Submission: innovative and transformative models of social inclusion for victims of trafficking

Submission from the International Committee on the Rights of Sex Workers in Europe (ICRSE) to the UN Special Rapporteur on Trafficking in Persons, especially Women and Children

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 working with sex workers in 31 countries in Europe and Central Asia, as well as 150 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. As long as sex work is criminalised – directly or indirectly through laws and practices targeting sex workers, clients, or third parties – sex workers will be at increased risk of violence (including police violence), arrests, blackmail, deportations and other human rights violations.

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Prostitution policies significantly shape how social inclusion programmes of victims of trafficking and victims of exploitation in the sex industry are framed. Currently, there are several typologies of prostitution policies that can be called ‘criminalisation’ of prostitution, ‘regulation’, ‘legalisation’ and ‘decriminalisation’. These categories are determined by two opposite ideologies: a call for the recognition of sex work as work and by consequence an end to criminalisation and legal oppression, and on the other hand the definition of prostitution as intrinsic violence against women and a support the criminalisation of clients as a policy intended to disrupt, decrease and ultimately abolish prostitution.

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Looking at the paradigms above, we can outline 3 approaches of social inclusion of sex workers:

1) Selling sex is criminalized - sex workers represent security risks for society, sex workers are portrayed as immoral or anti-social, and therefore deserving punishment. Criminal justice mechanisms are implemented within restorative justice systems in order to include those who are in breach with laws (criminalizing prostitution) into society. In case of migrants working in the sex industry, it may constitute reasons for detention and deportation. Exiting strategies and interventions rely on coercion and penal sanctions. SWOP-USA reports that the vast majority of funded sex worker services in the United States are court-ordered exit programmes. Viewing sex work as violence and a crime, these programmes often centre shaming and trauma-therapy and ignore sex workers’ skills and economic needs. The effect of such laws and approach is extremely negative as it builds a significant barrier between people working in sex industry (including involuntarily) and law enforcement authorities. Evidence, literature and studies show that denunciation to authorities works as a means of coercion by traffickers and those who exploit people in the sex industry. It is also recognized globally as one of the indicators of trafficking in human beings. In the policy systems, where prostitution is criminalized, trafficked persons may be charged with prostitution crimes. Treating trafficked persons as criminals subjects them to punishment and detention rather than providing adequate services, including adequate social inclusion programmes.

2) Selling sex is legal, but other aspects of sex industry are criminalized (such purchase of sex services or facilitation of sexual services, third party criminalization...). In such systems ‘prostitution’ has been defined as the ultimate form of ‘sexual exploitation’, to which no woman could ever consent. Such approach is problematic as it constructs all sex workers as powerless victims (and often victims of trafficking) and refuses to acknowledge their agency in making decisions about their lives and work. For instance in Sweden, where sex workers willing to oppose the dominant narrative about sex workers as victims of male oppression are discredited and infantilised, and state institutions depict them as self-destructive or self-deceiving, and thus in need of rescue. In this way, sex workers are being denied mental capacity to decide what is actually good for them, critical thought and informed decision making.2 Such attitudes consequently shape re-integrative and inclusive social interventions that are designed to prescribe how good way of living looks like. The evidence from Africa on failure of “Economic empowerment programmes for sex-workers”3 points out that many programmes are designed with persisting stigmatised and stereotypical views of sex work. Often, sex workers should stop with selling sex as pre-condition of possibility to remain in such programme. As a consequence, the income of sex workers decreases significantly and is one of the causes of failure of such programmes, as there is significant drop-out of people from such programmes.

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1 NSWP: Sex work as work, Policy Brief, 2017

2 ICRSE Community report on Structural Violence

3 NSWP: Economic Empowerement: Does Rehabilitation have a role? Available at:
Failure of Exit programmes in France:
Since 2016 when the Swedish model of law criminalizing purchase of sex services came into force in France, significant amounts have been invested into “Exit programmes” for “prostitutes”. The law was announced as a major breakthrough opening new "help" for "prostitutes" to fight against trafficking in human beings and push back "prostitution". The threshold for entry into this programme is so high that the majority of applications are currently rejected. Associations providing exit programmes financed by government must ensure that people have stopped sex work, and that they are sufficiently “re-integratable” to deserve “help” from the state. Sex workers are asked to speak French well in order to find work, and have already stopped sex work long enough to prove that they are in a serious process, and that they are not going to take advantage of this money while continuing to work in the sex industry in secret. Departmental commissions including prohibitionist associations, police, and authorities working together, monitor that people do not "relapse" and if the police services that are part of the commission locate a person selling sex that takes part in an exit programme, the person is excluded from the programme immediately. The current numbers show that there are only a few dozen people who will be “helped”, excluding in fact the people who need help the most because they cannot stop sex work immediately due to many reasons, do not speak French well enough (mainly migrant sex-workers that are even more vulnerable), or cannot prove a stable enough situation to be credible in their “commitment within the exit route”. Neither the “exit route", nor the law as a whole, actually help to stop sex work, since the programme is aimed especially at people who have already managed to stop by themselves.

