

Submission to the Office of the United Nations High Commissioner for Human Rights on the General Assembly Resolution A/RES/74/148 on the Protection of migrants

About the contributor

The International Committee on the Rights of Sex Workers in Europe (ICRSE) is a sex worker-led network representing more than 100 organisations led by or working with sex workers in 31 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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The right to work and the right to free choice of employment are identified as fundamental human rights guaranteed by legally binding international treaties and national constitutions. In reality, however, repressive immigration policies and restrictive residency and employment regulations adopted in the vast majority of European countries often severely compromise or entirely block migrants' access to formal labour markets and legitimate forms of employment. Similarly, in many European countries national laws directly prohibit refugees and asylum seekers to work legally or engage in any economic activities. Usually provided with little or no allowances to cover their subsistence and feed their families, refugees and asylum seekers find themselves forced to agree to low wage, precarious and often exploitative labour arrangements outside of the formal economy. For some refugees and asylum seekers sex work can be one of very few options to earn their living, especially if they are particularly economically vulnerable or face severe hiring discrimination in 'formal' labour markets,



as in the case of women or LGBT refugees.¹ It has been reported, for example, that many Syrian and Afghan male refugees trapped in Greece² on their way to Northern Europe due to increased border controls sell sexual services in order to survive.³

While many refugees, asylum seekers and undocumented migrants might feel they have little choice but to sell sex due to repressive migration laws, lack of other employment opportunities and poverty, large numbers of people migrate to and across Europe in order to find work in the sex industry. Their migratory projects might be driven by lack of social and economic opportunities in their home countries; pursuit of financial independence and improvement of their economic situation; will to escape from oppressive family arrangements, patriarchal relations, and trans- or homophobia; the desire for mobility or simple curiosity.⁴ As reported by the TAMPEP International Foundation, in 2008, migrant and mobile sex workers accounted for 65 percent of the sex worker population in Western Europe, 16- 17 percent in Central Europe, and on average 10 percent in the ten Central and South/Eastern European and Baltic countries that joined the EU in 2004 and 2007.⁵ Although the data on migrants in the sex industry in Europe is fragmentary and scarce, it is safe to assume that the number of migrant sex workers in the region is steadily growing. However, this growth hardly ever translates into legal changes facilitating migrants' access to legal and safe employment options in the sex industry.

¹ 1 Rosenberg, J. S. (Women's Refugee Commission), 2015, Refugees who turn to sex work need support, <http://america.aljazeera.com/opinions/2015/4/refugees-who-turn-to-sex-work-need-support.html>, <https://www.swarmcollective.org/blog/statement-on-poverty-sex-work-and-the-swedish-model-poverty-is-objectifying-demeaning-and-coercive1>; Irish Examiner, 2014, Women asylum seekers forced into prostitution, <https://www.irishexaminer.com/ireland/women-asylum-seekers-forced-into-prostitution-284630.html>

² According to UNHCR reports, Greece accommodated over 50,000 refugees coming from Syria, Afghanistan, Pakistan and Morocco in 2016, <http://rrse-smi.maps.arcgis.com/apps/MapSeries/index.html?appid=d5f377f7f6f2418b8ebadaae638df2e1>

³ See, for example, Public Radio International, 2016, Migrant men in Greece are selling sex to survive, <https://www.pri.org/stories/2016-06-02/migrant-men-greece-are-selling-sex-survive>; The Independent, 2016, Dozens of refugee men forced to sell sex for as little as €2 to survive in Greece <http://www.independent.co.uk/news/world/europe/dozens-of-refugee-men-sell-sex-for-as-little-as-2-to-survive-in-athens-a7068741.html>

⁴ See, for example, Agustin, L., 2007, Sex at the Margins. Migration, Labour Markets and the Rescue Industry, London: Zed Books, pp. 10-52; Andrijasevic, R., 2010, Migration, Agency and Citizenship in Sex Trafficking, Hampshire: Palgrave Macmillan, pp.48-50.

⁵ TAMPEP International Foundation, 2009, p. 30.

Deportations of migrant sex workers are common in those countries that do not recognise sex work as work and therefore as a legitimate form of employment. When caught by the police, migrants working in the sex industry are deported because they are unable to obtain valid work and residence permits, not because they are sex workers. Such cases were reported from Italy and Norway.

Effect of criminalization of purchase of sex services in France and the impact on trust to police:

In France, following the introduction of the criminalisation of clients (“Swedish model”) in 2016, sex workers remained indirectly penalised by municipal by-laws and regular arbitrary identity checks. According to a study on the impact of the law⁶, sex workers do not see police as a source of protection. Sex workers frequently report about episodes of intimidation by the police including being pressured to report clients and, if undocumented, threatened with deportation if they do not comply.

Even those countries which have legalised or regulated sex work significantly limit access to legal employment or self-employment in sex work for some categories of migrants. When pushed into illegality or to the margins of the legal labour market, migrant sex workers are forced underground into hazardous and unfavourable work conditions. This makes them particularly vulnerable to violence, harassment, and discrimination by clients, the general public and law enforcement agencies. Their undocumented status also renders them prone to abuse in work settings and severe exploitation, as it increases migrant sex workers’ dependency on third parties and different intermediaries, who facilitate their migratory projects and arrange their work upon arrival in the country of destination. This increasing dependency often translates into numerous and frequently arbitrary fees for third party services, exorbitant debts, wage manipulations, violence and unfair workplace practices.

