

To: Committee on the Elimination of Discrimination against Women
From: Sex Workers' Rights Advocacy Network from Central and Eastern Europe and Central Asia (SWAN)
Subject: Written submission for CEDAW discussion on the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration (General discussion on TWGCGM)
Date: 17th February 2019

Introduction and background

The Sex Workers' Rights Advocacy Network in Central and Eastern Europe and Central Asia (SWAN) is a sex worker led network which unites sex workers and rights advocates from 24 organizations in 17 countries in the Eurasian region, with a shared vision – to create societies where sex work is decriminalized/depenalized, where sex workers can operate free from state and non-state violence, stigma and discrimination. In these societies, sex workers are empowered and actively engaged in issues that directly affect their lives and health.

Since the debate on trafficking in women and girls has historically had significant impact and influence on policies and interventions targeting sex workers, we believe it is of the utmost importance that this consultation is inclusive of sex workers' lived experiences and sex worker group's expertise.

“Sex workers in the region are an increasingly mobile group. In the 1990s, after the dissolution of the Soviet Union, the most significant shift was the increased number of sex workers from Central and Eastern Europe migrating to Western European countries, and after the 2004, 2007, and 2013 EU enlargements, the same movement continued within the European Union. Consequently, a large number of migrant sex workers in Western European countries are from the CEECA region. Internal migration - migration from one administrative division of one's home country to another - is also significant in the region, although there is no estimates available on its volume.”¹

The reasons for migration vary between individuals, and are mainly economic, however sex workers also migrate within and outside of their countries due to discrimination and violence. Regardless of the reasoning behind, all migrant workers face the same obstacles and vulnerabilities: lack of access to basic health or treatment services, lack of access to justice system, education opportunities, as well as facing legal punishment and/or deportation. Internal migrant sex workers usually face problems when attempting to legalize their stay due to restrictions binding their registration to their employment status, unstable economic situations, or a lack of identity documents necessary to obtain a residence permit, which are

¹ Briefing Paper on Sex Work Legal Frameworks in CEECA, 2019, SWAN



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often confiscated by representatives of law enforcement agencies during police raids or imprisonment.

The complex situation of migrant sex workers, which needs special attention and solutions that will respect their human rights and dignity, is heavily burdened and misunderstood by anti-trafficking discourses and policies that conflate sex work, migration and trafficking for sexual exploitation. These discourses led by abolitionist groups use the 'victim narrative' in which a woman is forced into prostitution, either by being sold, transported and forced into the sex industry, or by having "no choice" but to enter sex industry due to poverty, in which men take advantage of them, making "prostitution" equal to exploitation in each case. This conflation of sex work with exploitation, and the conflation of exploitative work conditions in the sex industry with trafficking, creates confusion, which is then reflected in public opinion, laws, policies, the judiciary system, and negatively impacts the living and working conditions and in particular, the safety of both sex workers and victims of trafficking.

When sex workers are treated as victims of trafficking by default, they are often forced into rehabilitation and consequently get disconnected from their everyday life and support networks. On the other hand, this conflation also contributes to victims of trafficking being subjected to reformulation/requalification of their cases within the legal system as cases of "mediation in prostitution", which leaves the victims without proper protection and repatriation, and traffickers without adequate sanctions.

Part of the confusion is created by the absence of the definition of what "exploitation" means. "The term "exploitation" has no agreed definition in international law, and the concept is often described as "ambiguous".... The term "exploitation of prostitution" was not specifically defined in either the CEDAW Convention or the Palermo Protocol. The travaux préparatoires suggest that the CEDAW Convention did not intend to suppress "prostitution" as such but rather the "exploitation of prostitution". The argument, therefore, that exchanging sex for money is always a form of exploitation is not at all reflected in international law. When abolitionist feminists make this argument, it is based on their particular ideological position, rather than on the logic of any international legal authority."²

An additional issue is that even though it is recognized that trafficking can occur in different parts of labor markets and is not unique to the sex industry, many governments, policy-makers, and especially anti-trafficking organizations and women's rights advocates are focusing their anti-trafficking campaigns solely on sex work.

