

Shadow Report
Council of Europe Convention on
combating trafficking in human
beings

Switzerland

By End Demand Switzerland (EDS)
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Abbreviations:

HT	Human trafficking:
HTfSE	Human trafficking for sexual exploitation: HTfSE
CoE:	Council of Europe
The Convention	CoE Convention on Action against Trafficking in Human Beings 2005
GRETA	Group of Experts on Action Against Trafficking in Human Beings)
NAP	National Action Plan Against Human Trafficking
NAP23-27	National Action Plan Against Human Trafficking, 2023-27
NAP17-20	National Action Plan Against Human Trafficking, 2017-
FedPol	Swiss Federal Police
Federal Report (2015)	Report of the Federal Council (2015)
SCHR Study	Bekämpfung von Menschenhandel im kantonalen Kontext: Risikofaktoren, Fallaufkommen und institutionelle Vorkehrungen , by Johanna Probst in cooperation with Denise Efonayi-Mäder, Anne-Laurence Graf und Didier Rue, July 2022, Swiss Centre of Expertise in Human Rights (in English: Combating human trafficking in the cantonal context: risk factors, case volume and institutional measures) published by the Swiss Center of Expertise in Human Rights (SCHR)
CEDAW	Committee on the Elimination of Discrimination against Women
CEDAW Concl Obs 2022	Concluding observations on the sixth periodic report of Switzerland (31 October 2022)
SOCTA Report (2021)	Europol (2021), European Union serious and organized crime threat assessment, A corrupting influence: the infiltration and undermining of Europe's economy and society by organized crime, Publications Office of the European Union, Luxembourg
FEMM Study (2021)	Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 695.394 – September 2021: The differing EU Member States' regulations on prostitution and their cross-border implications on women's rights
OSCE (2021)	Discouraging the Demand that fosters trafficking for the purpose of sexual exploitation. Occasional Paper no. 11

ABOUT 'END DEMAND SWITZERLAND'

End Demand Switzerland (EDS) is a non-profit organization governed by the Swiss Civil Code and recognized as an NGO of public utility. We are all unpaid volunteers and receive no government funding.

EDS's overall objective is to reduce - ideally abolish - trafficking in human beings for the purpose of sexual exploitation in Switzerland.

To achieve its objective, EDS promotes strategies that focus on the root causes of human trafficking for the purpose of sexual exploitation and prostitution. In particular, the demand for commercial sex. Without this demand there would be no trafficking for sexual exploitation. EDS' perspective on human trafficking for sexual exploitation is guided by the experience of survivors, who are part of our NGO, and those with a direct insight into the sex industry, such as the police controlling the red-light district and street workers who regularly visit brothels and women in street prostitution.

Based on the principle of gender equality and the dignity of the human being, EDS sets out to:

- Raise awareness about the root causes of human trafficking for the purposes of sexual exploitation and prostitution.
- Raise awareness about the way in which prostitution policies impact human trafficking for sexual exploitation in Switzerland.
- Inform about the reality of prostitution, its damaging physical and psychological effects, and the harm that the normalization of prostitution causes society.
- Support women who wish to exit prostitution, whether they fall into the legal definition of victims of human tracking for sexual exploitation or not.

EDS focuses on human trafficking for sexual exploitation which continues to be the most prevalent type of human trafficking in Switzerland and in Europe. Our submission will therefore almost exclusively address issues relating to this type of human trafficking.

