For the Attention of: Committee on the Elimination of Discrimination against Women

**Subject: Written Submission for CEDAW discussion on the General Recommendation on Trafficking of Women and Girls in the Context of Global Migration (General discussion on TWGCGM) – The Portuguese Case.**

**Date: February 18th, 2019.**

**Introduction**

APDES (Agência Piaget para o Desenvolvimento) has been developing interventions with sex workers since 2008, mainly through national projects like *PortoG* – an outreach team funded by the General Directorate of Health – and via international projects funded by the European Commission, such as *Indoors* and *TransR*. In addition, APDES also includes a research and scientific production dimension on this phenomenon. We recognise sex work as a voluntary contract (without duress) to provide erotic services for financial gain, established by adults; we also believe that threatening and forcing practices, as well as the involvement of minors, should be considered sexual exploitation, rather than sex work.

Considering the key-objective of the present set of recommendations:

To guide State parties’ implementation of the Convention by providing an in-depth analysis of specific Convention obligations taking into account current realities facing women and girls (Concept Note, 2019, topic 23, p.7).

And the fact that international law and conventions advance according to societies’ acknowledgement and widening of Human Rights (namely among marginalised groups), the current document aims to discuss the practical effect of the discourse and strategies to tackle women trafficking on the emergence of certain types of violence against women (particularly adult women who are voluntarily part of the sex market) in order to accomplish the required in-depth analysis mentioned in the Concept Note.

Considering that one of the main goals of these recommendations complies with the following:

The aim of the current General Recommendation under elaboration is to interpret the definition, scope and expectations regarding States parties’ obligations in relation to article 6 of the Convention to suppress all forms of trafficking in women and girls, ensuring that the human rights of women and girls are respected, protected and fulfilled in accordance with international law (Concept Note, 2019, p.1).

This document also addresses a recent case in Portugal: the “approval of a prostitution strategy in the city of Lisbon”, based on a biased interpretation of the CEDAW (by assuming sex work, exploitation and trafficking as a single phenomenon). Said strategy will lead to the stricter control of women’s bodies and the adoption of strategies that affect and fail to protect migrant undocumented women.

1. **The non-differentiation between trafficking, exploitation and prostitution/sex work**

Similarly to other countries, the Portuguese abolitionist/prohibitionist agenda perceives CEDAW as a powerful tool to justify the prohibition and eradication of prostitution. In fact, the sentence used in article 6 (“exploitation of prostitution of women”) is openly interpreted, as mentioned by the Global Network of Sex Work Projects[[1]](#footnote-1):

The record of discussions that took place when CEDAW was drafted show that the term “exploitation of prostitution” was chosen deliberately to distinguish it from a duty to suppress all prostitution. The practices intended to fall under the term “exploitation of prostitution” however, remain unclear, partly because the term ‘exploitation’ has no agreed definition in international law (NSWP, 2018, p.7).

This inaccurate definition of exploitation is one of the key-issues discussed between fundamentalist/abolitionist feminists (who perceive the supply of sexual services as inherently violent and a type of violence) and the feminists who support sex work and distinguish sex work from exploitation. According to this, the first group also identifies prostitution as part of the violence that configures human trafficking for sexual exploitation purposes.

In this sense, the inaccuracy in the meaning of exploitation and the appropriation (misinterpretation) of the convention could lead to discourses favouring the “end of demand policies”, with negative consequences to the principles that address the protection of women’s health, human rights and well-being.

Contrarily to the assertion of the “end of demand policies”, the outreach work developed by our team with sex workers over the past 10 years led us to advocate that specific types of sexual services should not be understood as inherently violent. This position is sustained by several organisations as: Amnesty International, Human Rights Watch, International Labour Organization, WHO, Association for Women in Development, International Community of Women living with HIV, ILGA Europe, Transgender Europe, The Global Alliance Against the Traffic in Women (GATW), Médecins du Monde, The Global Commission on HIV and Law, etc.

This conflation of sex work and human trafficking for sexual exploitation is beyond a rhetorical strategy with real impacts in the lives of immigrant women who are voluntarily in the sex market.