On the other hand, the global sex workers rights movement has been opposing for decades the interpretation of sex work based on morals and ideologies, and is demanding rights based approaches which includes acceptance of sex work as work, opposition to all forms of criminalization and all other legal oppression of sex work (including sex workers, clients, third

²<https://www.iwraw-ap.org/wp-content/uploads/2018/04/Framework-on-Rights-of-Sex-Workers-CEDAW-1.pdf>



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parties, families, partners and friends) and support of self-organization and self-determination of sex workers.³

“For the sex workers rights movement, acceptance of sex work as work is key to advancing the human rights of sex workers. Analyzing sex work through a labour framework means that discussions are focused on improving the working conditions within the sex work industry rather than continuing protracted moral debates about the acceptability and legitimacy of selling sex. It recognizes that there is nothing inherently violent or exploitative about sex work but that violence and exploitation are a result of bad laws, policies and labour practices.”⁴ Analyzing sex work through labour rights framework is especially important given that sex work is often part of the informal economy making sex workers, especially migrant workers, particularly vulnerable to labor exploitation.⁵

Anti-trafficking debate and measures and their impact on sex workers' rights in CEECA region

a) The debate and implications

The debates around the understanding of sex work as a social phenomenon in the U.S. and Western Europe goes back to the 1970's, when radical feminist campaigns started focusing on the abolition of prostitution and the demand to “eradicate trafficking” and sex workers articulating opposing views and a common demand: the recognition of sex work as work. But in the region of CEECA, research and public debate on this issues were rare or non existent, and the otherwise strong women's rights movement hardly addressed the topic, until recently.

Recently, the debates and trends outside the CEECA, become increasingly more influential in this region too. Anti-trafficking discourses around sex work and arguments for criminalization of clients became appealing among policy makers and women groups under the motto of eliminating violence against women, where sex work is considered violence per se. These trends are also supported by rising conservatism and religion, and strengthening the traditional and family values where sex workers are seen either as sinners or as victims.

Sex workers in the CEECA region are also united in demanding measures which will eliminate discrimination and violence against sex workers, but they are clearly referring to removal of administrative and criminal provisions and accompanying discriminatory laws and practices targeting sex workers, their clients, and third parties, and the long-term decriminalization of sex work.⁶ Many studies and testimonies of sex workers prove that there is a direct link between criminalization and discrimination and vulnerability to violence, exploitation and

³ <https://www.nswp.org/sites/nswp.org/files/ConStat%20PDF%20EngSum.pdf>

⁴ <https://www.iwraw-ap.org/wp-content/uploads/2018/04/Framework-on-Rights-of-Sex-Workers-CEDAW-1.pdf>

⁵ Ibid

⁶ <http://swannet.org/files/swannet/FailuresOfJusticeEng.pdf>



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health risks.⁷ However, abolitionist and anti-trafficking groups targeting sex workers blur the debating space, pressure and distort the voices of sex workers themselves. In many cases feminist organizations even avoid/refuse to use the term sex work, or to provide time and space for sex work activists to speak at official debates, only on the basis of ideology which diminishes the agency of sex workers.

“Almost all sex worker groups report that abolitionist groups emerge and become vocal in their contexts. In Ukraine for instance, several Facebook groups, such as FeminismUA, FemUA Nordicmodel, and Resistanta withdrew from the 2018 Women’s March, because Legalife-Ukraine, a sex worker advocacy organization, was listed as an organizer. Similarly, in Russia, abolitionist organizing is on the rise, with many outspoken abolitionist feminists and online groups publicly calling for the adoption of the client criminalization model, the so called Swedish Model. The idea of penalizing clients of sex workers has also been publicly supported by officials of the Russian Orthodox Church and has inspired legislative actions, such as the introduction of administrative penalties for the purchase of sexual services in Belgorod in 2012.”⁸

As a result of abolitionist approaches and debates on eliminating prostitution, not only are some countries considering the criminalization of clients, but also increasing penalties for sex workers and criminalization of sex workers in countries where sex work is not regulated. “For instance, in Kyrgyzstan, activists report three legislative attempts to introduce the offense of sex work in 2005, 2012, and 2015. In Tajikistan, the administrative fine was doubled, and the possible punishment of 15 days administrative arrest was added. Serbia also saw the already harsh sentence for sex work doubled in 2016.”⁹

Since 2013, SWAN and its members started to engage and use CEDAW convention as a tool for advocacy to improve status and wellbeing of female sex workers in respective countries and the region, which resulted in numerous shadow reports and follow up advocacy. The experience so far, which also relate to all above mentioned debates is that female sex workers reported discrimination and mistreatment in many aspects of life and work based on their status as female sex workers, such as stereotyping, negative media portrayals, education, health, family matters, violence, right to work, but regardless of the type of discrimination, the Committee always considered and interpreted the reports through Article 6, referring to trafficking in women and girls and exploitation of prostitution.

Over the last 5 years we witnessed how the approach of the Committee was slightly evolving, in the attempt to make distinction between trafficking victims and “women in prostitution” within the Article 6.

