



sex workers' rights advocacy network

From: Sex Workers' Rights Advocacy Network in Central, Eastern Europe and Central Asia (SWAN)
To: The Working Group on the issue of discrimination against women in law and in practice, OHCHR
Title: Submission for the 41st session of the Human Rights Council in June 2019 (on deprivation of liberty of women and girls)

About SWAN:

The Sex Workers' Rights Advocacy Network (SWAN) is a sex worker-led regional network in Central and Eastern Europe and Central Asia that advocates for the human rights of female, male and transgender sex workers.

SWAN mission is to work toward creating societies in Central-Eastern Europe and Central Asia where sex work is depenalized and decriminalized; sex workers can live and work free from violence, stigma and discrimination and sex workers are empowered and actively engaged in issues that directly affect their lives and health.

SWAN currently unites 33 members in 19 countries in Central Eastern Europe and Central Asia, with headquarters in Budapest, Hungary.

About submission:

Due to time constraints all off the paragraphs from the submission below have been taken out from the 2 (two) regional and community based researches/reports of SWAN. Therefore we did not footnote each paragraph.

The reports are the following:

In 2009, SWAN published a sex worker-led community based research project on police raids, detention and physical and sexual violence by police. Sex workers and allies interviewed 238 female, transgender and male sex workers in 11 countries of the region (around 20 per country) for what became as known as the "Arrest the Violence" report.

http://swannet.org/files/swannet/File/Documents/Arrest_the_Violence_SWAN_Report_Nov_2009_eng.pdf

In 2015, we decided to follow up on that research and to look more in-depth at what lay behind some of its findings, in specific relation to access to justice. We extended the research to 16 countries and a total of 320 semi structured interviews with women, transgender and male sex workers (around 20 per country). We also did more in-depth qualitative interviews with 9 sex workers who had reported violence or abuse in Kyrgyzstan, Russia and Serbia to learn from their experiences. This resulted in the report called Failure of Justice.

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

The submission focus on the following topics of major importance for sex workers across the region:

1. Lawful and unlawful arrests and detention;
2. Human Rights violations due process of arrest and detention;



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3. Threats of arrests as means for extortion money/sex services;
4. Profiling/Sex worker especially vulnerable to arrest, detention and abuse;
5. Implications from arrest, detentions and human rights violations due process on health and safety;
6. Recommendations;

1. **Lawful and unlawful arrests and detention**

Sex workers across the region report high level of arrests and detention. Part of reported cases are sex work related arrests (when individual sex work is illegal and punishable by criminal or administrative laws), but part are not.

For example, 95% and 90% of sex workers interviewed in Kazakhstan and Kyrgyzstan respectively were arrested in the previous year although neither of these countries have either criminal or administrative laws against sex work. Rather, sex workers in these countries, as well as in Bosnia and Herzegovina, and Bulgaria where high arrest rates were also reported, are frequently arrested and detained under public order or misdemeanor laws or under the pretext of residency checks. Such charges can result in a fine or imprisonment depending on the context. In Kazakhstan, for instance, such charges can result in up to 10 days in prison.

In contrast, in Serbia and Ukraine, where a significant majority of sex worker respondents had also been arrested in the past year, selling sex is an administrative offense. In Serbia, charges can result in a fine or imprisonment of up to 30 days.

In Montenegro, Poland and Slovakia, street based sex workers described being discriminatorily targeted with charges for minor offenses such as littering, disturbing the peace, lack of ID documents, not wearing reflectors on the side of the road, or more serious offenses such as drug possession.

2. **Human Rights violations due process of arrest and detention**

In both researches sex workers reported that they are particularly vulnerable to abuse by police at the time of arrest or detention, whether on prostitution-related charges or for other alleged infractions. Risks of experiencing further human rights violations include physical and sexual violence, forced HIV and STI testing and forced free labor such as cleaning or sweeping police stations.

