this must be respected by all parties (e.g. clients, potential clients, third parties, police, judges and other law enforcement officials). Where consent is not voluntary and ongoing, including when a person's changed or rescinded consent is not respected, this constitutes rape and is a human rights abuse and must be treated as a criminal offence. Consent analysis is necessarily fact- and context-specific and the views, perspectives and experiences of individuals selling sex should be prioritized in any consideration of issues related to consent.

Law enforcement bodies, other government bodies and clients often make assumptions, based on stereotypes, that sex workers always consent to sex (because they may engage in sex frequently for their work) or, conversely, that sex workers can never consent to sex (because no one could rationally consent to selling sex).

Decisions to sell sex can be influenced by situations of poverty and/or marginalization. Such situations do not necessarily undermine or negate a person's consent. Constrained circumstances do not eliminate an individual's ability to make decisions about their own lives, except under particular circumstances that amount to coercion where an individual faces threats, violence or abuse of authority.

Nevertheless, there may be an increased risk of exploitation for individuals making decisions in the context of poverty, displacement and/or conflict. States have obligations to protect all individuals from exploitation and the conditions that create a risk of exploitation. However, in doing so, states must also recognize and respect the agency and capacity of adults engaged in consensual sex work. States must address the conditions that give rise to exploitation, by enhancing sex workers' choices and control over their own circumstances.<sup>30</sup>

<sup>30</sup> See Amnesty International, 'Policy on state obligations to respect, protect and fulfil the human rights of sex workers,' (POL 30/4062/2016), page: 15, Available at: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>



## 2.1 CISGENDER WOMEN

**“I have two girls. I have to pay school fees for both of them, buy them clothes, food. It’s not easy... They have their dad, but their dads don’t help me, it’s a lot.”<sup>31</sup>**

Twenty-four of the 46 women interviewed for this research were cisgender Dominican women between the ages of 19 and 48. All but two of these women had children, the majority of whom were single mothers raising on average two children.

Most were unable to estimate their monthly earnings which tend to fluctuate each month. Those that could, earned between 10,000 and 20,000 Dominican pesos monthly (approximately US\$ 200 and US\$ 400). The national average monthly salary earned by women in 2016 was 14,659 Dominican pesos, which puts the income of these women in some instances under, and in some instances over, the national average monthly income.<sup>32</sup>

As the head of their household and sole breadwinner, most cisgender women spent their earnings on basic needs - rent, food, baby formula and school supplies and fees. Many also supported other members of their families – usually their mothers.

Most of the cisgender women interviewed had attained low levels of formal education. Less than half of the 24 interviewed by Amnesty International had completed secondary school. Their reasons for leaving school varied. Some left after becoming pregnant, others said their parents’ poverty required them to work as children. One woman said she left school at age 12, after she was expelled for being pregnant. She told Amnesty International: “I was pregnant, but kept going to school, they didn’t realize and then stopped me.”<sup>33</sup> Of those interviewed, some were also putting themselves through night school to complete their secondary education, and one was at university.

Just under half of the cisgender women interviewed had also first exchanged sex for money or goods before age 18. They began selling sex for a variety of reasons. Most received no financial support from the father of their children and engaged in sex work to maintain their family. Others sought to gain financial independence from relationships in which they had suffered domestic violence. Many said they had few alternative employment options.

**“It was my own decision. I had two girls. I hadn’t finished any studies, I didn’t have anything to do. So I decided (to do sex work).”<sup>34</sup>**

**“I had my first child, she’s now 6, and I was having a really hard time, experiencing a lot of misery. Her father mistreated me... He beat me, for any little reason, even for the food. He found any reason to hit me.”<sup>35</sup>**

**“I got married, got divorced, and when I left I had my two children and I had to do sex work to maintain them.”<sup>36</sup>**

**“I worked in a hotel as a waitress. It didn’t work out for me, I had to do too many things for little money, so I had to leave it... (In sex work I earn) triple... in one outing I charge 2,000 pesos, or 1,500 pesos and if the client is great, he will give me up to 3,000 pesos and I earn it in around an hour and a half...”<sup>37</sup>**

<sup>31</sup> Interview Day 3, 2

<sup>32</sup> See Oficina Nacional de Estadística: ‘REPÚBLICA DOMINICANA: Salario promedio por sexo y relación de paridad de género en el salario promedio por año,’ 2008-2016 which places the national monthly salary for women at RD 14,659 (approximately US\$ 304). Available at: <https://www.one.gob.do/sociales/empleo-y-seguridad-social/genero-y-desigualdad-en-el-mercado-de-trabajo>

<sup>33</sup> Interview Day 2, 3

<sup>34</sup> Interview Day 1, 2

<sup>35</sup> Interview Day 3, 2

<sup>36</sup> Interview Day 3, 11

<sup>37</sup> Interview Day 3, 8

The cisgender women interviewed had diverse ways of working. The majority worked independently, often after they had put their children to bed. They approached clients in bars or discos, or colmados (Dominican corner shops and drinking spots), or on street corners. Others used Facebook and apps such as WhatsApp to initiate or maintain contact with clients. Their working conditions and hours also varied, some worked only weekends, others worked each day of the week.

The women also had diverse views on selling sex – ranging between positive, neutral and negative.

**“I see it as an employment option. If you are a doctor you work with your hands and mind, well I work with my vulva and with my hands and with everything I’ve got.”<sup>38</sup>**

**“There are some that do it for pleasure. But in my case, I do it out of necessity.”<sup>39</sup>**

**“I don’t have a boss, I am my own boss.”<sup>40</sup>**

**“It’s something that I do and I like. So people see it (sex work) from one viewpoint, but I see it differently. I see it as something normal. It’s a job like any other.”<sup>41</sup>**

Many cisgender women view sex work as way of maintaining their financial independence and means to provide for their children and to give them a good education. Several women had children at university, others were building houses, or continuing their education at night-school. As one woman said, “I don’t count on men, I count on myself.”<sup>42</sup>

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<sup>38</sup> Interview Day 1, 1

<sup>39</sup> Interview Day 1, 3

<sup>40</sup> Interview Day 2, 3

<sup>41</sup> Interview Day 3, 8

<sup>42</sup> Focus group with cisgender women at MODEMU, 20.7.18

## 2.2 TRANSGENDER WOMEN

Of the people interviewed for this report, 22 interviewees self-identified as transgender. They included 17 people who self-identified as transgender women, and 5 people who self-identified as transvestites or drag queens (transformistas),<sup>43</sup> and their ages ranged from 21 to 59 years old.

**“My family is very religious... All the violence fell on me for being trans, for being a ‘fag’, because (according to society) there shouldn’t be ‘fags’ in a family.”<sup>44</sup>**

Homophobia and transphobia is widespread in the Dominican Republic and oftentimes a person’s gender identity is conflated with their sexual orientation.

Many of the transgender women interviewed by Amnesty International for this research had been pushed out of their homes as children, usually around age 12 or 13, when they had started expressing their gender identity, by wearing feminine clothing or make-up. Many had also experienced severe rejection or violence from their fathers due to their non-normative gender identity and sexual orientation, and report having been beaten or locked-up by their fathers.

**“Around (age) 14 I arrived (home) dressed as a women. I told them I was like that. My father beat me. He punched me, he locked me up, and didn’t let me go out. So (after that) I left home.”<sup>45</sup>**

**“I played with dolls a lot. I cooked a lot... around age 8 or 10 years old. So by 13 I was becoming very feminine... by 16 I was developed as a trans (woman)... (At home) my mum hit me a lot, my father disowned me, he didn’t want me. I got to the point of trying to poison myself three times.”<sup>46</sup>**

Over half of the transgender women interviewed had first exchanged sex for money as teenagers. Many had started selling sex to purchase items to enable them to express their gender identity such as feminine clothing, make-up and wigs, and to get their nails done.

As well as being pushed out of their homes as adolescents, many transgender women said they had left school around the same age, due to the bullying and discrimination that they had experienced in educational settings. Only a handful of the transgender sex workers interviewed by Amnesty International had completed secondary school.<sup>47</sup>

Transgender interviewees either lived alone, or with their mothers who they often supported, or with friends or siblings. Some transgender women interviewed expressed a desire to marry and have families. However, since the state considers transgender women to be legally male and they cannot legally change the gender-markers on their identity documents, and same-sex marriage is not legal in the Dominican Republic, they are unable to form legally recognized families with cisgender men.

<sup>43</sup> Nearly all of the transgender people interviewed for the report identified as transgender women who were principally attracted to cisgender men. Only a few who identified as transvestites or drag queens identified as bisexual or gay.

<sup>44</sup> Interview 1, Day 1

<sup>45</sup> Interview 1, Day 3

<sup>46</sup> Interview 1, Day 4

<sup>47</sup> These low levels of education are consistent with findings from a separate study which surveyed 90 transgender women sex workers in Santo Domingo and Santiago and found that only 34% had finished secondary school and around 23% had completed primary school. See: Hasbún, J. et al, ‘Focus right: diversity and commonality – a look at female and transgender sex workers in three Caribbean countries’, Santo Domingo, CVC/COIN/PANCAP/CARICOM, 2012

Nearly all the transgender women interviewed said they had started sex work because very few job opportunities were open to them due to widespread discrimination based on their gender identity and expression in the job market. Like the cisgender women interviewed, some had also worked as domestic workers (including as child domestic workers) but had left that work to sell sex which they said is better paid.

**“I worked as a housekeeper but I left it because they paid me very little and I had to do too many things, clean and everything for 500 pesos and so I left it.”<sup>48</sup>**

Like cisgender women, transgender women had varied perceptions of sex work, reflecting the fact that sex workers’ experiences are not homogenous. But compared with the cisgender women interviewed, more transgender women worked on the street and had fewer options for alternative employment, which increased their risk of violence by police, clients, and other community members. In turn this tended to make transgender women’s experience of sex work as distinctly marked by violence.

**“It’s not easy having sex with people that you don’t like, but you have to do it for the money and the economic situation. You don’t do it for love, that’s the most difficult thing... you know it’s not easy, drug addicts, drunkards, those that hit you...”<sup>49</sup>**

Other transgender women sex workers said that their clients treated them well, and that sex work made them feel liberated.

**“If you are on the street you are more vulnerable to harm. I can say that (my clients) are very decent. They pay me not just to have sex, but also to see how I am. We have a glass of wine, dinner and it’s fine, (we) talk and talk and they pay me my money without a problem.”<sup>50</sup>**

**“Gosh, in times gone by I felt marvellous. I was younger. I waited for the night to go out, I felt good, I did my make-up, I did my hair extensions, I felt elegant, I enjoyed it a lot.”<sup>51</sup>**

<sup>48</sup> Interview 6, Day 3

<sup>49</sup> Interview 4, Day 3

<sup>50</sup> Interview 5, Day 2

<sup>51</sup> Interview 5 day 1

## 2.3 BARRIERS TO FORMAL EMPLOYMENT

### STATES HAVE OBLIGATIONS TO ENSURE NO ONE HAS TO RELY ON SEX WORK FOR SURVIVAL

States have obligations under international law to provide an adequate social safety net: an adequate standard of living (including adequate food, clothing and housing and the continuous improvement of living conditions); and to address intersectional discrimination and structural inequalities in order to ensure that people do not have to rely on sex work as their means of survival due to poverty or discrimination. The rights of everyone to social security<sup>52</sup>, and to an adequate standard of living<sup>53</sup> are recognized in international law and regional law.<sup>54</sup>

Women who live with multiple discriminated identities – such as older women, women living with HIV, or transgender women – face significant barriers in accessing formal work and are often disproportionately represented in sex work. Their limited education, child-care obligations, and nepotism in the public and private sector present additional challenges in accessing other jobs.

