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Submission to: the CEDAW Committee

re: General Recommendation on Trafficking in Women & Girls in the context of Global Migration

February 2019

# 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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# Background

Historically, policy-making related to the trafficking in women and girls has significantly impacted sex workers all across the world. In Europe and Central Asia, migrant sex workers are particularly affected by misguided anti-trafficking interventions that heighten this population’s vulnerability to abuse, violence and exploitation. Migrant sex workers are estimated to comprise more than 65 percent of the sex worker population in Western Europe and 16-17 percent in Central Europe. Additionally, in recent years sex work has increasingly become an income-generating strategy among asylum seekers and refugees fleeing to Europe. Thus, it is crucial to examine how the living and working conditions of this group are influenced by anti-trafficking, migration and sex work laws and policies and design human rights based interventions.

ICRSE recognises the complexity of trafficking in human beings and its interrelation with global inequalities, changing migration patterns and neoliberal economies.  ICRSE echoes the stance of its membership that in order to effectively respond to such a complex phenomenon, the root causes of trafficking in human beings need to be addressed first and foremost. While root causes in countries of origin can include structural discrimination, poverty, lack of employment opportunities, gender inequalities or conflicts and political instability, important root causes during the migration process are the limited legal and safe opportunities to migrate. The recent “crisis of migration management” in Europe, that failed to prevent migrants from human rights violations, was a significant contributing root cause of trafficking. Root causes in the country of destination such as discrimination and barriers that prevent accessing justice or measures that impede the safety of vulnerable and marginalised groups, are presented in this ICRSE submission. The submission further points out some of the negative effects of end-demand policies.

**Impact of the conflation of sex work and trafficking in human beings**

ICRSE opposes the expansion of the definition of trafficking in human beings to include all cases of sex work performed by migrant sex workers (in irregular situation). This conflation often occurs through interpreting the means element of the trafficking definition, namely  the ‘abuse of a position of vulnerability’. This interpretation reduces all migrant sex workers to victims of trafficking as (undocumented) migration status constitutes vulnerability in itself. In countries where prostitution is defined or understood as ‘sexual exploitation’, it allows for fulfilling the action, means and purpose criteria of the human trafficking definition.

This approach victimises all migrant sex workers in need of rescue and has consequently had serious negative effects on this group:  it makes migrant sex workers targets of police action and forced return programs, due to the criminalisation of migrant sex work that can result in deportation in many countries. Even if being labelled as ‘trafficking victim’ implies some rights, the threshold to be qualified for a residence permit for the purpose of protection is very high and residence permits are often granted on the ground of the victims’ cooperation in the criminal investigation. Frequently, the residence permit for the purpose of protection is temporary, whereas most sex workers who face any kind of exploitation would need lasting solutions that enable them to protect themselves and trust that the officials will protect them rather than send them back to their country of origin after the criminal process and rehabilitation is over. Furthermore, as a report from the EU indicates, residence permits for the purpose of protection of victims of trafficking are under-utilised in the EU.

Rescue operations often end up in voluntary return (instead of deportation) in cases where there is no criminal investigation or if the crime is re-qualified as related, but not human trafficking. This approach allows states to claim easy credit for arrests and prosecutions of migrant sex workers themselves but does little or nothing to address those egregious forms of sexual exploitation that the Trafficking in Persons Protocol was intended to challenge. Evidence shows that police raids and rescue operations to identify victims of trafficking result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse. Such practices further result in sex workers being driven away from established sex work collectives and support services and forced to move from one place to another.

Impact of anti-trafficking raids in United Kingdom:

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| *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 organisations associated under La Strada International NGO Platform (2017) are also concerned by the increasing conflation of sex work and trafficking in Europe. They reconfirm that conflating 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.

# Understanding exploitation in the sex industry

In order to adequately address exploitation in the sex industry and trafficking in human beings for the purpose of sexual exploitation, more nuanced understandings of exploitation in the sex industry must be developed by anti-trafficking and labour organisations as well as international institutions. Sex workers in Europe, represented in national organisations and regional networks oppose the neo-abolitionist conceptualisation 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 actual violence and diversity of exploitative working practices that do occur in the sex industry.

Since sex work is not recognised as legitimate work in most European and Central Asian countries, the majority of (migrant) sex workers are pushed outside the formal labour market and forced to perform their labour in the grey or underground economy. 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 of immigration authorities. In Norway, for instance,  deportations constitute a significant risk for non-EU national sex workers due to police profiling and surveillance. In Finland and Sweden, 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 services. 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.

In countries where sex work is not decriminalised - or where some form of regulation is in place but non-EU citizens are excluded from legal sex work - 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 sex workers in Norway, the only instance they would be willing to engage with police would be the extreme circumstances where there was an immediate threat to their life.