In "Arrest the violence" a sex worker in Ukraine reported: "About five years ago, I was detained at the district police station. The police beat me in the kidney area and in the ribs and on the head—they didn't beat me on the face, so that there would be no visible bruising—then they raped me, with my arms tied to the radiator. After this incident I was depressed and considered killing myself. I had internal discomfort and for a long time I refrained from any sexual activity. I didn't report it to anyone. I was afraid because this had been done by the police themselves. There was a lot of violence and humiliation."

Another sex worker in Ukraine said police grabbed her off the street and took her to the station, where they handcuffed her and forced her to stand with her hands above her head until morning. She said: "When I tried to lower my hands or sit down, they kicked me in the kidneys."

Violence against sex workers was committed at locations where sex workers work, as well as in places of detention. Sex workers throughout the region were vulnerable to violence when



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in police custody, regardless of whether or not they were formally detained or taken to the police station. Sex workers reported that police illegally detained them and drove them to deserted areas where they beat them, raped them, verbally abused them, threw them into the river or threw them from the police car.

Sex worker in Slovakia described her experience of police violence: "Police officers drove me away from the city and demanded sex services for free."

Sex workers in Bulgaria described similar incidents. One said that an officer "arrested" her, pushed in her into a car, and handcuffed her. He took her to an isolated location and then beat her on the legs with a truncheon, causing serious bruising. She said he forced her to "serve him" and then took her money and threatened to take her mobile phone.

In the Northwest district of Russia (including St. Petersburg), Siberia and Ukraine, sex workers identified "subbotnik," that is, gang rape by police, as the number one threat to their safety. Subbotnik is a Soviet era term that refers to "voluntary (but in fact obligatory) monthly civil service provided free of charge." In the context of sex work, the term refers to sex workers being obliged to provide free sexual services to the police in exchange for limiting harassment or avoiding arrest. One woman is often forced to service more than one person, often without condoms.

"Failure of Justice" documents that 85% of surveyed sex workers in Kazakhstan, all of whom worked indoors, had been forcibly tested for HIV or STIs while in police detention in the last 12 months. In Kyrgyzstan, 15% of sex workers, both street and indoors had the same experience. In Macedonia, Romania and Tajikistan there were reports where everyone arrested in a massive police raid was kept 24 hour in detention and all were forcibly tested on HIV and STI, and in some cases the results were publicly announced.

In Kazakhstan and Kyrgyzstan, even though forced testing for HIV and STIs is illegal and selling sex is ostensibly decriminalized, police can require sex workers to present a medical certificate with their HIV status from a state-operated clinic or hospital. During the raids, the police ask sex workers for these certificates.

"The police can require a sex worker to obtain a medical certificate from a state-owned dermato-venerological clinic. They usually threaten sex workers that if they don't comply, they will be accused of a misdemeanor. Sex workers have to pay for the test themselves, and afterwards have to present it to policemen, who are constantly trying to collect data on them. Fortunately, for some time now the situation has changed in Bishkek, after sex workers have gotten to know their rights better and confront the police. However, in other parts of Kyrgyzstan, sex workers are still confronting this same abusive practice from the police." (Tais Plus, Kyrgyzstan)

"Arrest the Violence" also documents sex workers who were forced to clean the police station while in police custody during the past year: Bulgaria 80.0% (8/10) Kyrgyzstan 55.0% (11/20) Russia (Siberia) 50.0% (10/20) Russia (Northwest district) 45.0% (9/20) Macedonia 29.4% (5/17) Ukraine 25.0% (5/20) Latvia 19.0% (4/21).



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3. Threats of arrests as means for extortion money/sex services

As found in both researches, arrest and detention were frequently used tools by police to enforce extortion, to exert violent control over sex workers or to retaliate against sex workers who resisted their abuse.

A sex worker in Macedonia said of one officer: "He tells me if I don't give him money every day, he will arrest me for prostitution." (Arrest the Violence, 2009)

"The police beat you up, demand money and will detain you until you pay." - A sex worker in Kyrgyzstan. (Arrest the Violence, 2009)

Police also subjected sex workers to arrest on fabricated charges, such as drug possession. In some cases police used detention under falsified charges to isolate and exert control over sex workers in order to gang-rape or otherwise sexually assault them.

