Written Submission to CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

Submission from the International Committee on the Rights of Sex Workers in Europe (ICRSE) to the Committee on the Elimination of Discrimination Against Women

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 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 recognizes the complexity of trafficking in human beings and its interrelation with global inequalities, neoliberal economies including the power of corporations and corporate interests, the workplace insecurity and limited protection of workers’ rights mainly in global supply chains, increased conflicts and rapid grow of migration as consequence. In order to effectively respond to such a complex phenomenon as trafficking in human beings, root causes of trafficking in human beings need to be addressed primarily. While root causes in countries of origin (that may be influenced by global root causes) can include structural discrimination, poverty, lack of employment opportunities or traditional gender roles, that lead people to migrate, root causes during the migration can include limited legal and safe opportunities to migrate. The recent “Crisis of migration management” in Europe was significant contributing root cause of trafficking. Root causes in the country of destination such as discrimination, barriers that prevent accessing justice or measures that impede safety of vulnerable and marginalized groups are presented in this ICRSE submission.

- Recommendation: to acknowledge in the GR that any single “anti-demand” measure cannot provide solution to address exploitation and trafficking in human beings in the sex industry and that root causes must be addressed instead.

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ICRSE opposes the expansion of the definition of trafficking in human beings to include all cases of commercial sex work performed by (undocumented) migrants. It is often happening through broadening of the ‘means of a position of vulnerability’ that reduce all migrant sex workers to victims of trafficking as (undocumented) migration status constitutes vulnerability per se. In countries, where ‘prostitution’ has been defined as the ultimate form of ‘sexual exploitation’, it allows for fulfilling the action-means and purpose of the human trafficking definition. This approach reduces all migrant sex workers to victims in need of rescue and in need to escape from traffickers by return to their home countries. Such efforts have many negative effects as it permits states to claim easy credit for arrests and prosecutions of migrant sex workers themselves that do little or nothing to address those egregious forms of sexual exploitation that the Protocol was intended to challenge\(^1\). Evidence shows that police raid and rescue operations often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse\(^2\). Such practices further result in sex workers being driven away from established sex work collectives and can be forced to move from one place to another.

**United Kingdom\(^3\)**

*During a 2016 police anti-trafficking action targeting six sex work premises in Chinatown and Soho, London (UK) 18 people were arrested. Out of them, 12 have been removed on immigration grounds, six for other offences. Thai women were particularly targeted. Westminster police placed closure notices on the doors of premises and forcibly evicted women during the raid. According to the police, the actions aimed at targeting “suspected brothels” and looking for trafficked women. No victims of trafficking were identified.*

European anti-trafficking organizations associated under La Strada International NGO Platform (2017)\(^4\) are also concerned by increasing conflation of sex work and trafficking in Europe. In their statement they reconfirm the UN Women notes on sex work, sexual exploitation and trafficking where the conflating of consensual sex work and trafficking in human beings, leads to inappropriate responses that fail to assist sex workers and trafficked women in realising their rights. Furthermore, failing to distinguish between these groups infringes on sex workers’ right to health and self-determination and can impede efforts to prevent and prosecute trafficking\(^5\).

- **Recommendation:** To distinguish between consensual sex work performed by migrants and trafficking in human being while elaborating General Recommendations.

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\(^3\) http://prostitutescollective.net/2016/10/action-protest-raids-sex-workers-undermine-safety/

\(^4\) http://lastradainternational.org/lsidocs/LSI%20statement%2017%20December%20%20end%20violence%20against%20sex%20workers%20day%20def.pdf

\(^5\) https://www.nswp.org/sites/nswp.org/files/UN%20Women’s%20note%20on%20sex%20work%20sexual%20exploitation%20and%20trafficking.pdf
Exploitation in the sex industry

ICRSE opposes 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 that do occur in the sex industry⁶. Since sex work is not recognized as legitimate work in most European and Central Asian countries, majority of (migrant) sex workers are pushed outside the formal labour market and forced to perform their labour in the grey or underground economy⁷. Similarly, in European countries with regulatory regimes non-EU sex workers are restricted from the regulated legal system and thus must work clandestinely. The other contributing factor is usually their undocumented status and fear from immigration authorities. In Norway deportations constitute significant risk for undocumented sex workers as a result of engaging with police⁸. In Finland, in case of regulated stay, non-EU nationals can be removed from, and denied re-entry into the country if they are suspected of selling sexual services⁹. These factors significantly contribute to vulnerabilities of migrant sex workers who are prone to either labour-related offences (wage manipulation, wage deductions, excessive working hours), criminal offences (withholding of the passports/documents, rape, violence, robbery) or in extreme cases forced labour and human trafficking. Not-recognized (or restricted to EU citizens) sex-industry and the immigration status, prevents many of those working clandestinely to approach authorities and seek justice unless they fall victim of the worst form of exploitation or trafficking. According to some of sex workers in Norway, the only instance they would only be willing to engage with police would be the extreme circumstances where there was an immediate threat to their life¹⁰.