Of the women interviewed, none received any welfare from the state to support their housing, food, or childcare costs. Some had state-provided health insurance, but this does not include coverage for the cost of medicines. Almost none of the women with children received financial support from the fathers of their children.

Several cisgender women living with HIV told Amnesty International that they had applied for jobs in duty-free trade zones but believe they were not hired after being tested without their consent for HIV and being found seropositive, in violation of international human rights standards. While the country's Law 55-93 on AIDS specifically prohibits HIV testing as a requirement to access or remain in a job, discriminatory practices still seem to exist among employers.<sup>55</sup>

For transgender women, job opportunities in the private and government sector are almost non-existent due to institutional discrimination, and the only alternatives to sex work are low paid jobs such as cleaning. A few women interviewed worked in the hair or make-up sector, but without access to start-up capital this was not an option for most.

Transgender women are unable to legally change the gender-makers on their identity documents which also results in discrimination from potential employers. In fact, some transgender women told Amnesty International that they opt to present as male during the day to access employment or study opportunities they otherwise would not be able to if they presented as a woman due to institutionalised discrimination. One individual who self-identified as transvestite said: "I stopped using women's clothing, because as you know, when you don't have a dignified job and they see you like that, they don't give you a job. So I started dressing 'normally', but I don't stop being a woman because of that, I feel like a woman."<sup>56</sup>

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<sup>52</sup> ICESCR, Art. 9; Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador), Article 9;

<sup>53</sup> ICESCR, Art. 11.1; American Convention on Human Rights, Art. 26

<sup>54</sup> See Amnesty International, 'Policy on state obligations to respect, protect and fulfil the human rights of sex workers,' (POL 30/4062/2016), page: 8

<sup>55</sup> Law No. 55-93 on AIDS, Article: 3a

<sup>56</sup> Interview 5, Day 1

### 3 GENDER-BASED TORTURE AND OTHER ILL-TREATMENT



**"IF THEY CAN HAVE HER, WHY CAN'T WE"**

GENDER-BASED TORTURE AND OTHER ILL-TREATMENT OF WOMEN ENGAGED IN SEX WORK IN THE DOMINICAN REPUBLIC  
Amnesty International

## 3.1 RAPE BY THE POLICE

### RAPE BY STATE OFFICIALS IS TORTURE IN INTERNATIONAL LAW

Under international law, rape carried out by state officials constitutes torture,<sup>57</sup> including when it takes place outside of state facilities or in the victim's home.<sup>58</sup>

The Dominican Republic is state party to a series of international human rights instruments that forbid torture. It ratified the International Convention on Civil and Political Rights in 1978, the American Convention on Human Rights in 1978, the Inter-American Convention to Prevent and Punish Torture in 1987, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 2012.

The Dominican Republic has also ratified treaties aimed at addressing violence against women, including the Convention on the Elimination of All Forms of Discrimination against women (CEDAW) in 1982, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women "Convention of Belem do Para" in 1996.

The Convention against Torture and the Inter-American Convention to Prevent and Punish Torture set out similar elements required to prove torture - an intentional act, which causes severe physical or mental suffering, for a specific purpose, such as to punish or discriminate, carried out with the consent or acquiescence of public officials.<sup>59</sup>

Successive UN Rapporteurs have defined rape as torture.<sup>60</sup> In 2008, UN Special Rapporteur on Torture Manfred Nowak stated that "the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination."<sup>61</sup>

In 2016, UN Special Rapporteur on Torture Juan Méndez, in his report on torture and other forms of ill-treatment with respect to the experiences of women, girls and LGBTI people added, "the purpose and intent elements of the definition of torture are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality."<sup>62</sup>

According to the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment (Istanbul Protocol): "verbal sexual threats, abuse and mocking are also part of sexual torture, as they enhance the humiliation and its degrading aspects, all part and parcel of the procedure. The groping of women is traumatic in all cases and is considered to be torture."<sup>63</sup>

<sup>57</sup> See for instance: *Aydin v. Turkey* (23178/94), European Court Grand Chamber (1997), para: 86; *The Committee against Torture, C.T. and K.M. v Sweden*, UN Doc. CAT/C/37/D/279/2005 (2006), Para. 7.5; *Prosecutor v. Kunarac, Kovac and Vukovic* (IT-96-23 & IT-96-23/1-A), ICTY (2002), para: 151; *Fernandez Ortega et al v. Mexico*, Inter-American Court on Human Rights (Judgement of August 30 2010); *Rosendo Cantu et al v. Mexico*, Inter-American Court on Human Rights, (Judgement of August 31, 2010).

<sup>58</sup> *Fernandez Ortega et al v. Mexico*, Inter-American Court on Human Rights (Judgement of August 30 2010), para: 128

<sup>59</sup> The Convention against Torture in Article 1, sets out the following elements required to prove torture: 1. intentional infliction; 2) of severe pain and suffering (physical or mental); 3) for a specific purpose (i.e. to obtain information, intimidate, punish, or discriminate); and 4) with the involvement, instigation, consent, or acquiescence of a state official or person acting in an official capacity. Similarly, The Inter-American Convention to Prevent and Punish Torture in Article 2 and has established three required elements to prove torture: 1) a deliberate action or intentional act; 2) severe physical or mental pain or anguish suffered by the victim; and 3) a purpose to perpetrate the torture.

<sup>60</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak UN Doc. A/HRC/7/3 (2008), para: 26; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', Report of Juan E. Méndez, A/HRC/31/57 (2016), para: 51

<sup>61</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak UN Doc. A/HRC/7/3 (2008), para: 68

<sup>62</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', Report of Juan E. Méndez, A/HRC/31/57 (2016), para: 8

<sup>63</sup> OHCHR, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment (Istanbul Protocol), Geneva, 2004, p.41



The Inter-American Court has repeatedly found in its jurisprudence that rape by state officials is a form of torture.<sup>64</sup> In the 2018 judgement of *Atenco v. Mexico*, the Court reiterated that the severe suffering of the victim is “inherent to rape” as “rape, like torture, pursues, among others, the purpose of intimidating, degrading, humiliating, punishing or controlling the person who suffers it.”<sup>65</sup>

The Court has also explicitly recognized that women who face multiple forms of discrimination, such as indigenous women from low income backgrounds, can have additional barriers to effective justice when they are victims of sexual violence. In cases of rape of indigenous women, “investigators frequently reject the complaints, place the burden of proof on the victim and the investigation mechanisms are flawed and even threatening and disrespectful.”<sup>66</sup>

According to the Committee Against Torture, “States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law.”<sup>67</sup> The Committee has explicitly stated that states must adopt effective measures to ensure public authorities do not participate in acts of torture.<sup>68</sup>

## THE PROHIBITION ON TORTURE AND RAPE IN DOMINICAN LAW

Torture and other ill-treatment is constitutionally prohibited,<sup>69</sup> penalized by the Dominican Penal Code<sup>70</sup> and carries sentences of 10-15 years. The Penal Code provides for more severe punishment when torture is carried out by an on-duty public official,<sup>71</sup> and if accompanied by rape or sexual assault.<sup>72</sup>

Article 331 of the Dominican Penal Code defines rape as “any act of sexual penetration, of any nature whatsoever, committed against a person through violence, constraint, threat or surprise”. The offense of rape is punishable with sentences of 10 to 15 years and a fine, and longer sentences when committed against a pregnant women, vulnerable person, or child or adolescent.<sup>73</sup> Article 330 further defines sexual assault as “all sexual actions committed with violence, constraint, threat, surprise, deception.”

The Dominican Republic’s Organic Police Law,<sup>74</sup> which guides the conduct of law enforcement officials, also specifically lists as very serious misconduct ill-treatment of those in custody and acts of discrimination based on, among other grounds, sexual orientation, sex, or other “personal or social situation.” In such cases, police can be sanctioned in several ways, including suspension without pay for up to 90 days, loss of the right to be promoted for a year, and fines.

<sup>64</sup> See *Fernandez Ortega et al v. Mexico*, Inter-American Court on Human Rights (Judgement of August 30 2010) and *Rosendo Cantu et al v. Mexico*, Inter-American Court on Human Rights, (Judgement of August 31, 2010). Additionally see: Raquel Martí de Mejía v. Perú, (Case 10.970, Report No. 5/96), Inter-American Commission on Human Rights, (1996). Furthermore see: Inter-American Commission on Human Rights, ‘Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application’, 2015, Para: 27

<sup>65</sup> See *Atenco v. Mexico*, Sentence of 28 November 2018, (Preliminary objections, merits, reparations, and costs), Inter-American Court on Human Rights, Para: 193, which states in Spanish: “Asimismo, la jurisprudencia de la Corte ha determinado en numerosos casos que la violación sexual es una forma de tortura. Este Tribunal ha considerado que es inherente a la violación sexual el sufrimiento severo de la víctima, y en términos generales, la violación sexual, al igual que la tortura, persigue, entre otros, los fines de intimidar, degradar, humillar, castigar o controlar a la persona que la sufre. Para calificar una violación sexual como tortura deberá atenderse a la intencionalidad, a la severidad del sufrimiento y a la finalidad del acto, tomando en consideración las circunstancias específicas de cada caso.” See also, Inter-American Commission on Human Rights, ‘Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application’, 2015, Para: 18, Available at: <https://www.oas.org/en/iachr/reports/pdfs/legalstandards.pdf> which sets out standards of the Inter-American human rights system regarding violence against women.

<sup>66</sup> See Inter-American Court of Human Rights, *Fernandez Ortega et al v Mexico*, Judgement of August 30 2010, Para: 92 and 185, and Inter-American Court of Human Rights, *Rosendo Cantu et al v. Mexico*, Judgement of August 31, 2010, Para: 169

<sup>67</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2, January 2008, Para: 15

<sup>68</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2, January 2008, Para: 17

<sup>69</sup> Constitución de la República Dominicana, Votada y Proclamada por la Asamblea Nacional en fecha trece (13) de junio de 2015, Gaceta Oficial No. 10805 del 10 de julio de 2015, Art: 42

<sup>70</sup> Article 303 of the Dominican Penal Code states: “Any act carried out as a method of criminal investigation, measure of intimidation, corporal punishment, preventative measure, or criminal sanction or for any other end that causes physical or mental damage or suffering to a person constitutes torture or an act of barbarity.” (Amnesty International translation)

<sup>71</sup> Dominican Republic Penal Code, Article: 303-4.8.

<sup>72</sup> Dominican Penal Code, Article: 303-2 and 303-4.3

<sup>73</sup> Dominican Penal Code, Article: 331

<sup>74</sup> Law 590-16: Ley Orgánica de la Policía Nacional, Article: 153

At least 10 of the 24 cisgender women interviewed by Amnesty International, described having been raped by police.<sup>75</sup> Rape included being forced to provide oral sex, vaginal or anal rape,<sup>76</sup> often at gunpoint. Most of the transgender women had been subjected to discriminatory and violent actions by the police that could amount torture to or other ill-treatment, often based on their gender-identity or expression.