A sex worker in Ukraine said of police: "They threatened to plant drugs on me and charge me." (Arrest the Violence, 2009)

Throughout the region it was reported that police use the threat of arrest on fabricated charges to extort money or sex or to compel sex workers to inform on others who are involved in sex work or who use drugs.

A sex worker in Lithuania reported: "They force me to say who uses drugs, they threaten to lock me up in prison and then they fine me." (Arrest the Violence, 2009)

Another sex worker in Lithuania described how police use detention to extort money: "If I do not pay, then they bring a criminal case against me and they shut me in the KPZ." (Arrest the Violence, 2009)

A sex worker in Russia's Northwest district also reported the connection between detention and extortion: "You will be taken to the police station every time until you pay [them] off." (Arrest the Violence, 2009)

Police also "confiscated" sex workers' money and valuables, extorted information, and threatened to publicly disclose that they engage in sex work.

4. Profiling/Sex worker especially vulnerable to arrest, detention and abuse

Sometimes, police control over sex workers extends far outside of when sex workers are actually working and becomes a form of social profiling for repression of those identified or presumed to be sex workers. Such social profiling was highly gendered and directed almost exclusively towards women, both cisgender and transgender, who were either "known" to police as sex workers or presumed to be such based on trans status or drug use. A number of cis and trans women sex workers reported being targeted for arrest, detention, extortion or violence whenever they occupied public space, even if it was doing everyday things like walking to visit friends and family or buying bread. In Serbia, one cis woman, street and indoor sex worker, explained that: "Police stop me and check me for my docs even when I'm not working. I feel like I have 'hooker' stamped on me". (Failure of Justice, 2015)

In Central Europe, the police control and targeting of sex workers is not only frequently gendered, but frequently racialized. In our survey, it was most often Roma cis women who



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reported living under the constant threat of police violence. Indeed numerous Roma women sex worker respondents from Bulgaria spoke of their attempts to become “invisible” any time they were out in public: of hiding, wearing no make- up and plain clothes, in the desperate attempt to avoid police beatings, often with a bat, that occurred every time they were seen by certain officers.

Being “known” to police as a sex worker presented additional risks of violence to women who encountered the police in the course of drug arrests. One sex worker from Kazakhstan recounted being arrested by police outside of a place where people dealt drugs. She felt that it was their recognition of her as a sauna sex worker that contributed to them forcing her to have sex under threat of being sent to forced drug rehabilitation.

Police express discrimination against sex workers who are using drugs when they treat them with more aggression and disdain compared to those who don't use. They can be purposefully held in the police station for several days (especially since most do not have registration). The police taunt them when they start going into withdrawal and are not feeling well. They can be blackmailed and they can be offered drugs in exchange for information or for confessing to things they haven't done.

5. Implications from arrest, detentions and human rights violations due process on health and safety

“Failure of Justice” research has found that even when lawful, arrest and detention placed sex workers at higher risk of violence by other perpetrators through displacement to more dangerous working areas. Police repression create further HIV risks for sex workers by reducing their ability to screen clients and curtailing negotiations which impede sex workers' ability to assess and enforce compliance with condom use. Police displacement was also found to further fracture the longer-term ties many sex workers need to social, health and harm-reduction services in order to be bridged to drug treatment, and HIV and hepatitis C treatment and care. This is consistent with our findings in “Arrest the Violence” report.

The economic toll of police fines and extortion create economic pressure to forego condom use and engage in riskier practices for higher monetary returns. Police use of condoms as “evidence of a crime”, confiscation or destruction of condoms impede sex workers' ability to assert safer practices. Furthermore, they may result with indoor sex work venues such as brothels or saunas prohibiting condoms on the premises, out of fear of tipping off police, reducing sex workers' ability to negotiate and enforce condom use. Police use of syringes as “evidence of a crime, confiscation or destruction of syringes similarly create major impediments to the ability of sex workers who inject drugs to reduce risks of HIV transmission via injecting equipment.