SUMMARY

1. Prevention is the most important, cost effective, and sustainable way of combatting human trafficking (HT). Among possible prevention strategies, Art. 6. highlights the state's obligation to *discourage demand*.
2. However, Switzerland's NAP23-27 lacks any credible commitment to preventing HT. The NAP23-27 is unambitious and unlikely to achieve any real progress.
3. HTfSE is the most prevalent form of HT in Switzerland and the EU. High demand for prostitution motivates traffickers and fosters HTfSE.
4. The NAP23-27, the Federal Report, and Swiss answers to GRETA all confirm the lack of political will to discourage the demand that fosters HTfSE.
5. Prostitution policies focusing on discouraging demand are a fundamental *prerequisite* for a NAP that can lead to reducing HTfSE.
6. Switzerland's measures to combat HT are re-active.
7. Demotivating traffickers is the most impactful measure to combat HTfSE. It is best achieved when their business is made unprofitable. Traffickers depend on demand for prostitution, making effective policies that discourage demand crucial.
8. Reducing the size of the prostitution market leads to a decrease in the size of the "darkfield" (undetected cases of HTfSE) and results in fewer cases of HTfSE. A smaller darkfield makes it more manageable for law enforcement to identify victims and prosecute traffickers.
9. There is an approximate 0,5 % chance for a victim of HTfSE to be discovered in Switzerland¹.
10. Switzerland's strategy to combat HTfSE has failed. Law enforcement can only *be part* of the solution. Switzerland needs a fundamental change of its prostitution policies to make substantial progress in combating HTfSE. Comprehensive measures must be implemented to discourage demand for prostitution across all levels of society.

¹ See below p.12 under 2.5.2

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Chapter I – Purposes, Scope, Non-Discrimination Principle and Definitions

1.1 Article 1 – Purposes of the Convention

1.2 The importance of prevention within the concept of combatting HT

The overarching purpose of the Convention is to prevent and combat trafficking in human beings as expressed in Art. 1. Given that “preventing” is conceptually encapsulated in “combatting” HT, the explicit mentioning of prevention suggests that the authors of the Convention intended to ensure that *prevention* was understood as the preferred measure, amongst all others, to combat human trafficking.

“Prevention” as a means is repeated in Art. 5. further emphasizing its significance. Among the various possible prevention strategies, that can be deployed against HT, Art. 6. emphasizes the importance of addressing the *root causes* of human trafficking. Amongst the root causes, Art. 6 singles out the obligation of the state to *discourage demand*.

We shall therefore focus on what Switzerland has done about *prevention* and *root causes* of HTfSE. Indeed, the emphasis on prevention cannot be overstated. This is because effective prevention has a positive spill-over effect on the consequences of human trafficking, namely the protection of the human rights of the victims of trafficking, and the assistance given to victims and witnesses (Art. 1b). Prevention is the most cost-effective and efficient channel to reduce HTfSE, directly alleviating the need for the resource-demanding protection of HTfSE victims (Art. 1b.).

Chapter II – Prevention, Co-operation and Other Measures

2.1 Article 5 - Prevention of trafficking in human beings

2.1.1 Swiss NAP23-27 in light of Art 5. 1-2

On 16th December 2022, the Government adopted the new NAP23-27². This new plan constitutes Switzerland’s current strategy to combat human trafficking and follows the last NAP which covered the period from 2017-20. Upon comparison, there appears to be no fundamental change in strategic thinking between the two plans, which is not surprising given that a change in Switzerland’s liberal prostitution policy is a prerequisite for any significant changes to a new NAP.

As Switzerland’s core document in the fight against HT, the NAP23-27 deserves scrutiny. Although it is a positive development that a new NAP has been drafted, its value must be evaluated based on the quality of its content, particularly in terms of its specific targets, projected results, concrete actions, and indicators.

The NAP23-27 lists 7 strategic goals³:

1. *The cantons create the conditions necessary for combating human trafficking effectively and take appropriate measures in emergency situations.*
2. *The parties involved in combating human trafficking in Switzerland are trained to identify instances of human trafficking and take appropriate measures. The public and the business community are aware of human trafficking.*
3. *Switzerland’s anti-human trafficking response is grounded on situation reports and knowledge-based findings.*
4. *Switzerland takes effective action against human trafficking for the purpose of labour exploitation.*
5. *All human trafficking victims in Switzerland receive the protection and support they are entitled to.*
6. *Minors who are victims of human trafficking are identified and receive help and protection based on the child’s best interests.*

² <https://www.news.admin.ch/news/message/attachments/74538.pdf> (accessed 10.5.23)

³ Verbatim p. 10 from <https://www.news.admin.ch/news/message/attachments/74538.pdf>

7. *Switzerland contributes to reducing the causes of human trafficking and to effective and result-oriented cooperation at international level.*

It is common practice, for *strategic* goals to be formulated in general terms. However, it may be safe to assume, that in part, some of the goals have already been fulfilled and if so, this renders them less meaningful. In addition, many of the vague formulations make it impossible to assess if fulfillment of a given goal is already achieved.