Amnesty International collected multiple testimonies from women who described having been gang raped by armed and uniformed police officers in similar circumstances – late at night, on dark street corners, often in the back of police vehicles. In nearly all these cases, there were no witnesses, and police officers often used condoms, which limits collection of DNA evidence. In one instance where police did not use condoms, one women described to Amnesty International the additional trauma of having to wait for HIV and STI test results, a further risk associated with rape.

Various testimonies collected by Amnesty International further suggest that colonels and other senior ranking police officers participate in gang rapes, extortion, and harassment.

Some women told Amnesty International that they had specific police that “protected” them from other police in exchange for sex. Sex under such circumstances, where consent to sex is not given voluntarily, may also amount rape, as well as abuse of authority. The women who said they had not experienced sexual assault or rape by the police usually avoided the police by hiding when they saw them coming.

It appears that women who met or maintained their clients through social media or Whatsapp, instead of meeting them on the street, were less likely to be targets for police violence, but some reported that club owners had subjected them to excessively long working hours, verbal abuse, or threats of physical violence instead.

## GANG RAPED BY THREE ARMED AND UNIFORMED POLICE OFFICERS IN A PATROL CAR

A cisgender woman<sup>77</sup> told Amnesty International she was raped by armed and uniformed police officers in a patrol car in October 2017 at approximately 4am, on street Duarte in Santo Domingo. She believes there were no witnesses and two of the police officers who raped her used condoms, limiting recoverable DNA evidence.

**There were three of them. I was on a corner waiting for clients... and they abused me... They pulled me onto the (police) van... They saw that the area was empty... They started to grope me, take off my clothes. They ripped my blouse.... One after the other.**

**“I am first” (one said) and the other waited his turn.... From then on, they mistreated me. They forced me to do something I didn’t want to.**

**I was afraid. I was alone. I couldn’t defend myself. I had to let them do what they wanted with me... They threatened me, that if I wasn’t with them they would kill me. They (said) that I was a whore, and so why not with them?**

**They looked about ages 40, 30, 28.... They didn’t have their name (badges), I couldn’t identify them. ... Because they knew what they were doing wasn’t right, so they protected themselves.**

**“You will have to take the urges I have for you” (one said).**

**They called me a “bitch” and used many offensive words.... They saw me, I guess, and they thought “Well, if they (clients) can have her, why can’t we?”**



<sup>75</sup> As part of this research Amnesty International asked open ended questions of interviewees to assess if they had ever received gender-based violence. For a number or reasons, including normalization of violence, it is possible that women under-reported sexual violence they have experienced.

<sup>76</sup> See *Atenco v. Mexico*, Sentence of 28 November 2018, (Preliminary objections, merits, reparations, and costs), Inter-American Court on Human Rights, Para: 182 refers to rape as any act of vaginal, anal, or oral penetration, without the consent of the victim.

<sup>77</sup> Interview Day 2, 1

## CAMILLA: FORCED TO PERFORM ORAL SEX ON UNIFORMED POLICE

Camilla<sup>\*78</sup> a 25-year old cisgender woman told Amnesty International she was forced to perform oral sex on two uniformed and on-duty police officers, in Bávaro, a touristic area in Punta Cana.

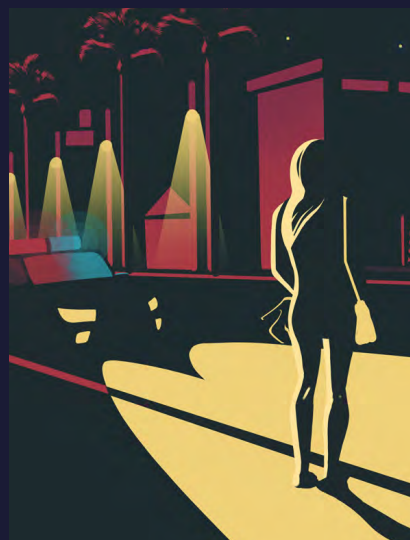
They were working... They pulled me, they backed me into a corner and they told me if I didn't do this they would kill me and leave me there. Disposed of (like garbage)... He told me that we were nobody, that the work that we are doing for them isn't a job... He said, "Don't look up"... They forced me to have oral sex with them. With each of them. Both had guns in their hands and they were pointing them at me.



## MATILDE: RAPED BY TWO UNIFORMED POLICE AFTER THEY OFFERED HER A RIDE HOME

Matilde<sup>\*79</sup>, a 34-year old cisgender woman, told Amnesty International she was raped by two uniformed police officers in the back of a police van on February 2018, on Calle Hermanas Mirabal in Santo Domingo. She said one hit her and subjected her to anal rape, another forced her to do oral sex. She said neither of them wore badges. She does not remember seeing them in that area before.

I was walking, going home, and waiting for a (public) car. No cars were passing. As none were going by, they (the police) called me and said, "Come I'll give you a ride." I thought they were going to give me a ride. They continued a bit and then passed me and said, "Give me your telephone and everything you have", so I gave it to them. (Then they asked) "What are you doing in the street at this time?" I was a bit tipsy. (They said) "You're a bit drunk." He said, "You have to suck me off..."



Matilde said the police officers pulled her hair and told her they would kill her if she did not have sex with them. She recalls one of them saying, "Bitch, this is what you are good for."

<sup>78</sup> Interview Day 3, 2

<sup>79</sup> Interview Day 3, 1

Most transgender women told Amnesty International that law enforcement officials routinely forced them to provide oral sex, often at gunpoint, or under threat of being detained. For example, one transgender woman said:

**“In the area I was at, I was arrested. Each night they were looking to arrest us and did. They would beat us and take our money. It was obligatory to perform oral sex on them (the police).”<sup>80</sup>**



## 3.2 OTHER FORMS OF SEXUAL ABUSE AND HUMILIATION

### OTHER FORMS OF SEXUAL ABUSE AND HUMILIATION

As it relates to gender-based torture, the UN Rapporteur on Torture has stated: “The definitional threshold between ill-treatment and torture is often not clear. A gender-sensitive lens guards against a tendency to regard violations against women, girls, and lesbian, gay, bisexual and transgender persons as ill-treatment even where they would more appropriately be identified as torture.”<sup>81</sup>

Because torture and other ill-treatment are part of a single unified prohibition, the Inter-American Court of Human Rights have generally found it unnecessary to define other forms of ill-treatment and have developed the definitions based on individual complaints.

For example, in the case of *Castro v. Peru*, the Inter-American Court of Human Rights identified “threats of sexual acts, ‘touching’, sexual insults, forced nudity, beating on their breasts, between their legs, and buttocks” (among other acts) forms of sexual aggression.<sup>82</sup>

<sup>80</sup> Interview 1, Day 1

<sup>81</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, Report of Juan E. Méndez, UN Doc. A/HRC/31/57, January 2016, Para: 8

<sup>82</sup> *Miguel Castro-Castro Prison v. Peru*, (Merits, Reparations and Costs), (Judgement of November 25 2006), Inter-American Court on Human Rights, Para: 260.z

## THE STATE'S DUTY TO PROTECT WOMEN FROM MULTIPLE FORMS OF DISCRIMINATION

States have a “heightened” obligation to prevent gender-based violence and discrimination against women, girls, and LGBTI people that amounts to torture and other ill-treatment by both state and individuals.<sup>83</sup>

According to the UN Special Rapporteur on Torture, “gender intersects with other factors and identities, including sexual orientation, disability and age, that may render a person more vulnerable to being subjected to torture and ill-treatment.”<sup>84</sup> He further states: “Intersectional identities can result in experiencing torture and ill-treatment in distinct ways.”<sup>85</sup>

Similarly, the UN CEDAW Committee has indicated that states must recognize that women with multiple discriminated identities – such as “being in prostitution” or “being lesbian, bisexual, transgender or intersex” or “living with HIV/AIDS” or “migration status” - can be at increased risk for violence and have obliged states to take appropriate legal and policy measures to address this.<sup>86</sup>

The Inter-American system’s standards for states on addressing violence against women also place a duty on “the legislative, executive, and judicial organs to analyze, with strict scrutiny, all the statutes, regulations, practices, and public policies that establish differential, treatment based on sex, or that may have a discriminatory impact on women in practice.” It also requires states “to consider, in the policies they adopt to promote gender equality, the particular risk of human rights violations that women may face due to factors combined with their sex, such as age, race, ethnicity, and economic position, among others.”<sup>87</sup>

**“If you do sex work, they (the police) consider you as the worst kind of woman...They (the police) pull your hair, they hit you, and push you. They treat you like a dog. As if we are dogs in the street, with four paws... They call you ‘dirty whore’, that’s normal.”<sup>88</sup>**

**“They (the police) do it, because they have power. Maybe to humiliate, because they think that we aren’t people and we aren’t worth it, but they also do it because of the power they have, because you would say that you can’t go against them because they are law enforcement and it’s them they are going to believe, because for society we are bad people. They will believe what they say.”<sup>89</sup>**

<sup>83</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, Report of Juan E. Méndez, UN Doc. A/HRC/31/57, January 2016, Para: 68

<sup>84</sup> Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, Juan E. Méndez, 5 January 2016, Para: 9

<sup>85</sup> Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, Juan E. Méndez, 5 January 2016, Para: 9

<sup>86</sup> The CEDAW Committee in General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, in Article 12 states: “The Committee, in its jurisprudence, has highlighted the fact that such factors include women’s ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.”

<sup>87</sup> Inter-American Commission on Human Rights, ‘Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application’, 2015, Para: 18

<sup>88</sup> Interview Day 3, 1

<sup>89</sup> Interview 4 Day 2

## ATENCO V. MEXICO, THE INTER-AMERICAN COURT ON HUMAN RIGHTS: TORTURE AS A METHOD OF SOCIAL CONTROL

In the 2018 judgement of *Atenco v. Mexico* the Inter-American Court on Human Rights found Mexico responsible for sexual violence, rape and torture of 11 women, which took place in the context of police repression of demonstrations in 2006.<sup>90</sup>

Among other things, the Inter-American Court on Human Rights found that state agents had used acts of torture as a method of “social control” in the context of repressing demonstrations, which in the courts view “increased the gravity of the violations committed.”<sup>91</sup> The Court also found that the victims had been subjected to verbal and psychological violence which were “heavily stereotyped and discriminatory” and “profoundly macho” and that by overstepping their stereotyped domestic and sexual roles to go out and protest, police had found motive to punish the women.<sup>92</sup>

Amnesty International’s research in multiple countries has found that sex workers are subjected to punishment, blame and social exclusion for being seen to transgress social, sexual and gender norms or stereotypes. The fact that many cisgender and transgender women sex workers are from communities that are already socially marginalized, magnifies the discrimination they experience.<sup>93</sup>

The interviews carried out with women for this report suggest that a deeply engrained culture of machismo and transphobia within the Dominican police, coupled with intense societal stigma and discrimination, conservative values, and sex worker’s criminalized status, results in law enforcement officials feeling similarly emboldened to unlawfully abuse their powers and punish women engaged in sex work as a form of social control.

Humiliation and other forms of ill-treatment characterize police interactions with Dominican sex workers. Beatings, groping, hair pulling, coupled with verbal abuse by police is routine and common-place, especially during arbitrary arrests and in detention. One transgender woman stated she had received electric shocks in detention by a police officer who she said (in a rare case) was later suspended after she initiated criminal proceedings against him.

The language reportedly used by law enforcement officials in the Dominican Republic during arbitrary arrests, rape, and other ill-treatment of sex workers, is heavily stereotyped, and deliberately intended to humiliate, discriminate, and punish them for transgressing socially constructed views about femininity, acceptable sexuality, and gender identity and expression.