Sex workers’ and trafficked persons’ agency should not be undermined in programmes that sex workers and trafficked persons’ wilfully take part in. Economic empowerment programmes, programmes that aim to include certain (marginalized) groups into society should be produced from the views and ideas of those groups including sex workers and trafficked persons’, and be ideally managed by the target groups themselves.

Respect Queensland (Australia) implements in a not fully decriminalized system a person-centred ‘career development program’. Funded as an exit programme, it serves sex workers with different needs and wishes, including sex workers who wish to build their sex work and non-sex work skills and those who wish to transition away from sex work. This programme focuses on recognising the transferable skills in sex work and building sex workers’ confidence in the workforce across the board.

Regardless of whether the policies criminalize some aspect of sex work, the programmes that aim to include victims of sexual exploitation, sex trafficking victims or sex workers into society and to empower them, should remove stereotypical and stigmatizing perceptions, recognize the agency of participants of such programmes and include sex workers, victims of THB or other target groups into designing of such programmes.

Sex workers activists have been consistently critical of rehabilitation and have categorically condemned of raids and rescues in the name of anti-trafficking policies. Sex workers from Asia

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4 Thierry Schauffauser, „Out of prostitution path“: the big foutage of path, November 2017, available at: http://ma.lumiere.rouge.blogs.liberation.fr/2017/11/19/parcours-de-sortie-de-la-prostitution-le-grand-foutage-de-gueule/ accessed Nov.13, 2018
argue that money would be better spent on increasing sex workers access to justice, education, safe workplaces, finance, housing, health care and other building blocks of fulfilled lives. The sewing machine has been used to symbolise rehabilitation and economic empowerment. Contrary, sex workers activists have accompanied the symbol of sewing machine with slogans opposing ‘raid and rescue’ such as ‘Save us from Saviours’; ‘Not Your Rescue Project’ and ‘With Rights I can Rescue Myself’. The slogan ‘Don’t Talk to Me About Sewing Machines’ (to rescue me from selling sex) comes from a couple of centuries of social work focused on Rescue and Rehabilitation: First remove the woman from prostitution, then give her alternative employment. Historically, sewing – with or without machines – has been the default alternative, despite the fact that many women have gone into sex work (and some of them became consequently exploited or trafficked into sex industry) having rejected sewing work. Similarly, a large number of sex workers and trafficked persons used to work in the factories, gourmet industry and low paid jobs where they have often faced bad working conditions, low pay, exceeding working hours and even sexual violence. Prostitution/sex work intersects enormously with the situation on labour market and as it allows for more flexible working hours and gives people working in the sex industry greater control over their working conditions than other jobs, which are often important factors for mothers or women with caring responsibilities whose needs are not met in the mainstream labour market. Others choose sex work because they find it financially rewarding as compared with other professions that are paying smaller wages for women and trans people than cisgender men. For other sex workers again, it may be the most acceptable of very few options available to them as single parents, IDP’s or (undocumented) migrants, asylum seekers (in light of the failure of reception of asylum seekers in Europe), women of minority status, trans women, or with disabilities. While designing re-integration programmes for trafficked persons or sex-workers, it is necessary to bear in mind that these people were able to choose sometimes more risky alternative (brave!) and often willingly left their homes behind in search of better future (courage!) and better jobs (willingness to learn new skills!). Offering return to their country of origin and sewing machine (or poultry farming or whatever “traditional” income generating activity) as a means of economic “empowerment” may not always be in line with their visions and may even strengthen their feelings of failure.

The other issue that is extremely important is the access to compensation for damage and trauma suffered in cases, when sex workers become victims of crime. The case described below doesn’t concern trafficking in human beings. However, many criminal acts indicating human trafficking are not in the end classified as human trafficking for many reasons, but as other (related) crime. The case described below clearly illustrates how sex workers are discriminated and prevented from access to justice in systems where selling sex is legal but other aspects of sex industry are criminalized.

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Limited access to compensation in Norway

In 2016, four men were sentenced by the Oslo City Court for violent robberies against sex workers. The victims (sex workers) claimed financial compensation for the damage and trauma suffered as well as a temporary incapacity for work, and obtained 15,000 kroner (1500 euros) in court of appeal. One year later, in December 14, 2017, the Supreme Court had annulled this decision by three votes against two, explaining that the intention of the legislator was to fight against "prostitution". Granting a right to compensation would be a form of unacceptable recognition of their activity, because although sex workers are not directly criminalized, an offense must be committed by their clients for it to take place. The PION sex workers' association reacted by a statement that the court ruling was outrageous because it created a status of second-class citizens, and provided criminals with impunity. It recalls that the incomes of sex workers are subject to tax, including VAT, and that they should therefore have the same rights and protections.