- Recommendation: for the purpose of the General Report recognize the diversity of exploitative working practices that do occur in the sex industry and the need to address them by effective policy measures that are not necessarily associated to anti-trafficking policies. To recommend inclusion of migrant sex-workers and sex-worker led organizations into decision-making processes and policy development.

Access to justice

Anti-trafficking policies and practices are perceived very negatively by (migrant) sex-workers. Measures and services established around anti-trafficking policies very often do not serve the needs of (undocumented) migrant sex workers that are at risk of exploitation that can later result in forced-labour practices and trafficking. The positive obligation of states to identify victims of trafficking is still entirely within the competence of law enforcement agencies in many European and Central Asian countries and depends in practice on the presumed victim’s readiness to co-operate in the investigation. Victims’ identification is further associated with risks of detention or deportation if the identification fails or the crime is re-qualified to ‘easier to prosecute offences’. This limits the number of formally identified persons as trafficked and may discourage the self-identified victims to report the crime as they face significant risk of deportation. The strategic deportation of many migrant women who sale sex without appropriate assessment, also leads to failures in the detection and identification

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⁶ ICRSE: Exploitation- Unfair labour arrangements and precarious working conditions in the sex industry. Community report, 2016
⁷ Dziuban, A., Stevenson, L. Reflecting on labour exploitation in the sex industry
of victims and leaves individuals at risk of re-trafficking\textsuperscript{11}. Although there are measures set up by the European conventions\textsuperscript{12} to protect the rights of victims of trafficking and at the EU the Victims’ Rights Directive aimed to improve significantly the rights of all victims of crime (not only victims of trafficking), the implementation of those Directives in practice still serves rather the criminal justice needs than striving for victims’ rights. According to the European Union Agency for Fundamental Rights (FRA)\textsuperscript{13} “...a victim in an irregular situation of residence, when seeking access to justice, faces requirements and restrictions to which other victims are not subjected. Such a differentiation runs counter the non-discrimination principle of Article 1 of the Victim’s directive”\textsuperscript{13}

Safe reporting

According to PICUM\textsuperscript{14} “safe reporting” means the freedom to report crimes without fear that one will be punished for coming forward. It requires prioritizing the rights of victims and the safety of communities in situations of vulnerability ahead of enforcement of immigration rules. This would require to work on building more systematically a ‘firewall’ that would legally, technically and organizationally separate between public immigration enforcement and service provision in the area of health care, social services, education and access to justice system.\textsuperscript{15} ICRSE fully supports the establishment of such firewall for undocumented migrants. Further we see a need for establishment of safe reporting for sex workers in criminalized settings (including under the Swedish model). Sex workers are subjects to a high level of policing, surveillance and immigration controls, despite the claims that individual sex workers are not criminalized or penalized under the “Swedish model”\textsuperscript{16}. 

Effect of criminalization of purchase of sex services in France and the impact on trust to police:

\begin{quote}
In France, following the introduction of the criminalisation of clients (“Swedish model”) in 2016, sex workers remained indirectly penalised by municipal by-laws and regular arbitrary identity checks. According to a study on the impact of the law\textsuperscript{17}, sex workers do not see police as a source of protection. Sex workers frequently report about episodes of intimidation by the police including being pressured to report clients and, if undocumented, threatened with deportation if they do not comply.
\end{quote}

A recent systematic review and meta-analysis (including 40 quantitative and 47 qualitative studies across 33 countries) concluded \textsuperscript{18} failure of police to act on sex workers’ reports of violence against them, frequently blaming and criminalising them when such reports were made, created environments of impunity where violence, theft and extortion continued, and increased sex workers’ reluctance to report violence or other crimes.

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\begin{tabular}{|l|
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\textbf{11} ibid  
\textbf{13} FRA (2015) Severe labour exploitation: workers moving within or into the European Union, p.78  
\textbf{14} PICUM  
\textbf{15} PICUM  
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The comparative research carried out within the framework of the DemandAT study, as well as the research of others, suggests that those who sell or purchase sexual services in Sweden express greater distrust of the police, social service agencies and NGOs, than in Germany and New Zealand. The research found that since the legal changes in Germany and New Zealand toward a more integrative policy, sex workers and clients seem to show greater trust in the authorities. Under a repressive policy, as is the case of Sweden, it is more difficult for actors in the sex work sector, agencies and authorities to cooperate than in the restrictive (Germany) or integrative (New Zealand) approaches. As mentioned, this lack of cooperation can have implications for preventing and reporting crime.

CEDAW Committee in their General recommendation on women’s access to justice sees the essential component (among others) of access to justice in accessibility of justice system. “Accessibility requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women including those who face intersectional or compounded forms of discrimination.” Further, the CEDAW Committee has expressed concern that “[w]omen are ... disproportionately criminalized due to their situation or status, for instance women in prostitution.

