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## CRIMINALIZATION and PENALIZATION of SEX WORK

In most countries across the region, the penalization of individual sex work results in fines, detention at a police station or prolonged incarceration. The threat of these pushes sex workers into more dangerous and isolated working conditions leading to increased risk of violence and decreased access to health and harm reduction services. Furthermore, under these conditions, sex workers are more likely to rush negotiations and are thereby less likely to be able to assess if the client is aggressive or refuses to use a condom. They are less likely to carry condoms with them for fear of them being used as evidence of prostitution. Sex workers are more likely to need protection from third parties, often pushing them into situations of dependency that put them at further risk of violence or loss of control over their own work. There has been a lot of pressure from certain anti-prostitution groups and foreign governments to criminalize clients. We strongly oppose this as it similarly pushes sex workers underground and away from HIV services.

Laws against brothel-ownership limit sex workers' ability to work in-doors in groups or with security services.<sup>1</sup> Criminalization means that the indoor locations that are able to operate are often owned by people powerful enough to buy police 'protection': often organized crime or the police themselves. Both of these situations rob sex workers of any institutional or police recourse in the case of abuse or exploitative working conditions, including those that put sex workers at very high risk of HIV infection.

Even when arrests and detention follow due process, sex workers experience criminalization and penalization as a violation of their rights to liberty, safety and right to health. However, due process is rarely respected. Criminalization and penalization of sex work currently fuel human rights abuses against sex workers by creating pretexts for agents of the state to control and punish sex workers.

National laws and local by- laws that criminalize or penalize sex work, stand in direct contradiction to and undermine international efforts and funding policies for HIV prevention and treatment.

**Governments must depenalize and decriminalize sex work. Sex worker-led law reforms are essential to ensure safe working spaces and equal access to police protection.**

## INSTITUTIONAL DISCRIMINATION, RAIDS and REPRESSION

In some countries, even though sex work is decriminalized, police rely on local by-laws against street prostitution, ID offenses, offenses against public order, migration offenses or ministerial orders to specifically target sex workers for repression and detention.

Sex workers across the region are subject to illegal arrest and detention and violations of due process. Through out the region, police officers employ arrest and detention as tools for the extortion of sex workers, as punishment for sex workers who rebuke their demands for money or sex, and as a means of isolating and controlling sex workers to physically and sexually abuse them.<sup>ii</sup> Sex workers are forced to sign administrative protocols confessing to prostitution and subject to violence or fabricated criminal or administrative charges if they refuse<sup>iii</sup>. In most countries across the region “fines” levied by police under anti-prostitution laws are indistinguishable from extortion since they are undocumented, do not follow official guidelines and can include seizing an individual’s valuables and money.<sup>iv</sup> Sex workers report having evidence planted on them by police trying to reach arrest quotas<sup>v</sup>.

Sex workers’ live in vulnerability to unlawful detention and violations of due process due to systemic discrimination against them through legal institutions: from police, prosecutors, judges and ombudsmen, many of whom routinely consider them “unworthy witnesses” and “undeserving victims”. The responsible parties do not recognize systemic links and the institutional nature of such violations. Public authorities, legislatures, media and the public at large must address these issues.

The economic weight of repeated and routine fines, extortion and robbery by state actors or loss of income due to detention exert pressure on sex workers to sacrifice condom use for increased income from unprotected sex or increase their number of clients. This increases sex workers risk’ of HIV infection.

**Government ministries and departments on all levels must cease political orders, campaigns or quotas that push police to target sex workers for repression. Governments must put systems in place to investigate and punish human rights violations by the police force. Public authorities and legislatures must address systemic discrimination against sex workers.**

## VIOLENCE & IMPUNITY

In most countries in the region, sex workers face extremely high levels of physical, sexual, psychological and economic violence by police which in some instances rises to the level of torture.

The human rights abuses committed by police or other actors against sex workers are manifestations of policies that tolerate, and in some cases even encourage violence against sex workers. A consistent pattern of state failure to punish or otherwise hold accountable police who perpetrate violence against sex workers amounts to a policy-whether explicit or implicit- of tolerance of such abuses. In some cases, state policy appears intentionally designed to harm sex workers, as when police are instructed to use harsh measures to remove sex workers from a given area and then severely beat them.<sup>vi</sup>

Routine and rampant police violence along with institutional discrimination rob sex workers of access to equal protection of the law. This in turn creates a climate of impunity and fuels violence against sex workers by the general public, vigilante or hate groups, intimate partners and family and community members- violence, which is further increased in contexts of civil unrest.<sup>vii</sup>

In two countries in the region, police have threatened outreach workers. In one they threatened the closure of an organization that provides HIV and harm-reduction services, in another they seized the names of participants. Both of these cases occurred in retaliation for the organizations' providing support to sex workers denouncing police violence. This effectively nullifies sex workers' access to essential HIV services. State failure to halt police violence and crackdowns puts sex workers at a high risk of sexual violence including rape and violent coercion to forego the use of condoms. These also pose a direct risk of HIV transmission. Additionally, the fear of police violence drives sex workers into isolated areas that are less safe and away from access to HIV services.

**Governments need to put an immediate halt to the impunity for violence against sex workers, and in particular, police violence.**

## DISCRIMINATORY LAWS

The criminalization and penalization of sex work are inherently discriminatory laws. However, even in countries where sex work is decriminalized, a number of other discriminatory laws and regulations persist.