For example, it may be assumed that the Cantonal police – to the best of its ability - *already has* “created the conditions necessary for combating human trafficking effectively” within their respective jurisdiction and *are presently* able to take ‘appropriate measures’ in situations of crisis. Equally, it may be assumed that actors against HT are *currently* receiving training and that some public awareness measures *have* already been taken. Also, the 3rd and 4th goal state the obvious. The 5th and 6th goal about victim protection and assistance say nothing more than that Swiss authorities will be law abiding and grant victims, including minors, their rights.

Interestingly, the 7th strategic goal supposedly relates to *reducing the causes* of HT and therefore deserves special attention: Surprisingly, the ‘Specific targets’, the ‘Project results’, the ‘Concrete actions’ as well as ‘Indicators’ attached to the 7th strategic goal primarily promise: 1. increased exchange of information, 2. use of diplomacy 3. supporting measures abroad to combat trafficking in the countries of origin (victim protection). While it can be argued that ‘3.’ could potentially contain measures that somehow relate to *reducing causes of HT*, this is difficult to assess because the NAP barely reveals what these measures actually are. Apart from increased information sharing with countries of origin, the only concretization of the measures that are planned to be taken abroad we find mentioned under 7.2.2. Here, we are informed that the projects include victim protection. This is curious, because that last strategic goal was supposed to deal with *root causes*.

Strikingly, the Swiss authorities have clearly excluded addressing any root causes relating to the demand that fosters HTfSE *emanating from their territory*. But to address this would inevitably lead to questioning their liberal prostitution policy which politicians appear united⁴ to uphold. The political will to reduce demand for prostitution is manifestly lacking.

An examination of each of the mentioned sub-categories show the same pattern: they are mostly formulated in general and vague terms.

When strategic goals, *and* all their sub-categories, including ‘actions’ are formulated vaguely, the fulfillment of these goals becomes a matter of interpretation – and therefore renders them meaningless. For sub-categories of the strategic goals to carry any meaning they must be designed to be measurable and subsequently be evaluated independently and transparently. Real improvement will only be achieved when goals are concrete and there is a risk that failure will be visible when goals are not met. Unfortunately, the formulations of ‘specific goals’, ‘actions’, ‘indicators’ do not reflect any commitment to such standards.

The word ‘cooperation’ is used 26 times and ‘awareness-raising’⁵ 22 times in the NAP23-27. Naturally, cooperation between relevant actors is important, but it is also *assumed* in a well-functioning state apparatus with decades of experience working with civil society and other actors. The same can be said regarding awareness-raising⁶. In contrast, *reducing the demand that fosters human trafficking* is not mentioned once in the NAP23-27, reflecting Switzerland’s lack of political will in reducing such demand.

In conclusion: The formulations of the NAP23-27, and specifically its *goals and actions*, are kept in such general and vague terms that its meaningfulness is limited. Based on the NAP23-27, no concrete

⁴ On June 8th, 2022, the Swiss National Council voted with 172 against, 11 in favor and 4 abstentions against the criminalization of sex purchase.

⁵ Or variations of these words

⁶ It may also be worthwhile to question the utility of (superficial) awareness-raising about HT among the general population. Unfortunately, the NAP is silent about how to measure the impact of such awareness-raising initiatives.

measures are aimed at putting in place effective measures to prevent HT, yet this is among the most prominent of the legal obligations under the Convention.

A national action plan should be ambitious, striving for tangible improvements through specific and measurable actions. Unfortunately, the NAP23-27 indicates that Switzerland has no intention of changing its course.