1. **The Portuguese model**

In Portugal, the commercial sex is decriminalised since 1983, but pimping is still interdicted under article 169 of the Penal Code, which criminalises “those who professionally or for profiting purposes favour or facilitate the exercise of prostitution by others” (Portuguese Penal Code, art. 169). This penal statute addresses individuals who promote or organise sex work, such as owners or tenants of spaces where said services are supplied.

In this sense, the criminalisation of certain aspects associated with sex work also includes cases when the exercise of the activities is not a result of coercion, exploitation or abuse. This framework leads to a legal void that has been preventing the acknowledgment and legalisation of these practices by the Portuguese judicial order. Hence, sex workers do not have access to dignified work conditions, safety and healthcare measures and labour protection.

CIG (Commission of Gender Equality) is one of the government body that addresses the prostitution-related issues in Portugal, clearly perceives prostitution as a form of violence and a phenomenon that ought to be eradicated. (OLIVEIRA, 2017[[2]](#footnote-2)).

Concurrently, the identification and eradication of human trafficking is part of the Portuguese political agenda. Although there is little evidence of victims of trafficking for sexual exploitation purposes over the past decade (OTSH[[3]](#footnote-3); OLIVEIRA, 2017; CLEMENTE, 2017[[4]](#footnote-4); MANITA, OLIVEIRA, 2002[[5]](#footnote-5)), the public opinion follows the notion that this is a widespread phenomenon:

To stress the relevance of trafficking, the media and the government bodies keep indicating high levels of trafficking for sexual purposes in Portugal (…) in addition to the official discourse of the government organisation, which depicts migrant women who work in the sex industry as disempowered victims (OLIVEIRA, 2017, p.207).

In this sense, it is widely documented the application of the law that criminalises pimping mostly affects undocumented immigrants (OLIVEIRA, 2013[[6]](#footnote-6)), a clear violation of their rights:

When considering the application of the law and the police forces’ actions, it is vital to distinguish national sex workers from migrant sex workers. The harassment of illegal immigrants by the police is clearly contradictory: the immigrants are perceived as victims but addressed as offenders (OLIVEIRA, 2017, p.215).

Hence, the Portuguese “legal void” concerning the supply of sexual services, the increase in abolitionist/prohibitionist movements and the moral panic among the general audience – which exaggerate the cases of trafficking for sexual exploitation services and result in false implication between this phenomenon and sex work – lead to the lack of protection among migrant adult women who voluntarily work in the sex market.

1. **The specific case of the *Municipal Strategy on Prostitution*, approved in Lisbon.**

The current legal framework – as well as the biased interpretation of principles and norms established by international mechanisms – has been contributing to the rise of moralistic and paternalist public policies that consider sex work as a scourge and a phenomenon that ought to be eradicated.

One of said cases is the *Municipal Strategy on Prostitution*,[[7]](#footnote-7) recently approved by Lisbon’s City Hall. This strategy, recurring to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), is characterised by a discourse that fails to distinguish between sex work, exploitation and human trafficking:

The Portuguese State ratified the UN Convention on the Elimination of All Forms of Discrimination against Women, the Suppression of Human Trafficking and the Exploitation of Prostitution of Others, which defines prostitution as incompatible with the dignity and value of people; (...) Since prostitution is closely associated with social injustices (that generate and promote many dimensions of inequality), poverty, marginalisation, social exclusion, unemployment, job precariousness and denial of rights, Lisbon’s City Hall will address said issue in order to prevent this form of violence and support those who are victims of exploitation. The eradication of this social scourge ought to be done by addressing its causes and by taking into account its specific effect on people engaging in prostitution (women, men and children) (Lisbon´s City Hall, 2018).

According to an assumption that does not distinguish between sex workers and victims of exploitation and/or human trafficking, the objectives of this strategy include mapping the “prostitution settings” and identifying/inventorying of “prostituted people” (please note the violence of the adopted terms), in order to rescue them from their reality:

In this ambit, there are new sophisticated and insidious realities, like digital platforms, thus hindering the detection of exploitation phenomena; Finally – and considering the importance of keeping up with the work developed by the City Hall to prevent and eradicate all types of exploitation and violence (including exploitation in prostitution and human trafficking) – the implementation of this strategy will contribute to eradicate all these forms of violence (Lisbon´s City Hall, 2018).

