



**Public Consultation: Combating gender-based violence- protecting victims and punishing offenders**  
**International Committee on the Rights of Sex Workers in Europe**

## 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 providing services to 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 International Committee on the Rights of Sex Workers in Europe welcomes the public consultation on Combating gender-based violence - protecting victims and punishing offenders. We would like to take up this opportunity and provide recommendations based on our experience in the field of providing assistance and support to sex workers.

Access to justice for sex workers in Europe is a considerable challenge and a key area of our work. In November 2020, we published a report [‘Undeserving victims?’ Community report on migrant sex workers victims of crime](#) that analyses 49 sex workers' testimonies regarding policing, reporting a crime and access to justice in 10 EU countries. The report clearly reveals that there is a significant lack of implementation of the EU Victims Rights Directive in practice, mainly by front-line police officers. The report also points out how specific prostitution laws and diverse municipal bylaws prevent sex worker victims of crime from enjoying protections and rights under the EU Victims' Directive and consequently make sex workers more vulnerable to crime.

Migrant sex workers are estimated to comprise the majority of the sex worker population in Western Europe, and a significant segment of the community in Central-Eastern Europe. Sex workers bear a high burden of violence in Europe, including physical, sexual, and psychological violence. However, despite increasing recognition of violence against women and other marginalised groups as a human rights and gender equality priority by the European Union (EU), crimes against sex workers that occur within and outside the context of sex work are frequently overlooked.

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We urge the European Commission to direct its policies towards strengthening gender-sensitive crime prevention that is based on community empowerment, to improve the recognition of victims and to roll out provisions on non-judgmental low threshold services to victims. The EU gender-based violence initiative **should not be primarily focused on strengthening the apparatus of the criminal justice system** and **should not** call for **direct or indirect criminalisation of sex work**. Any conflation of sex work with sexual exploitation and human trafficking must be avoided.

- The EU initiative on gender-based violence can be an opportunity to promote gender-sensitive and inclusive crime prevention strategies that are based on community empowerment and that involve populations facing intersectional discrimination such as sex workers, migrants, LGBT persons, Roma, and others at national, local, and municipal levels. It can be an opportunity to roll out regional, local, and municipal policies and protocols that allow marginalised communities facing a higher prevalence of crime, such as sex workers and their organisations, to participate in designing specific anti-violence programs that benefit their communities. Such provision can increase crime reporting among members of marginalised communities and raise trust towards the public authorities<sup>1</sup>.
- The EU initiative on gender-based violence should alert member states about the negative effect of the ‘protectionist approach’, which seeks to restrict or curb women’s activities or freedoms with the rationale that the aim is to “protect” women from harm or wrongdoing. Such an approach does not challenge gender discrimination but reproduces it in the guise of protecting women. The protectionist approach tends to infantilize sex workers or treat them as deviant if they oppose the narrative of all ‘prostitution as violence against women’. As a result, sex workers are treated as powerless victims or deviants and are consequently excluded from conversations about gender-based violence.
- The EU initiative on gender-based violence should include provisions that will require states to critically review policies, laws and (municipal) by-laws that discourage victims of gender-based violence and other bias-motivated violence from reporting crimes committed against them. Such policies may include: restrictive migration laws; laws such as those against ‘third parties’ (‘pimping laws’) that are routinely used against sex workers; vague public morality, nuisance, loitering, and decency laws disproportionately and subjectively applied against trans people, including sex workers and other marginalised groups (e.g. racial/ethnic minorities). The EU initiative should explicitly reference an inclusive, non-discriminatory approach. This must apply regardless of residence and migration status of a victim or witness, consistent with the Victims’ Directive (Article 1) and the Istanbul Convention (Article 4).
- The EU initiative can be an opportunity to call for the inclusion and recognition of the role of low threshold, community-based organisations including sex workers and their organisations in the integrated and targeted specialist support referral and cooperation mechanism. Furthermore, community-based organisations should take part in national, local, and municipal interdisciplinary working groups on crime prevention, gender-based violence, and trafficking in human beings, including monitoring and evaluation of such strategies and policies.
- The EU initiative on gender-based violence should also strengthen actions to protect and support the most marginalised communities against gender-based violence by holding all relevant state actors accountable for facilitating access to justice for marginalised communities, such as migrant sex workers. It can also introduce measures to enhance police accountability and transparency, and monitor their implementation by working with marginalised groups that are disproportionately policed.