For example, for the 56th CEDAW Session (2013), sex worker group from Tajikistan and SWAN submitted a shadow report referring to violations that female sex workers face under different articles, such as: problems with legal documents due to migration; discrimination against sex workers’ children and their right to schooling; prejudicial and hateful media representation,

⁷[http://swannet.org/files/swannet/File/Documents/Arrest the Violence SWAN Report Nov2009 eng.pdf](http://swannet.org/files/swannet/File/Documents/Arrest%20the%20Violence%20SWAN%20Report%20Nov2009%20eng.pdf)

⁸ Briefing Paper on Sex Work Legal Frameworks in CEECA, 2019, SWAN

⁹ Briefing Paper on Sex Work Legal Frameworks in CEECA, 2019, SWAN



sex workers' rights advocacy network

stigma and violence due to religious and patriarchal norms, lack of equality in front of law and police violence, mandatory HIV testing by police, lack of confidentiality of health status¹⁰. In the Concluding Observations for this session, under Article 6, the Committee was "... concerned that women in prostitution are criminalized, unlike clients. It is further concerned about the lack of efforts to prevent exploitation of prostitution and address its root causes and the lack of protection and services available to women victims of such exploitation." Contrary to the actual demands of sex worker organizations for the Committee to pressure governments to uphold the rights of sex workers, the Committee recommended the State Party to "... (b) review its legal framework on prostitution in order to ensure that women in prostitution are not criminalized, step up efforts to discourage demand for prostitution and consider introducing sanctions for sex buyers."¹¹

In the next cycle, in 2018, during the pre-session for 71st CEDAW session, sex worker rights groups submitted lists of issues which included high level of police violence (extortion, blackmails, inhuman degrading treatment, arbitrary arrests, beatings), stigma and media stereotyping, forced HIV/STI testing and tightening of laws on sex work, including both penalties for sex workers and clients.¹²

In the Concluding Observations for 71st session, the Committee still reviewed the issues under Article 6, but this time made distinctions between measures for victims of trafficking and women in prostitution, and did not see ending demand as part of solution for sex workers. The Committee stated concerns "... about reports that women engaged in prostitution are denied access to services provided by non-governmental organizations that implement programs for the prevention of HIV and sexually transmitted infections and that they face discrimination, intimidation, harassment, extortion and bribery, forced testing for HIV and sexually transmitted infections, arbitrary detention and physical violence by the police." In line with this:

"The Committee recommends that the State party:

- (a) Collect statistical data on the number and nature of complaints of police abuse and complicity in corruption targeted at women engaged in prostitution and ensure that such complaints are duly investigated, that perpetrators are prosecuted and punished with appropriate sanctions and that the confidentiality of victims is preserved;
- (b) Ensure that women engaged in prostitution can benefit from the assistance provided by non-governmental organizations that implement programmes for the prevention of HIV and sexually transmitted infections;

¹⁰https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TJK/INT_CEDAW_NGO_TJK_1_5131_E.pdf

¹¹<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqWC9Lj7ub%2fHrJVf1GxZMHGQF5W%2bfPRNcyFicK%2f8Fn6u6ZNISFP0OW%2fsoKw99qk3ms4xp3Un1G6M0yj%2bDobl9nXQTONe7WuXV3RbYLoWeXnDvzu%2bG5FpTyOZcr%2bcAH9vmw%3d%3d>

¹²https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TJK/INT_CEDAW_NGO_TJK_3_0029_E.pdf



sex workers' rights advocacy network

(c) Provide exit programmes and alternative income-generating opportunities for women who wish to leave prostitution.”¹³

We greet the effort of the Committee to move forward in making distinctions between human trafficking and violations of the rights of sex workers, but we still feel that interpreting all reports of violence and human rights abuses of female sex workers through the scope of Article 6, gives a narrow and limited view on the realities of female sex workers and decreases the opportunities for recommendations which will better target the root causes of violations. This is why which we highly appreciate the Committee’s intention to develop a General Recommendation on Trafficking of Women and Girls in a context of Global Migration. We hope this General Recommendation will explain the differences between sex work, migration, exploitation and trafficking, and the different set of measures needed to improve the status of both sex workers and victims of trafficking. We hope that this will also open the space to read and address sex workers related issues beyond Article 6, in a way that will be more accurate to their realities and needs.

b) *The practice and implications*

Because sex work is often conflated with trafficking for the purpose of sexual exploitation, anti-trafficking measures are often used by police to conduct raids on workplaces. Whilst these raids are publicly justified under the guise of 'rescuing victims of trafficking', they are mostly immigration and anti-sex work raids with the aim of disturbing sex markets and controlling immigration. Migrant sex workers caught in such raids are typically either arrested and detained as criminals or taken to shelters as victims of trafficking. Sometimes, in an attempt to avoid being treated as criminals and punished, sex workers decide to state that they do not work by choice.

