Written feedback: Gender based and domestic violence initiative

International Committee on the Rights of Sex Workers in Europe

About the contributor

The International Committee on the Rights of Sex Workers in Europe (ICRSE) is a sex worker-led network representing more than 100 organisations led by or providing services to sex workers in 31 countries in Europe and Central Asia, as well as 200 individuals including sex workers, academics, trade unionists, human rights advocates, and women’s rights and LGBT rights activists. ICRSE opposes the criminalisation of sex work and calls for the removal of all punitive laws and regulations regarding and related to sex work as a necessary step to ensure that governments uphold the human rights of sex workers.

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ICRSE welcomes the possibility to provide feedback to the European Commission’s public consultation on Gender-based and domestic violence. We would like to take up this opportunity and provide recommendations based on our 15 years of experience and cooperation with sex worker-led organisations working at local and national levels.

Access to justice for sex workers in Europe is a considerable challenge and a key area of work for ICRSE. In November 2020, ICRSE published a report ‘Undeserving victims?’ Community report on migrant sex workers victims of crime that analyses 49 sex workers’ testimonies regarding policing, reporting a crime and access to justice in 10 EU countries. The report clearly reveals that there is significant lack of implementation of the EU Victim’s Rights Directive in practice, mainly by front-line police officers. The report also points out how specific prostitution laws and diverse municipal bylaws prevent sex workers victims of crime to enjoy protections and rights under the EU Victims’ Directive and consequently make sex workers more vulnerable to crime.

Migrant sex workers are estimated to comprise the majority of the sex worker population in Western Europe, and a significant segment of the community in Central-Eastern Europe. Sex workers bear a high burden of violence in Europe, including physical, sexual, and psychological violence. However, despite increasing recognition of violence against women and other marginalised groups as a human rights and gender equality priority by European Union (EU), crimes against sex workers that occur within and outside the context of sex work are frequently overlooked.
In line with the three possible scenarios proposed by the European Commission, we would like to provide feedback on first and third proposed scenarios:

1) **The baseline scenario.** There remain important opportunities to improve the situation of (migrant) sex workers survivors of violence through improved implementation of existing EU legislation. We remain deeply concerned about the inadequate implementation of EU Victim’s Rights Directive that, if properly implemented, would contribute to improving access to justice to sex workers who experience gender-based violence (for details see [ICRSE feedback on the implementation of the EU Victims’ Directive](#)). In summary:
   a. When seeking access to justice, communities that face multiple or intersectional oppression and discrimination such as sex workers, migrants or undocumented migrants, face requirements and restrictions to which other victims are not subjected. Such requirements and restrictions may run counter the non-discrimination principle of Article 1 of the Victim’s directive.
   b. Police often adopt rigid standards about what they consider as appropriate behaviour for women, and that they treat those who do not conform to mainstream gender norms such as sex workers in degrading and humiliating ways. Our abovementioned report revealed that unless the report was filled with the help of a sex worker service provider, NGO or collective, victims were rarely referred to appropriate victim support services by the competent authorities.
   c. Crimes against sex workers fall clearly under the definition of gender-based violence and hate crime. However, none of the victims interviewed for the purpose of above mentioned report was treated as a victim with specific protection needs. In many cases, authorities implied that sex workers deserved violence or that violence was a ‘part of the job’. The report points out that in particular the provision of Article 22 (3) of the Victim’s directive that aims at protecting victims of gender based violence, hate crime and/or bias motivated crimes lacks its proper implementation due to discriminatory attitudes towards sex workers victims of crimes.

2) **The third proposed option: A holistic initiative on preventing and combating gender based violence and domestic violence.** ICRSE urges the commission to use this initiative to strengthen gender sensitive crime prevention that is based in community empowerment, to improve recognition of victims and to roll out provisions on non-judgmental low threshold services to victims. The initiative should not be primarily focused on strengthening the apparatus of the criminal justice system. This initiative should not call for **direct or indirect criminalisation of sex work**, and avoid any conflation of sex work with sexual exploitation and human trafficking.
   a. The new sectoral directive can be an opportunity to promote gender-sensitive and inclusive crime prevention strategies that are based in community empowerment and that involve populations facing intersectional discrimination such as sex workers, migrants, LGBT, Roma, and others at national, local, and municipal levels. It can be an opportunity to rollout regional, local, and municipal policies and protocols that allow marginalized communities facing higher prevalence of crime such as sex workers and their organisations to participate in designing specific anti-violence programs that
benefit their communities. Such provision can increase crime reporting among members of marginalized communities and raise trust towards the public authorities¹.

b. The new sectoral directive can include a provision that will lead states to critically review policies, laws and/or (municipal) by-laws that discourage victims of gender based violence and other bias motivated violence from reporting crimes committed against them. Such policies may include restrictive migration laws, pimpping laws that are routinely used against sex workers, vague public morality, nuisance, loitering, and decency laws disproportionately and subjectively applied against trans people, including sex workers and other marginalised groups, e.g. racial/ethnic minorities. The new sectoral directive should explicitly reference an inclusive, non-discriminatory approach including about a victim’s or witness’s residence or migration status, consistent with the Victims’ Directive (Article 1) and the Istanbul Convention (Article 4).

