



'HIV Jane' and 'COVID Geni': What does COVID-19 mean for the human rights of those working in the sex industry?

Antónia Maria Martin Barradas*

abstract: People working in the sex industry have been severely affected by the social and economic crisis stemming from COVID-19. As a business generating immense profits worldwide, whether in person or online, it is time to bring this industry into the global debate over business and human rights, with a focus on gender and intersectional perspectives.

COVID-19 has [highlighted](#) the critical role of adequate investments in public health systems, comprehensive social protection programs, decent work, housing, food, water and sanitation systems, as well as for institutions to advance in research around healthcare and gender equality. Such investments are crucial in [responding effectively](#) to global health pandemics and in counteracting multiple, intersecting forms of inequality, including deep inequalities in income and wealth both within and among countries.

*Antónia Martin Barradas is the head of *Barradas Direitos Humanos*, a consultancy for human rights advocacy in Portugal. She is a gender equality trainer and in the list of specialists for the Portuguese Commission for Citizenship and Gender Equality. [EMA](#) graduate from 2011, she has contributed to the Global Campus [CHRA Summer School](#) and [Venice School](#). More info at cienciavita.pt

In relation to HIV and even more to COVID-19, those rendering sexual services are particularly vulnerable to their direct and indirect consequences, which especially impairs their possibilities to enjoy their economic and social rights, and place them further away from enjoying 'freedom from fear and from want', as stated in the Universal Declaration of Human Rights ([UDHR](#)).

Vulnerabilities brought by COVID-19

Since the early months of the pandemic, Portuguese civil society has engaged with the ways in which many people working in the sex industry have been suffering an unprecedented social and economic [crisis](#). [Healthcare, social welfare and safety](#) have become more at stake. New challenges have emerged both for states and corporations, with a greater need for protection and promotion of the human rights of those who provide [sexual services](#).

The sex industry includes occupations associated with a high risk for infection — sexually transmitted infections (STDs) and also COVID-19— but many states have failed to recognise the structural roots of several 'high-risk behaviors', mostly holding those providing sexual services responsible for the risk of infecting others, instead of making their [clients accountable](#) as well.

One must consider how the right to health of those providing these services is compromised because they are more vulnerable to infection. The communal living arrangements they often find themselves in and the fact that many sexual service providers are itinerant influence not only their welfare but also their health conditions, for example due to inadequate access to hygiene facilities or protective equipment.

This shortfall in state-coordinated policies has been raised by civil society in [Portugal](#), [France](#), [Spain](#), [Italy](#), the [Netherlands](#), and [Belgium](#). This increases the need to discuss such issues with a gender lens and from an intersectional perspective, within the normative context of business and human rights.

Applying international human rights law

There are urgent measures that states should provide during the pandemic for the inherent dignity of all to be respected and protected. First and foremost, the [minimum core obligations](#) laid down in the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)) should be prioritised by states and be complied with. States must also use their maximum available resources to guarantee the progressive realisation of economic and social rights, particularly the right to health. Targeted programmes to protect livelihoods are vital. State measures which limit these rights should comply with [article 4](#), as they must be necessary, reasonable, and proportionate.

As [highlighted](#) by the Committee on Economic, Social and Cultural Rights (CESCR), states must adopt 'regulatory measures to ensure that health-care resources in both the public and the private sectors are mobilised and shared among the whole population' for a comprehensive, coordinated health-care

response to the crisis. This applies to the mostly forgotten population in the sex industry, which tend to be part of the informal economy in many countries. In the same [statement](#) the recommendations on the right to free and gainful employment can be applied in relation to the sex industry. Also [CEDAW General Recommendation 19](#) on violence against women is applicable in this regard. As [added](#) by the CESCR, since the pandemic is a global crisis, international assistance and cooperation are crucial as a core principle of the ICESCR. This includes 'the sharing of research, medical equipment and supplies, and best practices in combating the virus'. Such international endeavours also entail the need for 'coordinated action to reduce the economic and social impacts of the crisis', as well as 'joint endeavours by all states to ensure an effective, equitable economic recovery'. These efforts are particularly relevant in the context of healthcare and the sex industry where many workers are from disadvantaged groups and more vulnerable to such impacts.