Yet, implementing strategic changes by focusing on prevention is needed as a matter of urgency, given that currently, there seems to be only a 0.5% chance for a victim of HTfSE to be discovered by law enforcement (See under 2.5.2).

2.2 Article 6 - Measures to discourage the demand

2.2.1 HTfSE is the most prevalent form of HT

In Switzerland, the most prevalent form of HT continues to be HTfSE. This fact is widely acknowledged, not least by the Swiss authorities⁷ themselves. Victims of HTfSE are found in prostitution.

According to the European Commission⁸ HTfSE also continues to be the most prevalent form of HT in the EU. Yet, Swiss authorities routinely downplay the connection between prostitution and HTfSE in highlighting the fact that prostitution is legal, whereas HTfSE is a crime. Although legally correct, it *obscures* the reality where the phenomena of trafficking, exploitation and prostitution of women are inextricably linked. To focus on the distinction serves the image of the sex industry, and in particular the profiteers of the prostitution of others⁹. This does nothing to help victims and potential victims of HTfSE and misleads the public in its understanding of HTfSE and its functioning. A prerequisite to efficiently combat HTfSE it is to acknowledge and focus on *the connection* between prostitution and HTfSE.

The number of undetected cases of HTfSE is high. However, Switzerland has created a legal framework for prostitution suiting traffickers. By treating prostitution as a normal business and granting pimps and brothel-owners the status of businessmen in a legitimate industry, Switzerland is *attracting* traffickers because they can operate in plain sight.

2.2.2 The Explanatory Report on Art. 6

As we have seen *the prevention* of HT is at the very heart of the Convention. Art 6 stipulates *how States must go about* preventing HT: namely by discouraging the demand.

According to the Explanatory Report¹⁰, the authoritative interpretation guide to the Convention, Art. 6 “places a *positive obligation on Parties to adopt and reinforce measures for discouraging demand whether as regards sexual exploitation* or in respect of forced labour or services, slavery and practices similar to slavery, servitude and organ removal. *By devoting a separate, free-standing article to this, the drafters sought to underline the importance of tackling demand in order to prevent and combat the trafficking itself.*” (italics added)

2.3.1 NAP23-27 ignores the legal obligation in Art. 6

Yet, Swiss authorities tasked to formulate policies implementing this legal obligation ignore this.

⁷ NAP23-27, p. 8

⁸ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, (19.12.2022) p. 4

⁹ Also, the recent FEMM Study (2021) confirms this p.28: “In the European Union sex trafficking and prostitution are strictly intertwined, from a theoretical and practical point of view.”

[https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)695394](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)695394) (accessed 10.5.23)

¹⁰ Council of Europe Treaties Series – N. 197, Warsaw 16.V.2005 point 108

Paradoxically, the NAP23-27 (p. 9) states the Convention as its fundamental basis. It is therefore noteworthy that one of the most central obligations, namely the prevention of HT by discouraging demand is not mentioned in any 'strategic goal', 'specific target', 'projected result' or 'concrete action'. Here, it is crucial to highlight that a proactive NAP *necessitates* a prostitution policy that discourages demand. Only when Swiss prostitution policy change, can we anticipate a meaningful NAP.

Unfortunately, this omission can only be interpreted in one way: The Swiss Government has no intention to fulfill its legal obligation to discourage demand.

Switzerland's non-compliance with one of the most central legal obligations of the Trafficking Convention has a long history.

2.3.2 Swiss Federal Report ignores the legal obligation in Art. 6

The most comprehensive, 141 pages long, Federal Report (2015) on the subject, entitled 'Prostitution and Human Trafficking for Sexual Exploitation'¹¹ does not even mention that Switzerland has a legal obligation to discourage demand under the Convention.

Not only is the Federal Report silent on Switzerland's international obligation to discourage demand, but also it is silent on concrete actions taken in this respect. This is because no meaningful actions have been taken to reduce demand in the first place. (See below under 2.3.3).