There has been increasing evidence in Europe indicating that anti-prostitution and anti-immigration policies often implemented in the name of fight against trafficking in human beings prevent migrant sex workers from accessing justice. Even reporting a crime seems to be a considerable challenge for most (undocumented) migrant sex workers. Introduction of firewall between immigration authorities and access to other services including access to justice and implementation of safe reporting mechanism for all undocumented migrants would be a significant step forward in all legal systems. However in the legal systems that criminalize some aspect of sex industry (including the Swedish model) it would be necessary to introduce additional firewall- between law enforcement that uphold the anti-prostitution legislation (such as sex-worker, client and third-party criminalization) and police officers to whom migrant and domestic sex workers can turn in the event of the crime. It is however doubtful, if such firewall would be realistic due to the structural discrimination, policing and surveillance and essential distrust that exists between sex workers and authorities.

- Recommendation: for the purpose of the General Report to recognize that immigration policies and criminalization of sex-industry impedes migrant sex-workers access to justice. To recommend states to implement firewall between public immigration enforcement and service provision in the area of health care, social services and access to justice system. To recommend introduction of firewall between law enforcement that uphold the anti-prostitution legislation and police officers to whom migrant and domestic sex workers can turn in the event of the crime.

- Recommendation: national (victims’ rights) policies must ensure that detention and deportation is suspended when the undocumented immigration status comes to light as a consequence of reporting (any) crime by (undocumented) (sex) worker.

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20 ibid
21 Committee on the Elimination of Discrimination against Women, General recommendation on women’s access to justice, CEDAW/C/GC/33, 23 July 2015
22 ibid, para. 14(c)
23 ibid, para. 49
Prevention of trafficking in the sex industry

Evidence shows that anti-prostitution, anti-immigration and anti-trafficking policies negatively impact fundamental human rights of an already marginalised and vulnerable group, such as the right to health and safety and to organise. When States persist in such policies despite knowing and acknowledging its harmful effects, there is a serious human rights problem. Evidence from Europe shows that sex workers and undocumented migrants have hardly that same access to fundamental human rights in Europe as other citizens. Further they are excluded from policy making and their right to organize and work collectively (mainly for the purpose of safety) is often impeded by criminalization of third parties. In countries criminalizing purchase of sex services, sex workers willing to oppose the dominant narrative about sex workers as victims 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.

It has been acknowledged by WHO, UNFPA, UNAIDS or World Bank, that besides health and HIV interventions most successful interventions combating violence against sex workers 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. Similarly the comparative European research carried out within the framework of the DemandAT between 2014-2017 recommends to ensure community empowerment, whereby sex workers are empowered and supported to address, for themselves, structural and everyday constraints on their safety, and to improve their access to services and measures that will reduce their vulnerability to crimes such as exploitation and trafficking in human being.

Besides introduction of safe reporting mechanisms for those who are undocumented, recognition of sex work as work and decriminalization of sex industry would significantly advance (migrant) sex workers rights. Further recognition of role of numerous sex workers collectives in prevention of violence, exploitation and trafficking and their invitation to the policy table can significantly contribute to effectively address human trafficking. It has been also recognized by UNAIDS in their Guidance Note on HIV and Sex Work highlighting that sex worker organisations are best positioned to refer women and children who are victims of trafficking to appropriate services if sex worker organizations are recognized, included into policy development and take part in the national referral mechanism.

Some European sex-workers led initiatives to address exploitation

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28 UNAIDS, Guidance Note on HIV and Sex Work

29 Dziuban, A., Stevenson, L. Reflecting on labour exploitation in the sex industry
Silver Rose in Russia or STAR-STAR in Macedonia, engage with managers, controllers, or owners of sex work businesses and settings to improve working conditions and implement occupational health and safety provisions for sex workers (ICRSE 2016a; NSWP 2014). Collectivo Hetaira in Spain and Hydra in Germany have, in turn, launched peer education projects to enhance sex workers’ capacities to negotiate and bargain with agents and employers (Autres Regards 2012). PROUD in the Netherlands provides community members with information on their labour rights, tax obligations, and workers’ benefits, such as paid sick leave. Finally, some community-led projects, including the Italian Committee for the Civil Rights of Prostitutes, combat forced labour and exploitation in the sex industry by providing support services to persons who have been trafficked into the sex industry (ICRSE 2015a, 2016a)

- **Recommendation:** Regardless of legal frameworks, programmes that aim to prevent violence against sex workers and exploitation in the sex industry that may or may not lead to trafficking in human beings, should consult migrant sex workers and sex worker-led organizations. It is also essential to remove stereotypical and stigmatizing perceptions of sex workers and to recognize agency of people working in the sex industry.
- **Recommendation:** States should regularly evaluate possible unintended effects of (anti-trafficking and related) policies and measures. People directly addressed or affected by such policies should take active role in such evaluations including undocumented migrant sex workers.