3) Policies that decriminalize sex work and recognize agency, labour and social rights of sex workers work best. When sex work is recognised as work, sex workers are also treated as full citizens in terms of access to housing, social, legal and justice services, psychological counselling, financial institutions, and other state and privately provided services.

Stigma- the persisting problem

The information from Exit programmes realized in (more or less) decriminalized systems (the Netherlands and Germany) shows, that, although the environment recognizes sex work as a work, the stigma remains the persisting problem that plays a role in the social inclusion of all sex workers. Stigmatization means that prostitution is viewed as its own world, separated from the "normal" or "conventional" world. Addressing causes of stigmatization of sex work as such, rather than addressing the negative consequences of stigmatization for those, who want to exit prostitution, would benefit all sex workers and needs to be mainstreamed in all already decriminalized policy systems.

The policy systems in which sex work is recognized and decriminalized allow for compensation for material damages of people working in sex industry that became victims of crime. In the Netherlands, there have been numerous judgements granting compensation to victims of trafficking for sexual exploitation. The compensation for material damage is calculated based on the estimates of the daily earnings of the person working in the sex industry. The approach illustrated bellow on calculation of material losses has been repeatedly used in the Netherlands.

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11 http://behindthedistrict.blogspot.com/2014/10/new-prostitution-exit-program.html
Zwolle-Lelystad District Court, 2010

“The victim in this case submitted a claim for €100,000 for material loss and €5,000 for emotional injury. Explaining the claim of material loss, she argued that during the period in prostitution for which charges had been brought, she had earned €300 to €700 a day. She had to surrender all of her earnings to the suspect. She based the calculation on a sum of €100 a day in surrendered income; this amount was multiplied by 50 months (five years, with an average of two months that she had not worked each year), making a total of €100,000. Her [lawyer] stressed at the hearing that, to avoid any discussion at that time, a very conservative estimate had been made. The Public Prosecution Service argued that the claim should be awarded in full and that an order to pay compensation should be attached to it. The court found that the investigation at the hearing had adequately shown that the aggrieved party had suffered damage as a direct result of the acts of the suspect that had been declared proven. The court found it plausible that the amount of €100 for every day worked was a minimum, referring in that context to judgments of the Amsterdam Court of, in which a sum of €100 for every day worked was also adopted. As mentioned above, the court awarded the entire claim and issued a compensation order for the total sum of €105,000”.

It is crucial to evaluate social-inclusion, re-integration and economic empowerment programmes targeting trafficked persons and/or sex workers with the lens of how much they contribute to destigmatization and stereotypes reduction, how much they value target group’s agency and respect the right for self-determination and how much they are either led or designed by target groups in order to ensure success, meaningfulness and sustainability.

Health and HIV interventions work best when sex work is decriminalized
We can see also the strong link between social inclusion programmes for sex workers and right to health programmes designed for sex workers. People working in the sex industry can face a significantly higher burden of HIV and STD. It has been recognized by WHO, UNFPA, UNAIDS or World Bank, that most successful health and HIV interventions to date have been those that are peer-led, relying on individual and collective empowerment to improve sex workers’ working and living conditions. The guidelines for states released in 2012 by the above mentioned UN agencies urged states to decriminalise sex work, and establish rights respecting laws to protect sex workers against violence and discrimination.  


In conclusion, ICRSE supports the Amnesty International’s\(^{15}\) summary of state obligations in order to ensure that individuals can exit the sex work that are in line with above information. Some of the defined obligations may fully apply to victims of trafficking. The obligations are based on the Concluding Observations of CEDAW committee to states.

To ensure that individuals are in a position to leave sex work, states must:

- Provide adequate and timely access to support through, for example, state benefits, education and training and/or freely chosen alternative employment;
- Develop and implement support programmes, in meaningful consultation with sex workers, including those facing multiple forms of discrimination, that are responsive to the lived experiences of sex workers and respect individual agency;
- Guarantee that sex workers are not compelled to participate in coercive “rehabilitation” programmes;
- Provide targeted support and care to those who have been victims of human rights abuses and exploitation within sex work;
- Take measures to remove common barriers to alternative and supplementary forms of employment that sex workers face (such as issues relating to criminal records or employment history checks), remove any legal barriers to exit from sex work and protect former sex workers from discrimination on the basis of their previous sex work;
- Tackle gender inequality and discrimination against cisgender women and transgender people in the field of employment, including by reforming discriminatory laws, policies and practices that diminish their opportunities in the economy, and taking steps to end gender stereotypes, rigid gender roles and prejudice that undermine their equal participation in the economy; and adopt effective measures, including temporary special measures, to eliminate occupational segregation based on gender stereotypes; and
- Combat stigma and discrimination against people who are gender non-conforming that inhibit their access to education and employment opportunities or enable and reinforce violence against them by state and non-state actors, and work to dismantle gender stereotypes that lead to punishment of those who transgress gender norms.

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