In this sense, Lisbon’s City Hall aims to:

Develop a diagnosis study about the city’s situation over the following year, which ought to be approved by the Municipal Council. Said research aims to collect information about: the age, gender and nationality of prostituted people; the prostitution settings/areas and their relation with cases of human trafficking for sexual exploitation purposes; the prostituted people who use drugs; the organisation of the sex market (namely its relation with sexual tourism and pimping” and the existing social support services (Lisbon´s City Hall, 2018).

As mentioned before – and according to key international bodies – this approach is not suitable to address this phenomenon, since it could increase stigma and force sex workers to conceal their activities.

We fear that this moral approach – which goal is to “collect information about the age, gender and nationality of *prostituted people* and data on prostitution settings (street, apartment, hotel, online, etc.)” – does not ensure the rights of those affected; instead, we believe this strategy (with proven negative results in other regions) will be used to identify and persecute sex workers.

We are also against other inaccurate notions depicted in this strategy, like conflating sex work (when carried out free willingly by adults who fully exercise their rights) to other highly reprehensible phenomena that are punishable by law: sexual exploitation of adults and children and human trafficking.

1. **Recommendations**

Considering the political and technical discourses that associate sex work with criminal and/or marginal phenomena lead to its secrecy and concealment - when we ought to be finding ways to eradicate precariousness and insecurity associated with sex work and promote fundamental rights.

Considering CEDAW is misinterpreted in order to persecute and punish immigrant and usually undocumented women voluntarily engaged in sex work, we propose a set of recommendations:

* Distinguish between sex work, sexual exploitation and human trafficking;
* Acknowledge sex trade as the provision of services or services contracting, agreed upon by adults and as a voluntary, consented and informed decision – without abuse or coercion;
* Acknowledge sex workers’ rights, freedoms and protection – similarly to any other occupation – as well as contractual freedom, right to annual leave and associated allowance, weekly rest, working hours, safety and health standards at work, union and association rights, etc.;
* Recognise sex workers’ right to pay taxes and other State contributions;
* Ensure sex workers’ access to social support mechanisms (unemployment benefits, sick leave, maternity/paternity leave, retirement, allowances, etc.);
* Decriminalise all aspects and activities associated with sex trade, namely when voluntarily carried out by adults, with no abusive and coercion practices;
* Improve the identification, referral, protection and support mechanisms targeting victims of human trafficking;
* Acknowledge, document and include trans women and their particularities in the CEDAW, namely concerning the protection of their rights;

and

FINALLY...

* The jurisdiction of a right or legal good, such as the personal freedom of human trafficking victims, should not relinquish other equally relevant human and fundamental rights.
1. NSWP (2018). *The Smart Sex Worker’s Guide to the Convention on the Elimination of All Forms of Discrimination Against Women*. [online] Available at: https://www.nswp.org/sites/nswp.org/files/smart\_guide\_to\_cedaw\_-\_nswp\_2018\_0.pdf [↑](#footnote-ref-1)
2. OLIVEIRA, Alexandra (2017). *Prostituição em Portugal: uma atividade marginalizada num país que mais tolera do que persegue*. *Bagoas*, nr. 17, pp. 201-224. Available at: https://periodicos.ufrn.br/bagoas/article/view/13525. [↑](#footnote-ref-2)
3. OTSH (2018). *Tráfico de Seres Humanos* – 2017 Report. Ministry of Internal Adinistration. Available at: https://www.otsh.mai.gov.pt/wp-content/uploads/REC-OTSH\_Relatorio\_Anual\_TSH\_2017\_2018.pdf. [↑](#footnote-ref-3)
4. CLEMENTE, Mara (2017). *Cidadãos portugueses traficados*. OEM Fact Sheets, 5, Emigration Watch, CIES-IUL, ISCTE-IUL. DOI: 10.15847/CIESOEMFS052017. [↑](#footnote-ref-4)
5. MANITA, Celina. OLIVEIRA, Alexandra (2002). *Estudo da caracterização da prostituição no Porto e Matosinhos*. Porto: CDIM. [↑](#footnote-ref-5)
6. OLIVEIRA, Alexandra (2013). *Da prostituição de apartamento na cidade de Lisboa: Características e significados*. Report. Porto: FPCEUP. [↑](#footnote-ref-6)
7. LISBON’S CITY HALL (2018). Municipal Strategy on Prostitution. [↑](#footnote-ref-7)