Taking a business and human rights perspective

The United Nations Guiding Principles on Business and Human Rights ([UNGPs](#)) provide the 'protect, respect and remedy' framework, which is relevant also in relation to the sex industry, for the realisation of the rights of those providing sexual services, in the context of possible business-related human rights abuses. The UNGPs are important in considering the gender dimensions and intersectional perspective of these services. In the 2019 [report](#) to the UN Human Rights Council, the related Working Group highlighted that, 'since women's human rights are an inalienable, integral and indivisible part of universal human rights, both states and business enterprises should take concrete steps to identify, prevent and remedy gender-based discrimination and inequalities in all areas of life.' This report guides them on integrating a gender perspective in implementing the UNGPs, proposing a '[three-step gender framework](#)' and using it to develop gender guidance to each of the 31 principles.

It can be argued that the **state duty to protect** entails to mitigate the pandemic impact on the rights of those rendering sexual services, as they are often subject to structural [discrimination and disadvantage](#). For example, in line with Principle 3, states should enforce laws that are aimed at, or have the effect of, requiring the concerned enterprises to respect [sexual and reproductive](#) health rights of these persons, particularly women, and should periodically assess the adequacy of such laws and address possible gaps. It is important to address the direct and indirect discriminatory effects of existing laws and policies on women's rights in the sex industry in the COVID-19 context.

Moreover, states should adopt an extended moratorium on evictions or mortgage payments at locations where sexual service providers work, either from their own home or any other rented location. State should also consider the need of social relief and income-support programmes for food and income

security to sexual service providers, so subsidising the cost of essential foodstuffs and hygiene products to ensure they are affordable.

In parallel, the **business enterprises' duty to respect** the rights of sexual service providers entails to fight (in solidarity with states) against the pandemic and other longstanding inequalities by applying a [gender lens](#). As highlighted by the cited WG, 'women are overrepresented in [informal, casual and part-time](#) work worldwide, as well as in supply chains of numerous industries, where they are more vulnerable to exploitation and abuse'. This also applies to the sex industry, which is very much connected to the 'informal economy' as many of its workers are informal, casual and part-time.

Corporations doing business within the sex industry (like online platforms) should apply the aforementioned '[gender framework and guidance](#)' in all aspects of their responsibility to respect the rights of those working in this context, for example, through policy commitments, due diligence processes, and remedies to adverse impacts caused or contributed to (see Principle 15).

Businesses making profits from economic activities within the sex industry – whether in person or online– should particularly track the effectiveness of their responses (see Principle 20) to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation, which certainly include those working in the sex industry, such as migrant women for example. Another relevant principle is found in the UN [Global Compact](#), concerning the duty to treat all persons fairly at work, to respect and support their rights and non-discrimination (for example, to respect workers' rights to time off for medical care and counselling for themselves and their dependents). Also the [Women's Empowerment Principles](#) are significant to guide the private sector in promoting gender equality in the workplace, marketplace and community.

Recommendations

Affordable and equitable access to Internet should be provided to enable online sexual service providers to carry out their activities from home, in order to ensure that the rights and related obligations under the [ICESCR](#) are protected and fulfilled during such particular social and economic crisis, but also [outside](#) the context of the current pandemic.

[Immediate measures](#) to protect employment, pensions and other social benefits are a priority for those rendering sexual services, as well as the need to subsidise wages, provide tax relief and establish supplementary social security and income protection programmes.

These people are often excluded from access to the benefits of scientific advances of research and prophylaxis, which should be universal. The impacts of the current crisis should entail that states share diagnostics, medicines and vaccines in a flexible manner in what concerns their intellectual property regimes. These issues should be explored also in relation to the UNGPs and the [Sustainable Development Goals](#), as nobody should be left behind.

Early warning mechanisms and timely, transparent information provided by states would make it easier to tackle emerging epidemics. The WHO and other international organizations must therefore be supported in their fight to protect those particularly [disadvantaged and marginalised](#) in such contexts, in which sexual service providers —especially women— are included.

Overall, joint efforts by states and corporations should mobilise resources to ensure effective and equitable economic recovery of those deeply affected by the consequences of such situations, with the necessary integration of gender and intersectional perspectives in the implementation of the policies concerned. This counts also in the context of other pandemics.