In Kazakhstan, during police raids, police use the anti-trafficking rhetoric to check sex workers (sex work is not illegal in the country), to take fingerprints and pictures of people, under the pretense of preventing human trafficking.¹⁴

In Kyrgyzstan, “police find sex workers who have returned from abroad and ask for information about who helped them to leave. If they do not “hand over” the one who helped them, then sex workers are intimidated and blackmailed.” Also, it is documented that “sex workers are forced by police to write a statement about “mommies” (female managers), who are then threatened, blackmailed and extorted.”¹⁵

¹³<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqWC9Lj7ub%2fHrJVf1GxZMHEKlgEy3EV5MKcAXsLQp5PD%2f8ImKYnx5c5kZmLuDnLTgSAIT6y0SSbvsti00QC13CeUoLxhiRKPuMH6Ge%2fXu2wp>

¹⁴ Information based on the submission from Amelia, Kazakhstan to Briefing Paper on Sex Work Legal Frameworks in CEECA, 2019, SWAN

¹⁵ Information based on the submission from Tais Plus, Kyrgyzstan to Briefing Paper on Sex Work Legal Frameworks in CEECA, 2019, SWAN



sex workers' rights advocacy network

In both regional community studies which SWAN conducted in 2009¹⁶ and 2015¹⁷, it was found that regardless of whether it is lawfully or unlawfully enacted, and under which rhetoric, police repression of sex workers and their clients displaces sex workers to more dangerous working environments and impedes their ability to safeguard their safety and health. It also negatively affects sex workers' overall psychological and physical health: frequent arrests and detention can lead to repeated treatment interruptions for sex workers on ART or substitution therapy and breaks the networks of support and distances sex workers from institutional support they might need.

Conversely, in Macedonia, for example, the conflation of sex work and trafficking also has implications for victims of trafficking, when perpetrators charged with trafficking have their charges commuted to lesser charges of 'mediation in prostitution' which carry milder sanctions than the original charge.¹⁸

In a study done in Serbia in 2011-2012, 3 cases of reclassification of trafficking for sexual exploitation to 'mediation for prostitution' were documented. Also, 4 cases that contained unambiguous elements of the criminal offence of human trafficking were classified as mediation for prostitution of a minor. One of the cases was not closed in a time of study, in the other 3 cases the defendants were sentenced from 3 months up to 1 year imprisonment.¹⁹

The reasons behind each court verdict can be separately examined, and can range from lack of evidence to corruption, but a big part of it is exactly conflation of trafficking for sexual exploitation and sex work, and lack of precise definition of both. Each vague formulation opens possibilities for arbitrary action, thus making it possible for the ambivalent position of judges to be reflected in their actions and the allotting of punishment.

Recommendations:

As a way forward in achieving universality of human rights, elimination of all forms of discrimination against women, including sex workers and migrant sex workers, SWAN recommends taking on positive measures that:

- Recognize, respect and protect the human, labor, sexual and reproductive rights of sex workers.
- Make clear the distinction between trafficking, migration, exploitation and sex work, and recognize different set of measures addressing the needs of victims of trafficking v.s the needs of sex workers;

¹⁶http://swannet.org/files/swannet/File/Documents/Arrest_the_Violence_SWAN_Report_Nov2009_eng.pdf

¹⁷ <http://swannet.org/files/swannet/FailuresOfJusticeEng.pdf>

¹⁸ Information based on the submission from HOPS and Star Star, Macedonia to Briefing Paper on Sex Work Legal Frameworks in CEECA, 2019, SWAN

¹⁹http://www.sexworkeurope.org/sites/default/files/userfiles/files/LAW_ABOVE_ALL_AND_COURT_PRACTICES_2016-5ver.pdf

This can be achieved through:

1. Acknowledging and listening to voices of sex workers as most affected by the discourses, laws, policies and practices which conflate trafficking for sexual exploitation and sex work;
2. Ensuring that all decisions influencing rhetoric and debates around sex work and exploitation are made not on a moral, but pragmatic grounds, based on evidence and documented implications to health and safety of sex workers;
3. Adopting terminology, which is non-stigmatizing, neutral, and provide space for self-identification of sex workers instead of condemning them as criminals or victims. This is crucial for providing a space for inclusion and participation in public debates of sex workers as equal citizens in a democratic societies;
4. Expressing opposition to laws and policies that criminalize or penalize sex work, be it of the sex workers, clients, or third parties, as there is a strong and robust evidence base demonstrating that laws and policies fuel human rights violations and poor health outcomes among sex workers.
5. Reviewing and amending anti-trafficking responses that increase the risk of exploitation and violence for migrant sex workers and explore the possibility of building cooperation with sex worker rights organizations to support the identification of genuine cases of exploitation and abuse within the sector;
6. Promoting measures that ensure access to justice for all victims of trafficking, including sex workers, and adequate health, social, psychological, legal and economic support;
7. Promote rights based migration policies that reduce vulnerability of migrant workers in all sectors, including sex work, and ensure the right to health, social, educational and legal services for all migrant workers.

On behalf of,

Sex Workers' Rights Advocacy Network from Central Eastern Europe and Central Asia
(SWAN)