c. The new sectoral directive can be an opportunity to promote inclusion and recognition of the role of low threshold, community-based organizations including sex workers and their organizations in the integrated and targeted specialist support referral and cooperation mechanism. Further, community based organizations should take part at national, local, and municipal interdisciplinary working groups on crime prevention, gender-based violence, and trafficking in human beings, including monitoring and evaluation of such strategies and policies.

d. The sectoral directive can also strengthen actions to protect and support the most marginalized communities against gender based violence by holding all relevant state actors accountable for facilitating access to justice for marginalized communities such as migrant sex workers. It can also introduce measures to enhance police accountability and transparency, and work with marginalised groups disproportionally policed to monitor their implementation.

e. Member states should collect and report data on gender-based violence and analyse them. The critical analyses of such data should steer governments to review policies that are ineffective or have significant negative effects on the ability to access justice and in order to identify groups and communities in need of better protection against crime and gender based violence.

f. Member states should train professionals (victim support providers, police officers, judicial officers, NGO staff, healthcare workers, teachers, etc.) on preventing and responding to discrimination and violence against trans people, sex workers, and other groups facing intersectional discrimination and violence, and providing gender sensitive and appropriate support.

g. Any new legislation addressing and codifying violence against women should not lead to further criminalisation of sex work, and rather safeguard the dignity and human rights of sex workers. UN agencies addressing HIV/AIDS, namely UNAIDS, WHO, UNFPA and UNDP² have found that, in the context of sex work, criminal laws actually cause harm, especially for already marginalized group. Criminal sanctions against sex work contravene a number of human rights, including the non-discrimination principle, the right to equality before the law and equal protection of the law without discrimination, the right to be free from cruel, inhuman or degrading

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¹ EU Strategy on Victims’ Rights 2020-2025
treatment or punishment, and the rights to privacy and to health. Nor do they address the structural factors that perpetuate women’s economic and social inequality, which contribute to discrimination and violence.

h. **The new sectoral directive should take into account the growing body of evidence that any criminalisation of sex work, including of clients and third parties, negatively impacts the safety, health and rights of sex workers.**³ We oppose the neo-abolitionist definition of prostitution/sex work as inherently violent and synonymous with sexual exploitation. This approach obscures the complex realities of sex workers’ lives and work arrangements, and in consequence fails to address the diversity of exploitative working practices and violence that do occur in the sex industry⁴. Conflation of sex work/prostitution with violence against women and, as a response, policies criminalizing purchase of sex that have been introduced in numerous EU countries have been proven ineffective, having significantly negative impact on sex workers’ agency, wellbeing, safety, access to services and justice. The researches from France⁵, Northern Ireland⁶, Sweden⁷ or Norway⁸ point out how such policies fail to protect people selling sex.

i. **The new directive should avoid any “end demand” for sexual services** that are driven by abolitionist feminist ideologies rather than evidence and research. As numerous research pointed out, it can foster repressive sex work policies, which have been proven to exacerbate sex worker’s vulnerabilities to violence, compromise sex workers’ safety, access to health services and access to justice.⁹

j. **A comprehensive approach to violence should address violence in the workplace.** The new sectoral directive should also take a holistic approach towards violence in other settings, including violence and harassment in the workplace, consistent with the ILO’s Convention 190 on violence and harassment in the world of work that also covers informal sector workers. Female labour sectors populated by migrant labour, such as domestic and care work in private households, entertainment and sex work, are rarely fully recognised as work, and as such, do not, or only marginally, benefit from protection of labour law, nor do they provide legal migration channels.¹⁰ The lack of regulation in these sectors and the illegal or semi-legal character of women’s work is also tied to women’s vulnerability under migration law and can increase risk of exploitation and trafficking.¹¹ Migrant women working in these sectors need to be able to organise to protect their human rights without fear of losing the right of continued residency, just as sex workers need to be able to organise without fear of arrest and arrest.

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⁴ ICRSE: Exploitation- Unfair labour arrangements and precarious working conditions in the sex industry. Community report, 2016

⁵ A study on the impact of the law against ‘Prostitution system’ in France

⁶ Assessment of impact criminalization of the purchase of sexual service in Northern Ireland


⁸ Amnesty International: Norway: The Human cost of ‘crushing the market

⁹ Platt and others (2018); GAATW, ‘Moving Beyond Supply and Demand Catch-Phrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking’ (2011).


¹¹ Anderson and O’Connell Davidson (n 30) 11.
detention. Governments must remove obstacles for those women workers to exercise their right to freedom of association.\textsuperscript{12}

k. The new sectoral directive should ensure that the language used does not undermine women’s empowerment and agency by contributing to a narrative of women as helpless victims incapable of making decisions for themselves. The directive should provide a framework for policies that uphold and protect the human rights of women, including the right to self-determination, increase women’s options and opportunities, rather than restrict, repress, or criminalise the limited options they have.

\textsuperscript{12}CEDAW GR 26 para 26(b); Amnesty International 2016 14.