Police repression can further negatively impact access to treatment in a number of ways. Frequent arrest and detention can represent repeated treatment interruptions for sex workers on ART. Depleted earnings due to fines and extortion can make it difficult to have sufficient money for transportation in order to access care, or to provide oneself with adequate nutrition. Lastly, fears that one's drug use or sex work might be reported to police or child welfare authorities can discourage sex workers from seeking testing, treatment and care. A number of countries in the region have laws prohibiting the transmission of STIs and HIV, some of which have been used to specifically target and charge cisgender women sex workers in recent years (in Romania and Macedonia). Such laws and their use to punish,



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publicly shame, control and intimidate sex workers present important obstacles to sex workers protecting their health and reducing transmission.

6. Recommendations

(Amplifying the recommendations in “Failure of justice” report)

The Government's on CEECA region should:

- Decriminalize sex work. Remove punitive laws for sex work, drug use and same-sex behavior. Involve sex workers as partners in reforming sex work laws.
- End implicit or explicit policies of tolerance or encouragement for the police repression of sex workers and their clients.
- Implement policy directives to proactively work with sex workers to improve their safety and to ensure swift, thorough and respectful investigations of reported cases of violence against sex workers.
- Investigate and prosecute officers responsible for physical or sexual assault of sex workers.
- Investigate and prosecute officers responsible for extorting sex workers.
- Instruct Ministry of Internal Affairs officials to improve the quality of police work with specific regard to upholding the rights of sex workers, drug users, men who have sex with men, transgender people and the Roma community, including through specialized training, and allocate sufficient funds to realize this.
 - Reverse any regulations establishing mandatory HIV or STI testing of sex workers and ensure that all health measures geared toward sex workers respect their human rights and support their control over working conditions.

Ministry of Internal Affairs Officials and Others with Responsibility for the Quality of Police Work Should:

- Signal to law enforcement officers throughout the system that police abuse of sex workers will not be tolerated.
- Conduct internal investigations of police violence and corruption and make public the findings as well as the consequences for officers found guilty of misconduct.
- Make it mandatory for police to undergo training on international human rights standards and domestic laws regulating the conduct of law enforcement officers, with an emphasis on the need for respectful rights-affirming treatment of sex workers and members of other vulnerable groups.
- Increase salaries for police officers.
- Cooperate with NGOs working with sex workers to organize education of police about the problem of police violence against sex workers. Where appropriate, such cooperation should include policy directives and financial support for a system of police partnership with sex worker communities in order to institutionalize their right to legal protection.
- Establish a system to ensure police are accountable to the communities they serve.

Ministry of Justice Officials and Others with Responsibility for Legal Reform Should:

- Re-examine laws and policies relating to the criminalization or penalization of sex work in light of evidence that such measures undermine both health and human rights. In particular, where laws, policies, or policing practices negatively affect sex workers' health and rights through criminalization or other means, support sex worker-led legal and policy reform initiatives premised on sex workers' human rights and workers' rights.
- Ensure that sex worker groups are included in a meaningful way in the design of laws, policies, and programs that affect their lives.



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Where Relevant, Ombudsman Offices Should:

- Investigate police violence, including sexual violence, against sex workers.
- Conduct outreach among sex workers, through cooperation with sex worker advocacy groups, to identify human rights issues affecting sex workers and formulate ways to address these abuses.

UN Agencies and Member States Should:

- Express opposition to laws and policies that criminalize or penalize sex work as there is a strong and robust evidence base for how such laws and policies fuel human rights violations and poor health outcomes among sex workers.
- Express opposition to violence against sex workers by police.
- Express opposition to forcible testing of sex workers for HIV or other STIs, as well as any other discriminatory measures against sex workers.
- Call for investigation and prosecution of corrupt and abusive police.