Women repeatedly told Amnesty International that law enforcement officers used humiliating and offensive words linked to their gender, gender identity, and/or work during their interactions with them. “Bitch”, “tramp”, “worthless woman” were some of the words frequently used to insult cisgender sex workers.

For transgender women, the insults, humiliation, and extremity of violence carried out by law enforcement officers was often magnified by discrimination that focused principally on their gender-identity and sexual orientation, as well as their involvement in sex work. Transgender women reported being called “fags” and “devils” and said they believed they were treated as “aliens” or “animals.”

One transgender woman told Amnesty International that the police in the Colonial Zone of Santo Domingo regularly humiliated transgender women. She described one specific occasion in which the police had made fun of her.

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<sup>90</sup> Inter-American Court on Human Rights, ‘Mexico is responsible for sexual torture of women in *Atenco*’ (Press Release), 21 December 2018

<sup>91</sup> *Atenco v. Mexico*, Para: 222

<sup>92</sup> *Atenco v. Mexico*, Para: 216

<sup>93</sup> See Amnesty International, ‘Policy on state obligations to respect, protect and fulfil the human rights of sex workers,’ (POL 30/4062/2016), page: 9

**“They said I was a man, ‘a damn fag, a fag from hell’. With obscene words they said: ‘Look at those tits of sponge, take off her hair, take away those cloths that she has on her tits.’ They took down my pants to see if I had a vulva or a penis.”**

Multiple transgender women sex workers told Amnesty International that during their arrest police officials had forcibly removed their wigs and burned them. In one case, police officers cut off the natural hair of a young transgender woman with the intention of humiliating her. Several transgender women said that law enforcement officials had thrown buckets of water on them in prison cells and forced them to clean prison toilets covered in excrement.

Many women expressed that such acts caused them severe pain and suffering, and in their views were carried out by state officials with the specific purpose of discriminating based on gender-identity and or sexual orientation. As such these acts constitute ill-treatment, and in some cases may amount to torture.

When Amnesty International spoke to senior representatives of the police in Santo Domingo in July 2018, the Director General of the National Police, Ney Aldrin Bautista Almonte, indicated that under his leadership he was trying to make advances to combat gender-based violence, for example, by reducing police response times to reported incidence of such violence. Regarding police perpetrating violence against sex workers, he recognized that gender-based violence was a “cultural problem” and said that law enforcement officials who largely come from low-income communities often share discriminatory practices towards women. While he did not deny that police violence towards sex workers could take place, he denied that it was commonplace and said that his office had not received reports. “We aren’t saying that it does not happen, but if there is not a complaint we cannot act,” he stated. He went on to say that in his view the national police do have an additional role in combating crime, and in “social control”.<sup>94</sup>

**“They put us in a cell with men... often aggressive ones, sometimes murderers... Some like gays, others hate them.”<sup>95</sup>**

Transgender women are also routinely placed in cells with men, without taking their gender identity and choice into account, sometimes exposing them to further sexual violence, threats of sexual violence, or discrimination from male prisoners. Several transgender women said they were obliged by other detainees to provide oral sex.

International law requires that authorities take special steps to ensure the rights, safety and dignity of detainees who are at risk because of their actual or perceived sexual or gender identity or status, as these individuals are at greater risk of discrimination and sexual abuse in detention or prison.<sup>96</sup> The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) specifically call for the identity and self-perceived gender of prisoners to be respected.<sup>97</sup>

<sup>94</sup> Interview with the General Director of the National Police, Ney Aldrin Bautista Almonte, 18.7.18

<sup>95</sup> Entrevista 4, día 3.

<sup>96</sup> OHCHR, ‘Discrimination and violence against individuals based on their sexual orientation and gender identity’, UN Doc. A/HRC/29/23, 4 May 2015, Para: 13 and 36; and OHCHR, ‘Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity’, UN Doc. A/HRC/19/41, 17 November 2011, Para: 34; and UNODC, ‘Handbook on Prisoners with Special Needs’, Chapter 5, pages: 104-121

<sup>97</sup> General Assembly resolution 70/175 on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc. A/RES/70/175, 17 December 2015.



Notably, the Subcommittee on Prevention of Torture has noted that in cases of LGBTI persons deprived of their liberty, state authorities “must recognise specific risks, identify those who are in a vulnerable situation and protect them in ways that do not leave them isolated”.<sup>98</sup>

According to the Yogyakarta Principles, “to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity”.<sup>99</sup>

Along these lines, failure to address the human rights situation and needs of a transgender prisoner may constitute cruel, inhuman or degrading treatment.<sup>100</sup>

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<sup>98</sup> Committee Against Torture, Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. CAT/OP/C/57/4, 26 March 2016, Para: 76

<sup>99</sup> Article 9, The Yogyakarta Principles, Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2016, page: 16, Article 9.c, Available at: [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

<sup>100</sup> Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 2016

## 4 ROUTINE ARBITRARY ARRESTS



“For me it was a bit overwhelming in the sense that they arrest you without you knowing the reason they are arresting you. They don’t let you communicate with anyone.” <sup>101</sup>

<sup>101</sup> Interview 1, Day 2

## THE LEGAL FRAMEWORK AROUND SEX WORK IN THE DOMINICAN REPUBLIC

Unlike in English-speaking Caribbean countries, the sale and purchase of sex between consenting adults or “prostitution” is not a criminal offence in the Dominican Republic. However, “procuring/pimping” (“proxenetismo” in Spanish) is criminalized under section 334 of the Dominican Penal Code and penalizes the organization of sex work. It includes, among other things, facilitating prostitution, benefiting off the earnings of prostitution, and contracting or maintaining a person for prostitution, and is punishable by imprisonment.<sup>102</sup>

### THE RIGHT TO LIBERTY

According to international human rights law, an individual can only be lawfully deprived of his or her liberty on grounds and according to procedures established by law.<sup>103</sup> Anyone who is arrested should be informed of the reasons for their arrest and the charges against them.<sup>104</sup>

The Inter-American Court has held that the right to be informed requires both the accused and their lawyer to be informed.<sup>105</sup> Domestic laws authorizing arrest and detention, and domestic laws setting out procedures for arrest and detention, must conform to international standards.<sup>106</sup> A variety of Dominican laws also set out safeguards that reflect international human rights standards.<sup>107</sup>

Arrests and detentions must not be based on discriminatory grounds. Policies and procedures allowing arrest and detention based on racial, ethnic or other profiling should be prohibited.<sup>108</sup> The UN Working Group on Arbitrary Detention, the group of experts mandated to investigate cases of arbitrary deprivation of liberty, has clarified that deprivation of liberty is arbitrary in the following contexts, among others.<sup>109</sup> An arrest or detention without a basis in law is arbitrary. In addition, an arrest or detention that is permitted under domestic law may nonetheless be arbitrary under international standards. Examples include where the law is vague, over-broad,<sup>110</sup> or incompatible with other human rights such as the right to be free from discrimination.<sup>111</sup>

Arbitrary arrests are commonplace in the Dominican Republic. Amnesty International’s prior research has found that young men and boys living in marginalized and low-income communities are regularly discriminatorily targeted by police for mass arbitrary arrests.<sup>112</sup>

<sup>102</sup> Dominican Penal Code, Para: 334, 1-7

<sup>103</sup> The Universal Declaration of Human Rights in Article 3 states: “Everyone has the right to life, liberty and security of person.”

Article 9 (1) of the ICCPR states, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Article 7 of the American Convention on Human Rights, also protects the right to personal liberty. It requires states to act based on the principle of legality, prohibits arbitrary arrests, requires those detained to be informed of the reasons for their detention and promptly notified of the charges against them, and for detainees to be brought promptly before a judge within a reasonable time, and to be able to challenge the lawfulness of their detention.

<sup>104</sup> ICCPR, Article 9(2) “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

<sup>105</sup> *Tibi v. Ecuador*, Inter-American Court of Human Rights, (Preliminary Objections, Merits, Reparations and Costs) (Judgment of September 07, 2004)

<sup>106</sup> See Principle IV of the Principles on Persons Deprived of Liberty in the Americas, Available at:

<https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf>

<sup>107</sup> The Constitution of the Dominican Republic in Article 40 1- 6 protects the right to liberty and personal security. It establishes that no one shall be detained without an order issued by a judge, except in cases of flagrante delicto (where someone is caught in the act of committing a crime). Authorities with arresting powers must identify themselves, and everyone should be informed of their rights at the moment of their detention, and have the right to communicate with their families, lawyer, or others. Detainees must also be presented before a judicial authority within 48 hours of their detention or freed, and those deprived of liberty without cause shall be immediately freed. Additionally, the Dominican Code of Criminal Procedures in Article 95 (2) requires, among other things, that any person criminally charged should receive “a dignified treatment” during the arrest, free of “unnecessary violence” or “excessive and disproportionate use of force”, be allowed a phone call to communicate with a person of his choosing and a lawyer (Article 95 - 4), and Article 95 (7) be presented before a judge. Any agent or functionary that violates any of these rights can be sanctioned.

<sup>108</sup> CERD General Recommendation XXXI, Para: III(A)(20) and (23); *Williams Lecraft v. Spain* (1493/2006) HRC, (2009) Para: 7.2-8; *The Situation of People of African Descent in the Americas*, Inter-American Commission (2011) Para:143-162. Also, the UN Working Group on Arbitrary Detention has stated: “The vilification and persecution of persons for their sexuality violate the principles of international human rights law.” (UN Working Group on Arbitrary Detention, Opinion No. 42/2008 on Egypt, UN Doc. A/ HRC/13/30/Add.1, 2010. Para: 25)

<sup>109</sup> Working Group on Arbitrary Detention, Fact Sheet No.26, Section IV(A)-(B).

<sup>110</sup> General comment No. 35, Article 9 (Liberty and security of person), UN Doc. CCPR/C/GC/35, (2014)

<sup>111</sup> *A and Others v United Kingdom* (3455/05), European Court Grand Chamber (2009), Para: 161-190 (nationality); See CERD Concluding Observations: Ukraine, UN Doc.A/56/18 (Supp) (2001), Para: 373, Ethiopia, UN Doc. CERD/C/ETH/CO/15 (2007), Para:19, Turkmenistan, UN Doc. CERD/C/60/CO/15 (2002) Para: 5 (belief), India, UN Doc. CERD/C/IND/CO/19 (2007) Para: 14 (caste), CERD General Recommendation XXXI, Para: 20.

<sup>112</sup> Amnesty International, “Shut up if you don’t want to be killed!”: Human rights violations by the police in the Dominican Republic (AMR 27/002/2011)

Similarly, this research finds that women sex workers in the Dominican Republic are presumed to be “criminal” because they are members of highly stigmatized groups, regardless of whether they engaged in unlawful behaviour or not. This, combined with the existence of laws that criminalize aspects of sex work, which has a punitive effect on sex workers by imposing a criminalized status on them, puts them at increased risk of repetitive and mass arbitrary arrest, discrimination, violence, and extortion by law enforcement officials. The Dominican Republic’s police’s unlawful abuse of their powers of arrest is a key gateway violation that facilitates a series of abuses, including acts that constitute torture and other ill-treatment.

Many sex workers interviewed by Amnesty International for this research had been detained by the police in relation to their sex work at least once in their lives. Many had been arbitrarily detained so many times in their lives that they were unable to recall the exact number. For example, one 40-year old transgender woman believed she had been detained about 50 times in her life and about 6 times in the past two years.