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<sup>1</sup> EU Strategy on Victims’ Rights 2020-2025

- Member states should collect, report, and analyse data on gender-based violence. The critical analyses of such data should steer governments to review policies that are ineffective or have significant negative effects on the ability to access justice and to identify groups and communities in need of better protection against crime and gender-based violence.
- Member states should train professionals (victim support providers, police officers, judicial officers, NGO staff, healthcare workers, teachers, etc.) on preventing and responding to discrimination and violence against trans people, sex workers, and other groups facing intersectional discrimination and violence, and on providing gender-sensitive and appropriate support. The training should be developed and evaluated by marginalised communities themselves.
- **Any new EU initiative addressing and codifying violence against women should not lead to further criminalisation of sex work: it should safeguard the dignity and human rights of sex workers.** UN agencies addressing HIV/AIDS, namely [UNAIDS](#), [WHO](#), [UNFPA](#) and [UNDP](#)<sup>2</sup> have found that, in the context of sex work, **criminal laws actually cause harm**, especially for already marginalised groups. Criminal sanctions against sex work contravene a number of human rights, including the non-discrimination principle, the right to equality before the law and equal protection of the law without discrimination, the right to be free from cruel, inhuman or degrading treatment or punishment, and the rights to privacy and to health. In addition, criminal sanctions do not address the structural factors that perpetuate women's economic and social inequality, which contribute to discrimination and violence.
- **Any EU initiative on gender-based violence should take into account the growing body of evidence that any criminalisation of sex work, including of clients and third parties, negatively impacts the safety, health and rights of sex workers.**<sup>3</sup> We oppose the neo-abolitionist definition 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, consequently failing to address the diversity of exploitative working practices and violence that do occur in the sex industry<sup>4</sup>. The conflation of sex work/prostitution with violence against women and, as a response, policies criminalising the purchase of sex that have been introduced in numerous EU countries have been proven ineffective. This approach has also proven to have a significantly negative impact on sex workers' agency, wellbeing, safety, access to services and justice. Research from France<sup>5</sup>, Northern Ireland<sup>6</sup>, Sweden<sup>7</sup> and Norway<sup>8</sup> demonstrates how such policies fail to protect people selling sex.
- Consent is central concept for sex workers and is determinant in defining sexual violence. For sex workers, consent means agreed upon terms and conditions, under which sexual services are provided. If these consented terms and conditions are violated, the incident should be

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<sup>2</sup> WHO: Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach.

<sup>3</sup> Lucy Platt and others, 'Associations between Sex Work Laws and Sex Workers' Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies' (2018) 15 PLoS Med; Vanwesenbeeck I, 'Sex Work Criminalisation Is Barking Up the Wrong Tree.' (2017) 46 Archives of sexual behavior 1631; Kathleen N Deering and others, 'A Systematic Review of the Correlates of Violence Against Sex Workers' (2014) 104 American Journal of Public Health E42; Global Alliance Against Traffic in Women, 'Collateral Damage: The Impact of Anti-Trafficking Measures on Rights Around the World' (2007).

<sup>4</sup> ICARSE: [Exploitation- Unfair labour arrangements and precarious working conditions in the sex industry. Community report, 2016](#)

<sup>5</sup> [A study on the impact of the law against 'Prostitution system' in France](#)

<sup>6</sup> [Assessment of impact criminalization of the purchase of sexual service in Northern Ireland](#)

<sup>7</sup> Charlotta Holmström and May-Len Skilbrei, 'The Swedish Sex Purchase Act: Where Does It Stand?' (2017) 1 *Oslo Law Review* 82, 100.