Meanwhile, the report examines policies one country has put in place to discourage demand: Sweden. Over 5 pages, the report purports to provide a balanced account of Sweden's demand reduction efforts. However, the authors of the report do not conceal their disapproval of the Swedish demand reduction policy.

When government reports are biased in this way¹², it may be because the authors have an interest in ignoring the obligation to discourage demand because this obligation is intrinsically incompatible with Switzerland's liberal prostitution policy. Consequently, and regrettably, the Federal Report is biased from the outset. It omits fundamental information despite the fact such a report is supposed to comprehensively inform and guide political decision makers who may not be particularly well-versed on the subject. Such bias is not only dishonest but also results in missed opportunities in the fight against HTfSE.

2.3.3 Switzerland's responses to GRETA evade the legal obligation in Art. 6

It is noteworthy to examine how Switzerland accounts for the measures they have taken in relation to the obligation contained in Art 6¹³.

As a response, Switzerland refers to an *awareness campaign* informing about the phenomenon of human trafficking *in general*. The reference says: "*One of the key messages focused on the diverse profiles of potential victims, who may be women, girls, men or boys. A special focus was placed on highlighting the existence of various forms of exploitation, in particular labour exploitation*"¹⁴.

While it is true that some men and boys are subject to human trafficking, the vast majority of trafficking victims in Switzerland are women, the exploitation takes place *in prostitution*, and the buyers are *men*.

¹¹ Prostitution und Menschenhandel zum Zweck der sexuellen Ausbeutung, Bericht des Bundesrates in Erfüllung der Postulate 12.4162, Streiff-Feller, 13.3332 Caroni, 13.4033 Feri und 13.4045 Fehr, 5. Juni 2015

¹² The report (p. 86) mentions that HTfSE continues to exist in Sweden (despite the wide-ranging measures to discourage demand) implicitly doubting the positive impact the measures to discourage demand has had. However, such argumentation is flawed: criminalization has rarely – if ever - been able to *eliminate* crime. Switzerland would certainly not retract the criminalization of rape arguing that rape still does takes place.

¹³ GRETA Report (2019)14 p.24

¹⁴ GRETA Report (2019)14 p.16

Also, the Convention Art 6 litra b, is clear in relation to *what should be communicated* to the public as it says: ‘...in identifying the demand as one of the root causes, of trafficking in human beings’.

Despite this stipulation, the Swiss awareness campaign make *no* reference to root causes such as the demand that fosters HTfSE. Given the undisputed fact that the vast majority of victims of HT are found in prostitution as they are HTfSE, it is noteworthy that no discouragement to buy sex can be found. The public is thus simply made aware of the existence of HT and not that demand is one of the root causes of HT(fSE).

Awareness campaigns that do not efficiently communicate the message that demand is one of the root causes of HT *fail* to address the issue properly.

Switzerland’s second ‘measure’ to discourage demand reads as follows: “A website has been set up informing clients of prostitution of signs that should raise suspicion of human trafficking and how to react.”¹⁵ Although it is theoretically possible that some sex buyers might report a case, this measure obviously does not live up to what is meant by the obligation to ‘discouraging demand’. Essentially, Switzerland seeks the ‘cooperation’ of the group of men, whose very actions constitute the demand that fosters HTfSE and that the Swiss authorities *are supposed to* discourage.

Apart from this approach being hypocritical, it is questionable to which extent sex buyers have *any interest* in distinguishing between a woman who is trafficked and one who is not. A study from November 2022¹⁶ gives us some insight in the way in which men think about the women from whom they buy sex. The findings clearly suggest that men generally lack empathy for the situation in which the women find themselves. Furthermore, victims of trafficking are notoriously reluctant to disclose their situation, and often deny being a victim, typically due to the psychological pressure they endure.

Also, the help sought from the sex buyers in identifying victims show that Swiss authorities seem to ignore the significance of the word ‘fosters’ in Art 6.