Most of those who had been detained said the police had not provided them with any legal basis for their detention. Sex workers told Amnesty International that the police simply informed them they were not allowed to be on the street or alleged that they were bothering tourists.

In a large survey of 400 sex workers, Otrasex found that sex workers reported being detained for any number of reasons, from routine controls, to criminal background checks, lack of identity documents, during anti-trafficking operations, and for “public disorder”.<sup>113</sup>

Women who primarily work in the streets were much more likely to be detained, stopped and searched, or delayed by police than those who engaged with clients online or via phone. Transgender women told Amnesty International that until recently few sex work establishments accepted transgender women, which has led to transgender women primarily working in the streets, thus making them much more likely to suffer arbitrary detentions.

Law enforcement officials also routinely extort sex workers, by threatening them with arbitrary arrests. One woman told Amnesty International: “When you don’t want to hand over money, because sometimes you don’t have much and need to take it home, they (the police) take it from you forcibly, they hit you, they drag the women, they are bad. They abuse a lot.”<sup>114</sup>

Typically, sex workers are rounded-up and arrested in groups. Detention of sex workers can range from 1 hour to 48 hours, or in some cases several days. Police routinely fail to inform sex workers of their rights during arrest, in violation of international and Dominican laws.

Once detained, most of the sex workers interviewed said they were not charged or given access to legal counsel, in violation of international law. Police also rarely allow the women to make a phone call, again violating due process rights.

## “(They arrest you) for nothing. For the ‘fag’ that you are.”<sup>115</sup>

Consensual same-sex relations are not prohibited in law in the Dominican Republic, nor is cross-dressing. Nevertheless, time and again, transgender sex workers told Amnesty International that they are routinely arrested simply based on their gender identity and/or sexual orientation. According to one street-based transgender sex worker, the police simply say, “Come, pick up those fags, lock them up over there.”<sup>116</sup>

Despite these constant arbitrary arrests, sex workers almost never report them. As one transgender sex worker who said she had been arrested routinely by police told Amnesty International, “Where was I going to make it (the complaint)? Now there is a place to make complaints, but that could make them (the police) beat you, as well. Making a complaint against police, either they will lock you up, or take you for crazy.”<sup>117</sup>

To try and ascertain further information on the reasons women are commonly arrested in the Dominican Republic, Amnesty International submitted access to information requests to determine the total number of women and transgender women arrested by the national police and the number of charges brought against women over a five-year period. In its response, the General Prosecutor’s Office indicated such data was not disaggregated by sex. The specific criminal charges brought against women was shared as a screenshot of computer data, which when enlarged was unreadable.

<sup>113</sup> Redtrasex, ‘Informe Nacional sobre violencia institucional de las fuerzas de seguridad hacia los trabajadores sexuales en República Dominicana’, Santo Domingo, 2017, p. 17

<sup>114</sup> Interview Day 1, 4.

<sup>115</sup> Interview 2, Day 1

<sup>116</sup> Interview 2, Day 2

<sup>117</sup> Interview 1, Day 4

## 5 VIOLENCE FROM PRIVATE ACTORS

### THE STATE'S DUTY TO PROTECT ALL WOMEN FROM VIOLENCE, INCLUDING TORTURE, BY NON-STATE ACTORS

The UN Special Rapporteur on Violence against Women in 2006 stated, “On the basis of the practice and opinio juris outlined above, it can be concluded that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.”<sup>118</sup>

According to the UN Committee against Torture, “the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission.”<sup>119</sup>

The UN Rapporteur on Torture has stated: “Lesbian, gay, bisexual, transgender and intersex persons are disproportionately subjected to practices that amount to torture and ill-treatment for not conforming to socially constructed gender expectations. Violence motivated by homophobia and transphobia tends to be characterized by particularly brutal acts, often resulting in murder. Private actors typically inflict torture and ill-treatment on such persons in a climate of impunity as many States fail in their due diligence obligations to combat, prevent and remedy abuses.”<sup>120</sup>

The Inter-American System on Human Rights sets out a series of standards for states to address violence against women. Among others, it obliges states to: “act with due diligence to prevent, investigate, and punish swiftly and without delay all acts of violence against women, committed by state and non-state actors”; to “ensure the availability of effective, adequate, and impartial judicial mechanisms for victims of sexual violence, which constitutes torture when committed by state agents”; and “to implement actions to eradicate discrimination against women and the stereotyped patterns of behavior that promote their treatment as inferior in their societies.”<sup>121</sup>

The Inter-American Court has also emphasised the states’ due diligence obligations when conducting inquiries and judicial proceedings concerning gender-based discrimination in its jurisprudence,<sup>122</sup> and has reiterated states’ obligation to formulate laws and public policies, as well as institutions and mechanisms,

<sup>118</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, UN Doc E/CN.4/2006/61 (2006), Par: 29

<sup>119</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2, January 2008, Para: 18

<sup>120</sup> Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, Juan E. Méndez, 5 January 2016: Para 57

<sup>121</sup> Inter-American Commission on Human Rights, ‘Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application’, 2015, Para: 18

<sup>122</sup> See for example, Case of González et al. (“Cotton Field”) v. Mexico, Inter-American Court on Human Rights, (Judgment of November 16, 2009.) Series C No. 205, Para:

<sup>123</sup> See Atenco v. Mexico, Sentence of 28 November 2018, (Preliminary objections, merits, reparations, and costs), Inter-American Court on Human Rights, Para: 215

**“They (people) throw rocks, bottles, water, and if you pass by the market they throw tomatoes, eggplant... things from the market.”<sup>124</sup>**

In addition to police violence, women sex workers in the Dominican Republic face gender-based violence at the hands of their families, partners, clients, or even community members on the street.

Sex workers told Amnesty International that they believe that violence inflicted by clients is principally rooted in culturally perpetuated “machismo”. Many also said that clients who use drugs, often cocaine, tend to be more violent towards them. Clients can also become violent after sex is exchanged and refuse to pay for the service. For example, Cristina\*, a transgender sex worker, told Amnesty International that one client, after sexual relations, pulled out a machete, threatened to chop off her hand, actually chopped off a finger, and refused to pay her. “When my finger flew off I fainted”, Cristina said. After “playing dead”, the client left, believing he had killed her, and covered in blood she was able to run for help.<sup>125</sup>

Another transgender sex worker described how a client had beaten her with a home-made steel ball attached to a shoelace.

The widespread stigma and discrimination experienced by transgender women has a significant psychological impact on them.

**“It’s sad when you go down a street and an Evangelical says to you ‘Look, there’s a devil’. Those are things that affect you a lot, because we are human beings.”<sup>126</sup>**

Street-based transgender women were particularly exposed to homophobic and transphobic abuse from by-standers. R\*, a 59 year-old transgender woman, told Amnesty International, “I was standing on the Winston Churchill (avenue) and it seems (my presence) bothered this youngster... so he stood in front of me and threw a big rock and it cracked-open my head and I fainted.”<sup>127</sup> She added:

**“There are days that I wake up horribly depressed because each day something happens to you on the street. A person shouts at you from a car, another wants to run you over with a motorbike.”<sup>128</sup>**

One transgender woman told Amnesty International she had tried to commit suicide three times, at age 20, 24 and 35 respectively. The final time she tried to hang herself was one night after she was raped by 5 men who she believed to be members of a gang.

Most women interviewed by Amnesty International had not made reports of these acts of violence, because they did not believe the justice system would take their complaints seriously due to widespread discrimination against them.

<sup>124</sup> Interview 2, Day 1

<sup>125</sup> Interview 1, Day 3

<sup>126</sup> Interview 1, Day 1

<sup>127</sup> Interview 1, Day 4

<sup>128</sup> Interview 1, Day 4

## 5.1 NORMALIZATION OF VIOLENCE AND “EMOTIONAL NUMBING”

As part of this research, Amnesty International asked open-ended questions of interviewees to assess if they had ever experienced gender-based violence, such as: “Do you think there is anything difficult about your work?”, “Have you ever experienced violence or humiliation?”, “Who carried out this violence?”, “What kind of violence and/or humiliation did you experience?”

According to the Istanbul Protocol, “avoidance and emotional numbing”, as well as “inability to recall an important aspect of the trauma” are common psychological consequences of torture.<sup>129</sup> For many transgender women and some cisgender women who Amnesty International spoke with, the humiliation and violence in their daily lives was so routine, that many often could not recall details of one incident from another, and heavily normalized the violent experiences they had lived through. Due to these factors, it is possible that the women interviewed for this research under-reported the sexual violence they have experienced. Others indicated they preferred not to discuss particularly violent incidents.

Also, in many cases, because women interviewees live in a country where gender-based violence, including violence towards children, is widespread, many women had often experienced violence from multiple perpetrators, and at different points in their lives. As such one violent memory often triggered the recollection of another, making the discussion around one single instance of violence difficult. For example, one transgender woman who told Amnesty International that her most traumatic memory was of being raped as a child, said that each time the police extort her or oblige her to do something, she relives that experience of childhood rape.

Sex workers that experienced rape by the police, often described having experienced depression afterwards. Others described feeling rage and impotence.

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<sup>129</sup> Istanbul Protocol, page: 46





## 6 THE STATE'S FAILURE TO PROVIDE JUSTICE

**"IF THEY CAN HAVE HER, WHY CAN'T WE?"**

GENDER-BASED TORTURE AND OTHER ILL-TREATMENT OF WOMEN ENGAGED IN SEX WORK IN THE DOMINICAN REPUBLIC  
Amnesty International

## 6.1 COMPLAINTS NOT TAKEN SERIOUSLY

**“If you go to the police station to make a complaint, they treat you like a whore. They ignore you. They don’t pay you any attention.”<sup>130</sup>**

**“I didn’t make a report... Authorities don’t listen to me... Because of how I am... because I am ‘a fag’... It’s as if we don’t have feelings. As if we were robots, that don’t feel.”<sup>131</sup>**

Reporting of gender-based violence is generally low amongst cisgender women in the Dominican Republic. According to a Demographic and Health study, the percentage of women who sought help for physical or sexual violence remained the same between 2002 and 2013, at between 38% and 41%.<sup>132</sup> Women who had experienced sexual violence were less likely to seek help.<sup>133</sup> While most women turned to their families, only 25% went to the police, 11% went to institutions set up to protect women, and 21% went to public prosecutors.<sup>134</sup>

Women sex workers who have experienced violence, including sexual violence, very rarely make official complaints due to fear of being further humiliated or receiving reprisals from police. Of the women interviewed by Amnesty International, there were only a few exceptional cases, where sex workers had attempted to make a report to the police or a prosecutor. As transgender sex workers face multiple layers of discrimination from law enforcement, they were even less likely to try to make reports. As described in the testimonies below, most were simply ignored or prevented from accessing justice at the very first step of making a complaint.

### A: IGNORED AFTER BEING RAPED BY THREE UNIFORMED OFFICERS

A\*, a cisgender woman,<sup>135</sup> told Amnesty International that around December 2017 she and another sex worker believe they were drugged and then subjected to anal rape by three uniformed police officers after being taken to a cabaña (sex motel). A\* told Amnesty International that that same night, she and her friend, went to make a report at the police station.