<https://www.idunn.no/oslo-law-review/2017/02/the-swedish-sex-purchase-act-where-does-it-stand>

<sup>8</sup> [Amnesty International: Norway: The Human cost of 'crushing the market](#)

defined as rape or sexual assault. **Conflating all sex work/prostitution with sexual exploitation would be inconsistent with Article 36 of the Istanbul convention that clearly defines sexual violence and rape as absence of consent.** The conflation would undermine not only the agency of person to decide conditions of the sexual act, but will stand in direct opposition of the determinant concept of consent that defines sexual violence.

In 2019 a man was found guilty of rape after he removed a condom during sex without his partner's consent in the UK. The fact that a court convicted the perpetrator is even more significant because the woman he assaulted was a sex worker. The man was convicted of rape and two counts of sexual assault after it was established that the woman had consented to sexual intercourse only on the condition that condoms were used. A sex worker being able to win a rape case on grounds of conditional consent is an important moment in the fight for sex worker rights; it is also an important moment for our cultural understanding of consent<sup>9</sup>.

- **The EU initiative should avoid any approaches aiming to “end demand” for sexual services,** which are driven by ideology rather than evidence and research. As numerous research has pointed out, such approaches can foster repressive sex work policies, which have been proven to exacerbate sex workers' vulnerabilities to violence, and compromise sex workers' safety, access to health services and access to justice.<sup>10</sup>
- **A comprehensive approach to violence should address violence in the workplace.** The new EU initiative should take a holistic approach towards violence in other settings, including violence and harassment in the workplace, consistent with the ILO's Convention 190 on violence and harassment in the world of work that also covers informal sector workers. Female labour sectors populated by migrant labour, such as domestic and care work in private households, entertainment and sex work, are rarely fully recognised as work. As such, these sectors do not, or only marginally, benefit from the protection of labour law, nor do they provide legal migration channels.<sup>11</sup> The lack of regulation in these sectors and the illegal or semi-legal character of women's work is also tied to women's vulnerability under migration law and can increase the risk of exploitation and trafficking.<sup>12</sup> Migrant women working in these sectors need to be able to organise to protect their human and labour rights without fear of losing the right to continued residency, just as sex workers need to be able to organise without fear of arrest and detention. Governments must remove obstacles for these female workers to exercise their right of freedom of association.<sup>13</sup>
- The EU initiative should ensure that the language used does not undermine women's empowerment and agency by contributing to a narrative of women as helpless victims incapable of making decisions for themselves. The EU should provide a framework for **policies**

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<sup>9</sup> Franki Cookney: Finally the Law Understands how Sexual Consent Works. When will the rest of us catch up? Independent, May 1, 2019. Available: <https://www.independent.co.uk/voices/rape-consent-sex-worker-lee-hogben-conviction-sexuality-a8894246.html>

<sup>10</sup> Platt and others (2018); GAATW, 'Moving Beyond Supply and Demand Catch-Phrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking' (2011).

<sup>11</sup> CEDAW GR 26 paras 13–15; Benoit C and others, "'The Prostitution Problem": Claims, Evidence, and Policy Outcomes.' [2018] Archives of Sexual Behavior.

<sup>12</sup> Anderson and O'Connell Davidson (n 30) 11.

<sup>13</sup> CEDAW GR 26 para 26(b); Amnesty International 2016 14.

**that uphold and protect the human rights of women, including the right to self-determination. The framework should increase women's options and opportunities, rather than restrict, repress, or criminalise the limited options they have.**

Conclusion:

ICRSE urges the European Commission to develop policies on gender-based violence that will benefit all women, including those marginalised by intersectional oppressions, such as sex workers. Despite high levels of violence and human rights violations, sex workers are rarely consulted in the development of gender-based violence policies and laws. This historical exclusion has led to the development of legal frameworks that define prostitution as a form of violence and increase sex workers' vulnerabilities as documented by sex workers themselves and corroborated by Amnesty International and the World Health Organisation, amongst others. Exclusion from policy-making is a form of structural violence and silencing. Sex workers and their organisations must be included in decision and policy-making at a local, national and European level.

As highlighted above, access to justice must be a priority for all actors in order to end the quasi impunity of perpetrators of violence against sex workers. Violence from authorities, including police violence against marginalised communities, must also be central to policy reform.

We remain at your disposition if you wish to clarify any points.