Unfortunately, there are many examples showing that the Swiss authorities have no intention in discouraging the demand for prostitution, but one example stands out: A large and well-funded Geneva-based counselling service for women in prostitution which is also part of the Cantonal Round Table, has included a platform on their website where women can sell sex¹⁷. The platform was financed by FedPol and the Federal Department for Health¹⁸. When EDS contacted FedPol asking how they could ensure that the women who use the Platform were not sent by traffickers, no conclusive answer could be obtained.

In conclusion, the most serious deficiency in the government’s anti-trafficking efforts is their lack of compliance with their international obligation to *discourage the demand that fosters* HTfSE.

2.4 Switzerland’s reactive approach

As we have seen above and based on the NAP23-27, Switzerland does not appear to have any plans to put in place preventive measures to combat HTfSE that include discouraging demand.

Indeed, Swiss efforts to combat HTfSE are almost exclusively *reactive*. As a result, those benefitting from any possible progress made in the areas of prosecution and victim protection, are a very *few* individuals, namely those *who have been detected as victims* and/or have been legally recognized as such following a lengthy court case.

Reactive measures include: a. Victim identification b. Victim protection and c. Prosecution

¹⁵ <http://www.verantwortlicherfreier.ch/en/index.html> (accessed 2.5.2023)

¹⁶ M. Farley et al.: Men who buy for sex in Germany & what they teach us about the failure of legal prostitution, Nov. 2022

¹⁷ <https://www.aspasie.ch/call-me-to-play/> (accessed 10.5.23)

¹⁸ The newspaper, Der Sonntagsblick, reported on this issue on 20.2.12019 on p.13

Among these, only prosecution has a *potentially* preventive effect. However, given that Swiss courts have only issued thirteen convictions under Article 182 (HT) in 2021¹⁹, the risk of being convicted, i.e., the *deterrent effect* of prosecution, is extremely limited. The deterrent effect is further limited as successful convictions mostly lead to *suspended* sentences.

Therefore, re-active measures – while important – do not have very much to do with *combatting* HT. They are obviously *related to* HT in that they ensure help to victims once they have been recognized victims or while they are in the process of being recognized. When re-active measures are portrayed as *combatting HT*, it may give the public the impression that decisive action is taken. However, an analysis of the NAP23-27 and indeed the past NAP, reveals that this is far from reality.

Public attention is, therefore, diverted from Switzerland's significant failure to implement preventive measures against HT, notably in addressing root causes like the demand for prostitution.

It is crucial to consider the typical profile of victims of HTfSE in Switzerland, which often involves young migrant women from underprivileged backgrounds. It is estimated that approximately 85-95% of women in prostitution in Switzerland are migrant women, from low income countries²⁰. Moreover, there are numerous root causes and contributing factors to HTfSE that Switzerland can do little to address, including personal vulnerability, dysfunctional family background, experience of sexual violence, naivety, lack of education, poverty, and limited work opportunities in countries of origin, etc. All of these make women easy targets for traffickers.

But there is the one root cause that Switzerland *can* influence: changing its prostitution policies, by effectively discouraging the demand for commercial sex on its own territory.

2.5 The extent of prostitution and the HTfSE data gap

The discrepancy between efforts relating to the pro-active (prevention) and re-active measures (protection of victims) is striking and appear to represent a *strategic flaw* in itself.

The impact of this flaw on the effectiveness of combating the crime, significantly depends on the size of the dark field of HTfSE. The bigger the dark field, the more serious are the consequences of this flaw *for undetected victims*. An estimate of the dark field of HTfSE is a *prerequisite* for any strategy to combat HTfSE. By an estimate of the dark field, we mean the best possible quantification of undetected victims. This updated data is currently lacking, and it is a circular logic that the Swiss government points out the fact that there is limited data regarding the numbers of women in prostitution and HTfSE²¹ but yet is responsible for this lack of data.

2.5.1 Demotivating traffickers is the most impactful measure to combat HTfSE

Traffickers are motivated by profit²² and depend *entirely* on the demand for prostitution. The most impactful measure to combat HTfSE is to demotivate traffickers, which is best achieved when their business is made unprofitable. This requires effective policies that reduce the size of the prostitution market. Discouraging the demand for prostitution is therefore crucial and aligns with Switzerland's international legal obligation.