**“I remember it... but what I didn’t have was strength. I was lying on the bed, and they did what they wanted with us... We went to the police, because they left us there discarded. We went to the police station with a friend of mine... That same night.... We went straight there... We explained what had happened and they ignored us. They made us think that they would follow-up on it.**

**They (the police) asked if we were whores and we said yes. We told them what had happened and that they had gone too far because they had done things without our consent because we were drunk and drugged.”**

After trying to make a report that same night, A\* said the police officers told them to come back at 8am the following day. When they returned, A\* said they were sent to a medical examiner, and then went to the prosecutor’s office. Despite assurances that they would be called back, she told Amnesty International that they were not contacted again.

<sup>130</sup> Interview 1, Day 2

<sup>131</sup> Interview 2, Day 2

<sup>132</sup> Encuesta Demográfica y de Salud 2013, p. 337

<sup>133</sup> Encuesta Demográfica y de Salud 2013, p. 337

<sup>134</sup> Encuesta Demográfica y de Salud 2013, p. 339

<sup>135</sup> Interview Day 2, 2

## ESTEFANI: “ACCUSING A POLICE OFFICER IS TO DO NOTHING”

Estefani, a 24-year old cisgender woman,<sup>136</sup> told Amnesty International that she was on her way home at 2am in Villa Mella in April 2018, when she was raped by two police officers who forced her onto a patrol car and made her give them oral and vaginal sex. There were no witnesses and both the officers used condoms. She remembered the name badge of one and could describe them vividly. She has seen them since in her area but has hidden out of fear.

**“(It felt) worse than being with a man for money. I felt reviled, raped, forced... (I felt) rage more than anything else. Indignation because you think the police are going to help you, not that they are going to assault you. But mostly in this country it happens like that. They are never there to help.”**

Estefani says she did not make a report. She said, “Accusing a police (officer) is to do nothing, because they (the authorities) don’t do anything.”

The Dominican Republic has established a series of mechanisms to strengthen its response to violence against women. The National Police has a special police unit (Dirección Especializada de Atención a la Mujer y Violencia Intrafamiliar de la Policía Nacional) which receives complaints directly from women and provides training to police on responding effectively to gender-based violence. According to General Teresa Martínez Hernández, Head of the Unit, more than 2,600 members of the police were trained by the unit between 2017 and 2018. However, she admitted that the training does not specifically address issues which affect women sex workers.<sup>137</sup> She did indicate that when an allegation is made against a state official, the unit typically involves a prosecutor.<sup>138</sup>

As part of its National Plan against Gender Violence, the Dominican Republic’s Prosecutor General’s office has also established island-wide Units for the Attention of Sexual and Gender Violence (Unidad de Atención a la Violencia de Género Sexual), designed to provide integrated services by psychologists, medical experts, and lawyers for victims of sexual violence in one space. Despite these efforts, almost none of the women interviewed for this report specifically mentioned having accessed any of these services at any point.

As highlighted in a previous Amnesty International report, the Dominican Republic has no independent police oversight mechanism.<sup>139</sup> When Amnesty International met with the country’s Ombudsman’s Office in July 2018, the Ombudswoman also indicated that her office – which was established to safeguard constitutionally established rights - had not received complaints of violence from women who self-identified as sex workers.

**“Sex workers have a high risk, because they work in the darkness. The hardest thing for a sex worker is to make a complaint about an assault, when a lot of the time the person who has attacked her is the same police (officer) she’s going to report... and when she gets to the police station she finds the same police that the day before took her money.”**

**Juan Alberto Francisco, Coordinator of the Observatory for Vulnerabilized Groups**

<sup>136</sup> Interview Day 3, 9

<sup>137</sup> In an access to information request the National Police provided data suggesting that almost 2,300 police were trained in courses related to human rights between 2017 and 2018. Email 17.2.19

<sup>138</sup> Interview 18.7.19

<sup>139</sup> See Amnesty International, ‘Shut up if you don’t want to be killed! Human rights violations by police in the Dominican Republic, (AMR 27/002/2011)

In recent years, the Human Rights Observatory for Vulnerabilized Groups, and another Observatory based in TRANSSA, have formed to document human rights violations in populations most at risk for HIV, and to provide legal accompaniment in their cases. A local NGO COIN (Centro de Orientación y Investigación Integral) also provides psychologists and doctors sensitized in providing support services to sex workers. In the few cases where interviewees had initiated formal complaints against state officials or authorities for alleged human rights violations, they had done so with support from these organizations.

To overcome the initial challenge of police not taking complaints seriously, the Observatory has been sensitizing public prosecutors and encouraging marginalized groups who allege human rights violations to seek help directly at the prosecutor's office, rather than at police stations. Despite this, the Observatory representatives told Amnesty International that the prosecutor's office typically takes months to investigate a case without providing updates, and often encourages reconciliation between parties.

According to Juan Alberto Francisco, Coordinator of the Observatory for Vulnerabilized Groups, once investigations have initiated, lengthy legal processes that often require a claimant to attend court 15 times or more in a year, combined with fear of reprisals from police officers who often remain in their posts despite investigations against them, deter many sex workers from pursuing justice. He explained that: "The (system) asks a lot and often in a population with a low level of education, and low level of self-esteem, people get tired.... People end up abandoning the process, unfortunately."<sup>140</sup>

Representatives at CONAVIHSIDA, which supports the Observatory's work of documenting violence, similarly told Amnesty International that cases typically do not proceed because claimants are afraid.<sup>141</sup>

## 6.2 FAILURE TO INVESTIGATE AND PROVIDE REMEDIES FOR POTENTIAL CASES OF TORTURE AND OTHER ILL-TREATMENT

Of the women interviewed for this report, only one reported having had secured any kind of judicial remedy for a case of violence involving ill-treatment by a police officer.

Over a period of seven months Amnesty International made repeated requests for information to the Prosecutor General's Office for the number of allegations of torture, sexual assault, and rape made by women against members of the national police between 2013 and 2018. When the Prosecutor General's Office finally responded, it indicated it does not disaggregate data based on sex.<sup>142</sup>

Amnesty International also requested data on the number of charges for torture, sexual assault and rape that had been brought against members of the national police between 2013 and 2018, disaggregated by year. The Prosecutor General's office provided some incomplete information setting out charges presumably made against police officers disaggregated by district prosecutors, but not by year. Among the charges were only 3 for "beatings and wounds, abuse of authority against individuals", and one charge for rape.

Amnesty International also asked how many members of the national police had been suspended due to their participation in torture, sexual assault, or rape in that same period. The data provided again was unclear.<sup>143</sup>

The incomplete and unclear data provided make it difficult if not impossible to determine the scope and severity of the problem of gender-based torture and ill-treatment in the Dominican Republic. The Committee against Torture has previously emphasised that states must collect data disaggregated by age, gender, and other key factors to determine the incidence of torture, the difficulties in preventing torture against specific populations, and find better ways to prevent it.<sup>144</sup>

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<sup>140</sup> Interview 16.7.18

<sup>141</sup> Interview 17.7.18

<sup>142</sup> See Email entitled: "Solicitud de Información a la Procuraduría General Dominicana" received 4.2.19

<sup>143</sup> The data provided suggests that over the 5-year period more than 3,000 members of the police force had been recommended for cancellation, more than 6,500 sanctioned, and more than 4,600 "referred to justice" for "excess use of force, police corruption, irregularities in service, desertion, inter-family violence, excess of authority, or negligence". The data and the source of the data is unclear.

<sup>144</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2, January 2008, Para: 23

A key stumbling block for most violence victims is the failure of the Prosecutor General's Office to recognize allegations of rape or gender-violence by law enforcement officials as potential acts of torture, a crime under international law, and grave human rights violations.

In July 2018, Amnesty International met with the Prosecutor General's office, and representatives from its specialized units on gender-based violence, smuggling and trafficking, and human rights. The prosecutors explained that when an allegation is made against a police officer for gender-based violence, if charged they are suspended and disarmed, but otherwise the matter is investigated as any other case of gender-based violence without taking into account that the alleged is an official of the state.

As far as Amnesty International can establish, in cases of alleged sexual crimes, prosecutors apply the country's Guide of Recommendations for the Investigation and Processing of Sexual Crimes.<sup>145</sup> While this Guide provides useful guidance often in line with international standards, it is not designed for investigations for allegations of sexual torture – where the alleged perpetrator is a state official.

According to information available to Amnesty International, the Dominican Republic does not have a national protocol for investigating cases of torture, consistent with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment (Istanbul Protocol), which sets out international standards for the investigation of torture and other ill-treatment.<sup>146</sup>

International and regional human rights law requires the Dominican Republic to ensure competent authorities carry out a prompt and impartial investigation into torture when there are “reasonable grounds” to believe torture may have been committed.<sup>147</sup> Moreover, the Dominican Republic has additional commitments to protect “groups made vulnerable by discrimination or marginalization”, including women, from torture.<sup>148</sup> Even without an express allegation, investigations into torture should be carried out if there are other indications that torture or other ill-treatment might have occurred.<sup>149</sup> Along these lines, information provided by an NGO should be sufficient to trigger an investigation into potential torture and/or other ill-treatment.

Such investigators should furthermore be independent of the suspected perpetrators and the agency they serve. In this case, at an absolute minimum, the investigators should be independent of the police force.<sup>150</sup>

## 6.3 EVIDENTIARY BARRIERS TO ACCESSING JUSTICE

Representatives of the Prosecutor General's Office stated that while they were aware of some complaints from sex workers about incidents of violence by police and individuals, they often lacked evidence to pursue prosecutions. They further stated that they often ask the potential victims to work with civil society organizations to assist with gathering evidence. While various NGOs indicated that they had collaborated with the Human Rights Unit in the Prosecutor General's Office on specific cases, international law is clear - the duty of effective investigation of potential cases of torture rests squarely with the state.

In fact, in some cases of torture, courts have found that the burden of proof – or the burden of proving allegations of torture – shifts to the state. For example, in *Fernandez Ortega et al v. Mexico* the Court found that because the state had not provided any evidence to contradict the rape of the victim 8 years after its occurrence, the burden should fall on the state to counter the accusations regarding its responsibility.<sup>151</sup>

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<sup>145</sup> Procuraduría General de la República/Ministerio Público, *Guía de Recomendaciones para la Investigación y Procesamiento de Delitos Sexuales en República Dominicana*, Santo Domingo, October 2016

<sup>146</sup> A local NGO COIN, together with the UNDP, have also developed guidelines for prosecutors and judges when working on cases involving vulnerable groups, such as sex workers, and LGBTI people, but according to different sources, these recommendations would need to be developed with the Prosecutors Office to be formally integrated into the work of the justice system.

<sup>147</sup> Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, requires the Dominican Republic to ensure that “competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” Similarly, Articles 1, 6, and 8 of the Inter American Convention to Prevent and Punish Torture require states to prevent and punish acts of torture.

<sup>148</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2, January 2008, Para: 21 and 22

<sup>149</sup> Principles on the Effective Investigation and Documentation of Torture and Other Cruel (2.a), Inhuman or Degrading Treatment or Punishment

<sup>150</sup> The Dominican Republic's Organic Police Law establishes two organs of internal control for the police force: the Inspector General and the Internal Affairs. Both can investigate serious misconduct by the police. In interview with Amnesty International, the Director General of the Police described this process. However, in potential cases of torture by a state official, international standards require any investigation to be entirely independent from the police force.