In Hungary and Latvia, where sex work is legal failure to comply with regulations (i.e. soliciting for sex work in certain (often unpublicized)<sup>viii</sup> zones such as near churches, working out of an apartment where one lives with children or not undergoing mandatory medical examinations can result in an administrative offense punishable by imprisonment or a fine and a criminal record<sup>ix</sup>.

Regardless of the legal framework for sex work, laws that specifically criminalize transmission or exposure to STIs or HIV are used to discriminatorily target people based on their HIV status, Hepatitis-C status or status as sex workers. When mandatory test results are shared with the media, this leads to increased discrimination and violence against sex workers. Mandatory HIV and STI-testing and forced STI-treatment discourage sex workers from voluntarily testing. In Latvia, a discriminatory regulation makes sex work illegal for HIV-positive people who face an administrative fine or criminal charge.<sup>x</sup>

Sex workers disproportionately migrate to evade stigma and for economic opportunity. In many places, this means that the overwhelming majority of sex workers do not have residency documents. In many countries across the region, individuals need local registration documents to access public health services including HIV-testing and treatment. As a result, large numbers of sex workers cannot access public medical services including HIV-testing and treatment, nor can their children if they are living together. Similarly, many sex workers who are members of ethnic minorities, internally displaced, internal or external undocumented migrants or homeless and face major barriers to obtaining documentation are denied health care.

Furthermore, restrictions prohibiting migrants living with HIV from getting residency lead many migrant sex workers to avoid HIV-testing out of fear of being deported. In these countries migrants living with HIV do not have access to public treatment, medical services and social benefits.

Across the region there are some countries that criminalize homosexuality and many countries in which police abuse of male and transgender sex workers is generalized. Male and transgender sex workers are at a very high risk for HIV, these abuses, on top of stigma and discrimination further increase their risk of HIV. This dynamic also applies to other sex workers facing multiple levels of discrimination: such as sex workers who use drugs, sex workers from ethnic minorities and sex workers living with HIV.

**Governments must repeal laws that discriminate against sex workers and people living with HIV. They must oppose mandatory testing and STI treatment and ensure access to voluntary and confidential HIV-services and treatment for undocumented and/or uninsured people.**

## CONCLUSION

Sex workers across the region are part of the solution to combating HIV. However, severe human rights violations, many of them facilitated by repressive and discriminatory laws and condoned by governments are crucial barriers to HIV-prevention, treatment, support and care.

We call on this Commission to have the courage and integrity to stand up against the persecution sex workers face that increases their vulnerability to HIV by demanding **that governments in the region must:**

- **depenalize and decriminalize sex work. Sex worker-led law reform is necessary to ensure safe working spaces and equal access to police protection.**
- **cease political orders, campaigns or quotas that push police to target sex workers for repression. Governments must put systems in place to investigate and punish human rights violations by the police force.**
- **put an immediate halt to the impunity for violence against sex workers, and in particular, police violence.**
- **repeal laws that discriminate against sex workers and people living with HIV. Must oppose mandatory testing and treatment and ensure access to voluntary and confidential HIV-services and treatment for undocumented people.**

**The UN must:**

- **Oppose any policies based on discriminatory laws, raids, criminalization or anti-client initiatives. Policies must be based on scientific evidence and human rights rather than moralistic or religious grounds.**

**And finally, the UN and governments must:**

**\* further develop partnerships with each other, with institutions, foundations and organizations to increase funding for rights-based services that promote sex workers' health and rights and meaningfully involve sex workers in their operations in order to combat and redress the human rights violations listed.**

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<sup>i</sup> Central Eastern European Harm Reduction Network, *Sex Work, HIV/AIDS, and Human Rights in Central and Eastern Europe and Central Asia*, CEEHRN: Vilnius, 2005.

<sup>ii</sup> SWAN, *Arrest the Violence: Human Rights Abuses Against Sex Workers in Central and Eastern Europe and Central Asia*, SWAN: Budapest, 2009

<sup>iii</sup> Idem; SWAN, Human Rights Watch, The Canadian HIV/AIDS Legal Network, "Open Letter To The Government of Ukraine Regarding Police Intimidation and Abuse of Sex Workers in Kirovograd, Ukraine and the Illegal Arrest and Detention of an Outreach Worker in Kirovograd, Ukraine in September, 2009."

<sup>iv</sup> Idem.

<sup>v</sup> SWAN, *Arrest the Violence: Human Rights Abuses Against Sex Workers in Central and Eastern Europe and Central Asia*, SWAN: Budapest, 2009; SWAN, *To See Our Power: Sex Workers' Stories of Fighting For Their Rights in Central and Eastern Europe and Central Asia*, SWAN: Budapest, 2010.

<sup>vi</sup> SWAN, *Arrest the Violence: Human Rights Abuses Against Sex Workers in Central and Eastern Europe and Central Asia*, SWAN: Budapest, 2009

<sup>vii</sup> Idem.

<sup>viii</sup> Sex Workers' Report, Hungary. Swan News, April 2011.

<sup>ix</sup> Idem.

<sup>x</sup> Central Eastern European Harm Reduction Network, *Sex Work, HIV/AIDS, and Human Rights in Central and Eastern Europe and Central Asia*, CEEHRN: Vilnius, 2005.