Submission to the International Committee of Jurists
“Developing principles to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV”

Submission from the International Committee on the Rights of Sex Workers in Europe (ICRSE)

About the contributor:

The International Committee on the Rights of Sex Workers in Europe (ICRSE) is a sex worker-led network representing 103 organisations led by or working with sex workers in 32 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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• In your view, what concepts (human rights, moral/ethical, legal, good governance, harm etc.) are helpful in understanding whether the use of criminal law is justified in the context of the select areas? Are there some areas or conduct that should never be criminalized? On what basis?

Human rights concept is the most relevant in order to understand how criminal laws impact human rights of sex workers. Debates amongst feminists, sex workers, researchers and policy makers all over the globe focus on the harms and benefits associated with various legal frameworks put in place to regulate sex work. There exist several typologies of prostitution policies. Based on the typologies proposed recently by Östergren, repressive prostitution policies use criminal law to discourage or prohibit third party involvement as well as to ban the sale or purchase of sexual services. Restrictive policy type uses criminal legislation primarily at third parties such as mediators or owners of premises etc.. The administrative or criminal laws also aim to control those who sell or purchase sex. Under this type of policy, commercial sex is understood as a negative social phenomenon, but due to pragmatic reasons is tolerated. Integrative policy type is based on multifaceted understanding of commercial sex and the overarching goal is to integrate the sex work sector into societal, legal and institutional framework in order to protect those selling sex from harm. In this approach labour, administrative and commercial law is applied to sex work as it would to any other sector and specific legislation is introduced in order to protect sex workers as an occupational category. For more about the typology see Östergren (2017).

Existing typologies are determined by two opposite ideological frameworks:

1) a call for the recognition of sex work as work and by consequence an end to criminalisation and legal oppression, and

2) 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.

The second ideology thus puts “moral” concept ahead of the human rights concept and is currently promoted by neo-abolitionists feminist groups. In this understanding, purchasing sex, even between fully consenting adults, is a violation of human rights of women. It doesn’t go much beyond this quite vague phrase, where the advocates of this position believe that women’s submission and male dominance, as well as exploitation and violence, are fundamental characteristics of the act of purchasing sex. The Concept Note on the page 39 lists the overview of moral concepts that provide justification of criminal law on sex work.

In contrast, the first understanding is based on human rights framework claiming that principles such as right to security, right to health, right to livelihood, access to justice, right to self-determination, right to association and unionizing, right to participate in decision making forums that affects sex workers, right to exit sex work when chosen, should apply to all sex workers.

This can be achieved only when criminal laws are removed from sex work and sex workers will fully benefit from labour and social laws and will exercise respecting decent work concept set by International Labour Organization. Still, human rights violations such as exploitation, coercion, human trafficking or sexual exploitation of children must be combated using all legal instruments.

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2 ibid
• What would your topline recommendations be to States on the use of criminal law in the areas you work in?

• To remove criminal laws from all aspects of sex work including criminalization of sex workers, clients and third parties and to eliminate all discriminatory and repressive laws and regulations contributing to sex workers’ vulnerability to violence, abuse, discrimination and exploitation.

• To evaluate intended and unintended effects of relevant criminal laws and measures on human rights of sex workers, particularly those that aim to prevent and prosecute crimes such as trafficking in human beings, forced labour, modern slavery, pimping, pandering, criminal laws related to facilitation of illegal migration, further laws related to public order, such loitering or hooliganism.

• Include sex workers and sex worker led organisations into development of crime prevention policies. Crime prevention policies (including anti-trafficking) would benefit from sex workers’ in-depth knowledge of the dynamics of the sex industry and encourage them to directly report on the intended and unintended effects of anti-trafficking (and related) policies on (migrant) sex workers’ rights.

• Recognise and involve sex worker collectives into national referral mechanisms for victims of crime. As recognised by UNAIDS in their Guidance Note on HIV and Sex Work, sex worker organisations are best positioned to refer women and children who are victims of crime to appropriate service.¹

• Include sex worker led collectives into designing and implementing preventive campaigns that aim to eliminate vulnerabilities, promote workplace safety and address risk factors that may lead to exploitation and trafficking in human beings in the sex industry.

• Provide sufficient funding for sex worker led initiatives in order to support and recognise their role in prevention of exploitation and trafficking in human beings in the sex industry.

• Include sex worker led organisations into designing, implementing and evaluating social inclusion and rehabilitation programmes for victims of trafficking and crime and for sex workers who want to exit the sex industry.

• Recognise that immigration policies impede migrant (sex) workers’ access to justice. Therefore firewalls between immigration enforcement and service provision in the area of health care, social services and the justice system are implemented.

• How do you think a set of principles will help support the work you do? How will you use them?

The issue of sex work significantly divides the feminists, professionals working in NGOs providing variety of social services, professionals working on the issues of health, justice, equality, policy makers etc. On one hand, many organizations such as Amnesty International, Human Rights Watch, La Strada International took a clear position on the issue of sex work based on the numerous evidence in recent years. This month, in March 2019 ILGA World publicly articulated their support for sex work decriminalization. Similarly, UN Agencies such as UNAIDS, WHO, UNFPA took also a clear position that only decriminalization of sex work can lead to effective prevention of HIV and prevent violence against sex workers. Recent research on demand for trafficking in human beings analysed the policy and practical measures that aim to reduce demand, including demand for sex work and brought critical review of policies affecting sex workers (see https://www.demandat.eu/). Numerous academics, human rights activists also point to the evidence of negative effects of criminal laws on

¹ UNAIDS, Guidance Note on HIV and Sex Work, 2009
various aspects of sex workers lives. Regardless of this evidence and vocal voices globally, politics still insist on their abolitionists agendas. Repressive Swedish model of criminalization of clients gains increasing support in Europe and globally, regardless the overwhelming evidence that all forms of criminalisation of sex work directly increase sex workers’ vulnerability to violence, HIV and human rights violations. At European level, sex workers advocates are excluded from various foras such as EU civil society platform against trafficking in human beings. At the levels of international organizations dealing with anti-trafficking agendas the moral rhetorics is mainstreamed more often by calling for “end demand” policies, including end demand for prostitution. The moral “end demand” political games ignore the evidence and, among others have impact on appointment of high-level officials. For instance, in 2018, the only candidate for the position of OSCE Special Representative on Combating Trafficking in human beings, former Dutch national rapporteur on trafficking in human beings, Ms. Corinne Dettmeijer, was not appointed probably due to the political reasons for being a Dutch, as Netherlands recognizes sex work as a work and OSCE Office of Special Representative on Combating Trafficking in Human beings is significantly funded by the US. US Department of State is known well for their anti-prostitution pledge that is part of the US government’s HIV and AIDS programme. The fight against prostitution in the name of fight against trafficking in human beings (and conflation of sex work and trafficking) has numerous negative effects on daily lives of sex workers. Clear position of ICJ would extremely help to strengthen the human rights based arguments that support the only solution- decriminalization of sex industry. Sex workers stand face to face to the strongest opponents that are not willing to listen in their fight against struggles and for better life.

We welcome that ICJ recognises the need to re-examine the use of criminal law in the areas of sexual and reproductive health and rights, consensual sexual conduct, drug use, and HIV exposure, non-disclosure and transmission. The guidance can significantly contribute to raise a voice of those who are denied from the discussions and who are most affected by the overuse of criminal laws.