<sup>151</sup> *Fernandez Ortega et al v. Mexico*, Judgement of August 30, 2010, (Preliminary Objections, Merits, Reparations, and Costs), Para: 116



International law also requires states to consider the “special difficulties” in proving torture, which according to the UN Special Rapporteur “is often practised in secret by experienced interrogators who are skilled at ensuring that no visible signs are left on the victim.”<sup>152</sup>

In its jurisprudence, the Inter-American Court has stated that in cases of sexual violence, the testimony of the victim is fundamental evidence, given that sexual violence often occurs without witnesses, and does not always produce physical injuries. As stated by the Inter-American Court in *Rosendo Cantu et al v. Mexico* (2010) because rape generally occurs “in the absence of persons other than the victim and the aggressor or aggressors... one cannot expect graphic or documentary evidence and therefore the victim’s testimony constitutes fundamental evidence of the act.”<sup>153</sup> In light of this, the Court has also suggested that prosecutors should not give “excessive weight” to physical evidence.<sup>154</sup>

The testimonies gathered by Amnesty International for this research strongly suggest that rapes by uniformed police officers in the Dominican Republic take place on dark street corners, or other isolated areas, often where there are no witnesses. Sex workers rarely describe having struggled as police officers often point a gun at them, meaning they might not have evidence of bruising or other physical evidence such as DNA under fingernails that could be recovered. Interviewees also mention that police often use condoms, further limiting potential material evidence. Sex workers also told Amnesty International that uniformed police officials often do not wear name badges, making it difficult to identify individual perpetrators.

In order to carry out an effective investigation, the Dominican Republic’s Prosecutor’s Office must have due regard for these special difficulties. In line with jurisprudence, they should firstly consider the testimony of the victim as fundamental evidence. They should also take measures to recover any other evidence available. For example, by accessing video recordings from street surveillance CCTTV, requesting the register of officers on duty at the location and time of the alleged rapes, or geolocating the alleged perpetrator at the time of the offense. Such evidence collection should be subject to judicial oversight to ensure strict necessity and proportionality.

Additionally, as previously outlined, because many women who engage in sex work experience multiple levels of discrimination, and in the context of the country’s widespread gender-based violence, many have experienced violence numerous times from different perpetrators at different points in their lives, and therefore tend to normalize violence. Dominican prosecutors should therefore take this reality into account and make special efforts to utilize forensic psychologists in accordance with the Istanbul Protocol. These experts can help assess whether allegations are consistent with other indicators of torture and other ill-treatment, an additional form of evidence. Ideally such psychologists should have expertise in working with women who engage in sex work.

Finally, one of the principal reasons many women engaged in sex work fail to report sexual violence by state officials is fear of reprisals. Many sex workers indicated that the same police consistently patrol their areas of work, so if they were to make a report one day, the following they would likely encounter the same officer. International law requires Dominican prosecutors to take this specific reality into account and to take steps to ensure the complainant and witnesses are protected from intimidation and harassment after lodging a complaint.<sup>155</sup>

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<sup>152</sup> See: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, *A/HRC/25/60*, 10 April 2014; and The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, CAT/C/GC/2, January 2008

<sup>153</sup> See Inter-American Court of Human Rights, *Rosendo Cantu et al v. Mexico*, Judgement of August 31, 2010, Para: 89, Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_216\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf) and *Atenco v. Mexico*, Sentence of 28 November 2018, (Preliminary objections, merits, reparations, and costs), Inter-American Court on Human Rights, Para: 315, Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_371\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_371_esp.pdf); See also

<sup>154</sup> See *Atenco v Mexico*, Para: 315

<sup>155</sup> See The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 13

## 7 THE ALTERNATIVE



**"IF THEY CAN HAVE HER, WHY CAN'T WE"**

GENDER-BASED TORTURE AND OTHER ILL-TREATMENT OF WOMEN ENGAGED IN SEX WORK IN THE DOMINICAN REPUBLIC  
Amnesty International



## 7.1 LISTEN TO SEX WORKERS' VOICES

**“Instead of helping us, society humiliates us.”<sup>156</sup>**

### WHAT DO SEX WORKERS WANT?

- End torture and ill-treatment by the police
- To be listened to
- Alternative employment options
- Accountability and justice
- Dignity and a life free of discrimination
- Access to further education and a welfare safety net (pensions and housing support)
- Identity documents that reflect their inherently felt gender identity

As part of each interview conducted with women sex workers during this research, Amnesty International asked for their views on how their human rights could be better protected. As a way to conclude, below their recommendations are outlined.

### END GENDER-BASED TORTURE AND ILL-TREATMENT BY THE POLICE

The foremost issue of priority that was consistently raised was addressing gender-based violence and gender-based torture and other ill-treatment by the police. For example, Bridget\*, a 33 year-old cisgender women told Amnesty International that:

**“This country has the most violence against women, because if you report a man who mistreats us, they don’t do anything. He could even kill us. This should change. There shouldn’t be so much violence against women and sex workers, because I do it because I like it, and besides that’s my livelihood for my children, and it’s my only source of work.”<sup>157</sup>**

Along similar lines, P\* a young transgender women said:

**“I’d like the government to put a heavy hand on the police. Do something so they don’t mistreat us so much, so they don’t rob us. They have their job and they earn through their job. We go to the street to earn money to sustain ourselves, not so they can take it from us! We all have rights.”<sup>158</sup>**

<sup>156</sup> Interview Day 2, 1

<sup>157</sup> Interview Day 3, 7

<sup>158</sup> Interview 3, Day 1

Another transgender sex worker told Amnesty International that:

**“Trans girls should be respected, and authorities are the first people who should protect citizens and so should protect us as well. If we don’t break any articles (of the law), and don’t do anything improper, they have no reason to mistreat us.... I’d like that there was that culture, (of) respect, not only for trans girls but also for biological (women), because it’s a job. Just like working in a bank, or a supermarket, a shop...”** <sup>159</sup>

Along similar lines, Estefani\* a 24-year-old cisgender woman said:

**“To better the situation of women in the street, the first thing (needed) is an in-depth course for police because they don’t act as they should. Instead of looking after us, they do the opposite. They attack us, they disrespect us.”** <sup>160</sup>

## TO BE LISTENED TO

Nearly all women believed that they should also be free to choose to carry out sex work. They all believed authorities should listen more closely to their needs and meaningfully engage them in the development of policies that impact them.

For example, Catherine\* said:

**“It’s a normal job, like others. Because you go to a bakery to work, and its normal. You go to earn your money. It’s the same with us... but there are a lot of risks.”** <sup>161</sup>

## ALTERNATIVE EMPLOYMENT OPTIONS

Nearly all women sex workers also felt that the Dominican authorities should facilitate greater access to alternative jobs and reduce discrimination in access to employment and education. Women who live with multiple discriminated identities, such as transgender women, and women living with HIV, who had experienced additional layers of discrimination in accessing work, felt greater protections were needed to protect them from workplace discrimination.

**“The first thing the government should do, is give a dignified job to us all. Because that is where prostitution starts. Give us the liberty to do a job... to be able to go to any company and that they can give us access to work.”** <sup>162</sup>

<sup>159</sup> Interview 5, Day 2

<sup>160</sup> Interview Day 3, 9

<sup>161</sup> Interview Day 3, 6

<sup>162</sup> Interview 5, Day 1

**“They need to sit down and listen to difficulties that we face. Standing on a street corner isn’t easy. Screwing a man now and (another) man every half an hour, also isn’t easy... They should give us employment... We should be able to work in any public place and be respected.”** <sup>163</sup>

**“Those thieves, those thugs that do everything, that go around robbing and killing, they do everything and (the police) don’t catch them. But when you are earning your money and doing your work, they don’t understand that nobody (will) give you a job in a public company.”** <sup>164</sup>

## **ACCESS TO FURTHER EDUCATION AND A WELFARE SAFETY NET (PENSIONS AND HOUSING SUPPORT)**

Many sex workers also expressed interest in continuing or pursuing additional education and qualifications and felt the state should play a greater role in facilitating their access to further education that would in turn expand their job opportunities. Older sex workers, who have no access to pensions or other welfare assistance, were concerned about where they would live and believed the state should provide housing.

Cisgender women sex workers also said the state should provide greater support with child-care as they often have to pay baby-sitters during the evening while they work.

## **DIGNITY AND A LIFE FREE OF DISCRIMINATION**

Transgender women sex workers especially felt a starting point for improving their lives was to sensitize the Dominican Republic authorities and wider society about the needs and experiences of transgender women.

**“Firstly, they need trainings. Raising awareness, amongst medics, congresspeople, the President... Religions, need to be sensitized, given courses, that we are human beings, we are not aliens.”** <sup>165</sup>

**Cristina\*, said if she could speak directly to the government, she’d say: “I’d tell them that we are humans, that we aren’t dogs, or cats, or animals... That they accept trans girls because the police abuse us at night and this is our job.”**<sup>166</sup>

<sup>163</sup> Interview 2, Day 1

<sup>164</sup> Interview 4, Day 5

<sup>165</sup> Interview 1, Day 1

<sup>166</sup> Interview 1, Day 3

## IDENTITY DOCUMENTS THAT REFLECT THEIR INHERENTLY FELT GENDER IDENTITY

Transgender women especially want to be able to carry identity documents that reflect their gender identity, consistent with international human rights standards, so that they face less discrimination when applying for jobs.

R\* said, **“(They need to) make a change of identity for our names, it’s quite possible, and very much needed. It doesn’t matter how feminine we appear, we always have boys’ names. Wherever we go we feel bad.”**<sup>167</sup>

Some transgender women also felt there was a need to have refuges or support centers for LGBTI children so that transgender children and other teenagers pushed out of their homes due to their real or perceived sexual orientation or gender identity need not resort to exchanging sex for money as a means of survival, as many of them had done.

Amnesty International does not take a position on the exact form that regulation of sex work should take, or whether it is necessary for such measures to be either within or apart from the general laws that broadly regulate other businesses or employment practices in a country. Rather, this should be determined in collaboration with sex workers and should comply with human rights standards.<sup>168</sup>

En República Dominicana, las organizaciones de personas que ejercen trabajo sexual y quienes lideran a este colectivo tienen diversas estrategias para mejorar la protección de sus derechos humanos.

In the Dominican Republic, sex worker leaders and organizations have various strategies for improving the protection of their human rights. Jacqueline Montero, former President of MODEMU, and now a congressperson in the Dominican Chamber<sup>169</sup> of Deputies is seeking to pass a bill<sup>170</sup> which would regulate exchange of sexual services between consenting adults for remuneration and seeks to provide greater social protection for sex workers and their families.

Otrasex sees unionizing as another option to guarantee social security, pensions, and other worker’s rights for the tens of thousands of Dominican women engaged in sex work across the island. Early in 2018, the organization became a member of the National Confederation of Trade Union Unity (Confederación Nacional de Unidad Sindical). Eulogia Familia, Vice President and in charge of gender issues at the union, who was instrumental in facilitating the inclusion of sex workers in the union, told Amnesty International that the Dominican government is two-faced when it comes to sex workers. “Remittances largely arrive here because of Dominican women sex workers that are in Spain, Argentina, Chile, Uruguay, Europe... The government becomes smug and content when 12% of the GDP arrives in dollars. But then, who generates it? Here they say that (sex workers) aren’t worth anything, that they are inferior, but those that carry out prostitution overseas here mean a lot, because they are contributing dollars. Ultimately, it’s an issue that we understand needs to be pushed, above all their inclusion in social security.”<sup>171</sup>

Finally, various women told Amnesty International that while they had never made formal complaints about violence before, since becoming members of sex worker organizations they felt more empowered to press charges, suggesting - as international studies have - that sex worker-led organizations, when funded and supported, can play a vital role in empowering sex workers to reduce violence.<sup>172</sup>

<sup>167</sup> Interview 1, Day 4

<sup>168</sup> Amnesty International, Policy on States’ Obligations to Respect, Protect and Fulfill the Human Rights of Sex Workers (2016), 14. For an elaboration of why Amnesty International takes this position, see the section on “Why not legalization?” in the explanatory note accompanying the policy.