(Undocumented) migrant sex workers’ vulnerability to labour exploitation and mistreatment at work also results from the fact that more often than not, they lack access to justice, labour rights and protections commonly awarded to other workers.

⁶ Le Bail, H. and Giametta, C. (2018). A Study on the Impact of the Law from 13 April 2016 Against the ‘Prostitution System’ in France. Synthesis. Available: <https://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF>

According to PICUM⁷ “safe reporting” means the freedom to report crimes without fear that one will be punished for coming forward. It requires prioritizing 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 organizationally separate between public immigration enforcement and service provision in the area of health care, social services, education and access to justice system.⁸ ICRSE fully supports the establishment of such firewall for undocumented migrants. Further we see a need for establishment of safe reporting for sex workers in criminalized settings (including under the Swedish model). Sex workers are subjects to a high level of policing, surveillance and immigration controls, despite the claims that individual sex workers are not criminalized or penalized under the “Swedish model”⁹.

Anti-trafficking policies and practices are perceived very negatively by (migrant) sex-workers. Measures and services established around anti-trafficking policies very often do not serve the needs of (undocumented) migrant sex workers that are at risk of exploitation that can later result in 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 depends in practice on the presumed victim’s readiness to co-operate 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 sale sex without appropriate assessment, also leads to failures in the detection and identification of victims and leaves individuals at risk of re-trafficking¹⁰. Although there are measures set up by the European conventions¹¹ to protects rights of victims of trafficking and at the EU the Victims’ Rights

⁷ PICUM

⁸ PICUM

⁹ Amnesty International, 2016, “[The Human Cost of Crushing the Market](#),”

¹⁰ *ibid*

¹¹ 2005 Council of Europe Convention on Action against trafficking in human beings, 2011/36/EU Directive

Directive aimed to improve significantly the rights of all victims of crime (not only victims of trafficking), the implementation of those Directives in practice still serves rather the criminal justice needs than striving for 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"¹²

In summary, migrant sex workers have little or no power to demand and negotiate better working conditions and more favourable labour arrangements with the third parties they cooperate with, and while many state and non-state actors across Europe declare their desire to tackle migrant sex workers' vulnerability to exploitation by implementing anti-trafficking policies, little is done to effectively support migrant sex workers through legal recognition and access to labour rights. On the contrary, they are often threatened with arrest and deportation if they try challenge or report exploitation at their work places but refuse to identify themselves as victims of trafficking or fail to meet the respective trafficking victim criteria in any given country.¹³

(Undocumented) migrant sex workers find themselves in a complex web of anti-sex work and anti-immigration policies that violate their right to housing and expose them to exploitation. Not only are they affected by the above-described trends that make it close to impossible for (undocumented) migrants to find accommodation, but they are also hit hard by anti-trafficking and anti-sex work measures. Due to the economic, legal and social exclusion migrant sex workers face, many of them decide to live together and share costs associated with housing. This is often erroneously interpreted by police and immigration authorities as a sign of coercive third party relationships or trafficking. Their response is to carry out investigations and raids, which can lead to the disruption of workplaces and homes, and in the case of undocumented migrants, even to deportations. In a lot of instances when anti brothel-keeping laws are in place in a country, sex workers working together for safety can even be accused of trafficking.

¹² FRA (2015) [Severe labour exploitation: workers moving within or into the European Union](#) ,p.78

¹³ For more details, see ICRSE, 2016, Exploitation: Unfair labour arrangements and precarious working conditions in the sex industry, http://www.sexworkeurope.org/sites/default/files/userfiles/files/ICRSE_Exploitation%20Report_April2016_04_final.pdf

United Kingdom¹⁴

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.

Undocumented migrant sex workers’ access to healthcare is also severely restricted due to fear of being detected and deported once they approach public healthcare facilities or healthcare providers. Several reports have found that migrants in irregular situations tend not to access health centres and healthcare services because they are afraid of being reported to the police or immigration authorities¹⁵. This fear has solid legal grounds in several European countries that have introduced policies requiring healthcare providers or authorities in charge of healthcare administration to report migrants in irregular situations to immigration enforcement bodies.

Annex 1: [Policy Brief and Recommendations on the Rights on of Migrant Sex Workers](#)

¹⁴ <http://prostitutescollective.net/2016/10/action-protest-raids-sex-workers-undermine-safety/>

¹⁵ European Union Agency for Fundamental Rights (FRA), 2011, Migrants in an Irregular Situation: Access to Healthcare in 10 European Union Member States, https://fra.europa.eu/sites/default/files/fra_uploads/1925-FRA-2011-fundamental-rights-for-irregular-migrants-healthcare_EN.pdf; PICUM, 2016, The Sexual and Reproductive Health Rights of Undocumented Migrants. Narrowing the Gap Between Their Rights and Their Reality in the EU, http://picum.org/wp-content/uploads/2017/11/Sexual-and-Reproductive-Health-Rights_EN.pdf