# Increasing access to justice and safe reporting

Anti-trafficking measures and services established around anti-trafficking policies very often do not serve the needs of irregular migrant sex workers who are at risk of exploitation, and potential subsequent 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 in practice depends on the presumed victim’s readiness to cooperate 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 sell sex without appropriate assessment also leads to failures in the detection and identification of victims and leaves individuals at risk of re-trafficking.

Although European legislation, such as the Council of Europe Convention on action against trafficking in human beings, the EU Anti-Trafficking Directive and the EU the Victims’ Rights Directive, guarantee the rights of victims of trafficking, their implementation in practice still serves the criminal justice needs of states more than victims’ rights. According to the European Union Agency for Fundamental Rights (FRA) ”…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”.

According to the Platform for International Cooperation on Undocumented Migrants (PICUM), safe reporting means the freedom to report crimes without fear that one will be punished for coming forward. It requires prioritising 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 organisationally separate between public immigration enforcement and service provision in the areas of health care, social services, education and access to justice. ICRSE fully supports the establishment of such firewall for irregular migrants. Furthermore, we see a need for establishment of safe reporting for sex workers in criminalised settings (including under the ‘Swedish model’ of criminalisation of clients). Sex workers are subjects to high levels of policing, surveillance and immigration controls, despite the claims that individual sex workers are not criminalised or penalised under the ‘Swedish model’.

Client criminalisation in France and its impact on sex workers’ attitudes towards the police:

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| *In France, following the introduction of the criminalisation of clients (‘Swedish model’) in 2016, sex workers remained penalised by municipal by-laws and regular arbitrary identity checks. According to a study on the impact of the law, sex workers do not see police as a source of protection. Sex workers frequently report episodes of intimidation by the police including being pressured to report clients and, if undocumented, threatened with deportation if they do not comply.* |

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

The comparative research carried out within the framework of the EU-funded DemandAT project suggests that those who sell or purchase sexual services in Sweden express greater distrust of the police, social service agencies and NGOs than sex workers and their clients 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 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 previously, this lack of cooperation can have implications for preventing and reporting crimes.

The CEDAW Committee in their General recommendation on women's access to justice sees the essential component (among others) of access to justice in the accessibility of the 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 migrant sex workers in irregular situation. Introduction of a firewall between immigration authorities and access to other services, including access to justice, and implementation of safe reporting mechanisms for all migrants irrespective of their legal status would be a significant step forward in all legal systems. However, in legal systems that criminalise some aspect of the sex industry (including the ‘Swedish model’) it would be necessary to introduce additional firewalls 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 a crime.

# 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 right to organise. When states promote and maintain such policies despite knowing and acknowledging their harmful effects, there is a serious human rights problem. Evidence from Europe shows that sex workers and undocumented migrants do not have the same access to fundamental human rights as other citizens. Additionally,  sex workers are excluded from policy making and their right to organise and work collectively (mainly for the purpose of safety) is often impeded by laws that criminalise third parties. In countries where the purchase of sexual services is criminalised, 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 denied the right to make decisions about their lives.

It has been acknowledged by WHO, UNFPA, UNAIDS that the most successful interventions to combat 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 decriminalisation of the sex industry would significantly advance (migrant) sex workers’ rights. Further recognition of the role of numerous sex worker collectives in prevention of violence, exploitation and trafficking and their invitation to the policy table could significantly contribute to effectively addressing human trafficking. This has also been recognised 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.

Some European sex worker led initiatives that address exploitation in the sex industry:

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| *Silver Rose in Russia or STAR-STAR in Macedonia engage with managers 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)* |

# RECOMMENDATIONS:

* **Acknowledge in the GR that any single “end demand” measure cannot provide solutions to address exploitation and trafficking in human beings in the sex industry and that root causes must be addressed instead.**
* **Make a clear distinction between sex work performed by migrants and trafficking in human beings.**
* **Recognise 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 with anti-trafficking policies, such as removing ‘selling sex’ as a ground for deportation and granting of working permits to the sex industry. In this, ensure the meaningful inclusion of migrant sex workers and sex worker led organisations into decision-making processes and policy development.**
* **Recognise that immigration policies and the criminalisation of the sex industry impede migrant sex workers’ access to justice. States need to implement firewalls between immigration enforcement and service provision in the area of health care, social services and the justice system. Introduce a 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 a crime.**
* **Ensure that detention and deportation is suspended when an (undocumented) (sex) worker reports a crime.**
* **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 organisations. It is also essential to remove stereotypical and stigmatising perceptions of sex workers and to recognise the agency of people working in the sex industry.**
* **States should regularly evaluate the possible unintended effects of anti-trafficking and related policies and measures. People directly addressed or affected by such policies should take an active role in such evaluations, including migrant sex workers.**