<sup>169</sup> AP, “A former prostitute hopes to shake up Dominican Congress”, 6 July 2018, Available at: <https://apnews.com/f22a37e4a3584ec29c2c5b03880563c3>

<sup>170</sup> Propuesta de Ley que Regula el Trabajo Sexual para la Protección y Atención Integral de las Personas que lo ejercen, received from MODEMU on 14 January 2019

<sup>171</sup> Interview with Eulogia Familia, Vice President of the Confederación Nacional de Unidad Sindical, 16.7.18

<sup>172</sup> Global Alliance Against Traffic in Women (GAATW), Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions, 2018

## 7.2 MATCH INVESTMENT IN PUBLIC HEALTH WITH STRUCTURAL REFORM

The Dominican Republic has made large investments in its public health response to HIV & AIDS since the 1980s. According to UNAIDS, in 2008, the country spent US\$ 31.3 million on the response – almost half of which came from international donors – principally the Global Fund,<sup>173</sup> and in 2012, more than US\$ 41 million.<sup>174</sup> Despite having an elevated risk for HIV, less than 6% of overall funding for HIV in 2012 was designated to interventions with sex workers, men who have sex with men, and transgender people.<sup>175</sup>

It is no longer news in the public health world that the HIV epidemic is driven by human rights violations,<sup>176</sup> and in response international donors, and the Dominican government driven by this funding impetus and HIV&AIDS advocates have sought to mainstream human right-based programming and approaches to reducing stigma and discrimination into their response to HIV.

Despite this, the political will to address the underlying and root causes of discrimination, which often lead to violence that amounts to torture and other ill-treatment, has been sorely lacking.

While there is an urgent need to ensure that all those suspected of criminal responsibility are brought to justice for torture and other ill-treatment, international law requires the Dominican Republic to provide full reparation for victims of torture that provide real structural reform – including public apologies and guarantees in non-repetition, and changes in relevant laws and practices.<sup>177</sup>

In recent years, CONAVIHSIDA, in consultation with Dominican NGOs, led the drafting of comprehensive anti-discrimination legislation – (Ley General de Igualdad y No Discriminación) to protect historically marginalized groups. If passed, this law would give teeth to the country's Constitutionally provided protection against discrimination. It would also be among the first of its kind in the Caribbean. The law, would provide for protections for discrimination in a wide range of spaces, both public and private, including in healthcare, education, social protection, the workplace, and public spaces, among others. Should the bill pass, the Dominican Republic will have an opportunity to take principled leadership to protect the human rights of some of the country's most marginalized groups, including women engaged in sex work, and to address the underlying drivers of these grave human rights violations.

The Dominican Republic also ratified the Convention against Torture in 2012. It should seize the opportunity of this report, to put in place a national protocol for the investigation of torture, that includes a gender perspective, and is guided by the Istanbul Protocol.

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<sup>173</sup> ONUSIDA y COPRESIDA, *Medición del Gasto en Sida en la República Dominicana*, 2010, p.8

<sup>174</sup> ONUSIDA y CONAVIHSIDA, *Medición del Gasto en SIDA 2012 y serie de tiempo 2009-2011*, 2014, p.19

<sup>175</sup> ONUSIDA y CONAVIHSIDA, *Medición del Gasto en SIDA 2012 y serie de tiempo 2009-2011*, 2014, p. 26

<sup>176</sup> See numerous studies including Global Commission on HIV and the Law: 'Rights, Risks and Health', July 2012, Available at: <https://hivlawcommission.org/report/> and The Lancet, 'HIV and sex workers', 23 July 2014, Available at: <https://www.thelancet.com/series/HIV-and-sex-workers>

<sup>177</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3, , January CAT/C/GC/3, 2012, Para: 16

## 8 SPECIFIC RECOMMENDATIONS

### TO THE PRESIDENT

- Publicly recognize and condemn the use of rape, as a form of torture, and other forms of gender-based violence by the National Police and make clear that all those suspected of criminal responsibility will be brought to justice in fair trials before ordinary civilian courts.
- In consultation with civil society organizations, develop public education campaigns to counter the stigma, discrimination and machismo that drives sexual violence, gender-based torture and other ill-treatment by state and non-state actors.

### TO PARLIAMENT

- Pass the comprehensive anti-discrimination legislation drafted by CONAVIHSIDA, consulted with Dominican civil society, and consistent with international human rights standards, to protect against institutionalized and societal discrimination of socially marginalized groups.
- In consultation with transgender-led organizations, enact and implement gender-identity recognition legislation that allows for individuals to change their legal name and gender, including the gender markers on official's documents issued by the state, through a quick, accessible, and transparent procedure that reflects the individual's sense of gender identity.
- Repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration.
- Ensure the meaningful participation of sex workers, including those who face multiple forms of discrimination – such as women living with HIV, transgender women, and older sex workers – in the development of laws, policies and programs, that protect them from discrimination that fuels human rights violations, respects their agency and guarantees that all individuals who undertake sex work can do so in safe conditions, are free from exploitation and are able to continue or stop selling sex when and if they choose, while ensuring sex workers are not compelled to participate in such programs.
- Respect all people's economic, social and cultural rights, in particular guaranteeing access for all to education and employment options and social security to prevent any person from having to rely on selling sex as a means of survival due to poverty or discrimination. Take steps to rectify discrimination against people who are gender non-conforming that limit their access to employment in both the public and private sector.
- Develop specific programs to support transgender people to access education and employment, implement public programs to combat entrenched gender stereotypes and to increase awareness of the realities transgender identities.

### TO THE PROSECUTOR GENERALS' OFFICE

- Ensure that a prompt and impartial investigation is carried out when there are “reasonable grounds” to believe that sexual violence, gender-specific forms of torture, or other ill-treatment have been carried out by law enforcement officers, and that suspected perpetrators are prosecuted in proceedings that meet international standards of fairness.
- Consistent with the jurisprudence of the Inter-American Court on Human Rights, recognize that in cases of alleged rape, the victim's testimony constitutes “fundamental evidence of the act.”<sup>178</sup>

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<sup>178</sup> See Inter-American Court of Human Rights, *Rosendo Cantu et al v. Mexico*, Judgement of August 31, 2010, Para: 89, Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_216\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf) and *Atenco v. Mexico*, Sentence of 28 November 2018, (Preliminary objections, merits, reparations, and costs), Inter-American Court on Human Rights, Para: 315, Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_371\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_371_esp.pdf)

- Carry out investigations into sexual violence, gender-based torture or other ill-treatment carried out by state agents in accordance with the Istanbul Protocol, and develop a national protocol for the investigation of potential cases of torture and other ill-treatment.
- When “reasonable grounds” exist to believe torture or ill-treatment have been carried out by police, take proactive steps to recover all available evidence, for example, by accessing recordings from street surveillance CCTTV, requesting the register of officers on duty at the location and time of the alleged rapes, or geolocating the alleged perpetrator at the time of the offense. Ensure such evidence collection is authorized by a judge to ensure strict necessity and proportionality.
- With the consent of the alleged victim of torture or other ill-treatment, carry out forensic exams by psychologists and doctors in line with the Istanbul protocol that take into account sex worker’s increased vulnerability to violence and the patterns of rape described in this report.
- Collaborate with Human Rights Observatories and sex worker-led organizations to help effectively investigate allegations of police torture or other ill-treatment of women engaged in sex work.

#### **TO THE GENERAL DIRECTOR OF NATIONAL POLICE**

- Publicly condemn the use of rape and other forms of torture and other ill-treatment by members of the national police and make it clear that any police officer who commits such human rights violations will be criminally charged, prosecuted, and tried in proceedings that meet international standards of fairness.
- Immediately suspend any police officer suspected of perpetrating sexual violence, or gender-based torture or other ill-treatment until an independent, impartial, and prompt investigation is concluded.
- Hold superior officers accountable if they knew or should have known of the unlawful use of force, torture or other ill-treatment by police officers or other state agents.
- In collaboration with UN agencies, and Dominican NGOs, ensure that all members of the National Police receive ongoing human rights training, with specific focus on Constitutionally guaranteed due-process rights, and specific sensitization on the rights of women, transgender women, and sex workers.

#### **TO FEMINIST ORGANIZATIONS AND WOMEN’S MOVEMENTS**

- Strengthen collaborations with sex worker and transgender-led organizations in the fight against sexual violence, gender-based torture and other ill-treatment, by listening and giving voice to cisgender and transgender sex workers.

#### **TO INTERNATIONAL DONORS AND UN AGENCIES**

- Encourage the Dominican government to pass comprehensive anti-discrimination legislation drafted to protect against institutionalized and societal discrimination of socially marginalized groups.
- Ensure that technical assistance includes training for prosecutors on how to address potential cases of gender-based torture and other ill-treatment, especially among groups who suffer multiple forms of discrimination, as well as guidance on the application of the Istanbul Protocol.
- Provide technical assistance and training for law enforcement officials around international human rights frameworks, including the absolute prohibition on torture and other ill-treatment, and gender-based torture and ill-treatment towards groups that suffer multiple discrimination.
- Ensure that technical and financial assistance to address gender-based violence, HIV, women’s rights programming and other relevant initiatives includes support for sex worker-led organizations and focuses on achieving policy and legal reform to reduce human rights violations against women who engage in sex work which is driven by stigma and discrimination and machismo.







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 [info@amnesty.org](mailto:info@amnesty.org)  
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# ‘IF THEY CAN HAVE HER, WHY CAN’T WE?’

## GENDER-BASED TORTURE AND OTHER ILL-TREATMENT OF WOMEN ENGAGED IN SEX WORK IN THE DOMINICAN REPUBLIC

Across Latin America and the Caribbean, gender-based violence is so widespread it is considered a public health problem. Evidence shows that women sex workers are at heightened risk for violence from state officials and other individuals.

Tens of thousands of women in the Dominican Republic engage in sex work. This report analyses the stories of 46 cisgender and transgender women sex workers, many of who reported that rape at gunpoint, beatings, humiliation, and verbal abuse are routinely perpetrated against them. This type of violence can amount to gender-based torture and other ill-treatment, carried out with the purpose of punishing them for transgressing socially constructed norms about femininity and sexuality, and as a form of social control. The criminalized status of sex workers fuels arbitrary detentions by police and enables these grave human rights violations, with impunity.

Women sex workers face significant structural barriers in reporting violence, and the authorities fail to investigate these potential cases of gender-based torture and other ill-treatment as required by international law.

While the Dominican Republic has taken steps to address the co-existing epidemics of violence against women and HIV and AIDS, it has stopped short at carrying out the legal reforms sorely needed to protect some of the country’s most vulnerable women.

A draft law designed to address multiple forms of discrimination is being considered by decision-makers. It urgently needs to be passed to address the underlying drivers of this gender-based torture and other ill-treatment, which like the wider epidemic of gender-based violence, finds its roots in multiple forms of stigma and discrimination, hatred, and machismo.

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