¹⁹ <https://www.fedpol.admin.ch/fedpol/fr/home/kriminalitaet/menschenhandel/strafverfolgung.html> (accessed 30.4.23)

²⁰ CEDAW, Concluding Observations for Switzerland October 2022 point 45
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2582&Lang=en (accessed 10.5.23)

²¹ Federal Report (2015) p 66 under 5.1.2

²² Here, it should be noted that traffickers are also particular drawn to Switzerland because it is a high-income country, and they find plenty of sex buyers with a disposal income. Federal Report (2015) confirms favorable conditions for traffickers p. 59-60

2.5.1.1 The size of the prostitution market and the darkfield of HTfSE

To determine the size of dark field of HTfSE requires an estimate of the size of the prostitution market, or more precisely number of women in prostitution²³. The Swiss authorities usually avoid this question by stating that there are no reliable data available; neither about the numbers of women in prostitution nor about the number of trafficked victims²⁴. The Federal Report (2015)²⁵, states that: "There is no precise data regarding the number of prostitutes in CH". Subsequently, reference is made to an outdated study from 2008. This estimates that there are between 13.000 and 20.000 prostitutes. Another source (AidsHilfe, 2013) estimates between 18.000 and 22.000 prostitutes. Further, the Federal Report states p. 66, that: "The extent of human trafficking in Switzerland cannot be quantified.....However, the current data situation does not allow for a well-founded estimate on human trafficking. Therefore, it cannot be conclusively assessed whether there are fewer or more victims of human trafficking today."

However, in a footnote²⁶ to these sources it is acknowledged by the authors of the report that the situation *has changed* considerably since liberalization in migration rules for citizens from certain EU countries which is a strong indication that the size of the sex industry has since grown considerably since the last estimates.

By stating that *no exact* data exist, Swiss authorities seem to imply that the *degree of precision* of this data is important or that the current lack of data is *something unchangeable*. However, it is unimportant that data cannot be determined *with precision*, what is important is a *political willingness on the part of the State to collect and publicly provide this data*, by means of the most suitable and transparent methodology possible and to the best of its ability²⁷.

In reality, Swiss authorities are perfectly able to provide relatively reliable estimates. In fact, they already do so, inter alia based on official registrations by women who announce their activity in the sex industry *combined* with data collected by the Cantonal police tasked with controlling the red-light districts, brothels etc. and with testimonies made by women in prostitution including trafficking victims. In addition, there are other sources of information from various NGOs frequently shared during the Cantonal Round Table meetings²⁸.

Switzerland's lack of transparency, evidenced by the omissions of this information in the 140 pages of the Federal Report (2015) about this important point, suggests that any quantification of the numbers of women in prostitution is unwelcome. This is unsurprising given that the Swiss authorities consistently downplay the connection between the demand for prostitution and HTfSE.

2.5.1.2 The correlation between HTfSE and the size of the prostitution market

As suggested earlier there is a proportionality between the number of women in prostitution and the numbers of victims of HTfSE. The larger the size of the sex industry, the higher the presumed number of victims of HTfSE. Dark number of victims of HTfSE correspond to the number of undetected victims.

²³ we acknowledge that males are also in prostitution but want to stress that the vast majority of victims of HTfSE in Switzerland are female which is why we consistently speak of 'women'

²⁴ NAP23-27, point 2.3., p. 7: "the true extent of human trafficking is difficult to determine, not least because it takes place covertly and the number of unknown cases is therefore high."

²⁵ Federal Report (2015) page 46, under 4.1.2.1

²⁶ Federal Report (2015) p. 46 Footnote, no 97: "It should be noted that in 2008 persons from the EU-8 (Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic, Hungary) and self-employed persons from the EU-2 (Bulgaria and Romania) did not yet enjoy complete freedom of movement. The liberalization in their favor in May and June 2011 changed the overall situation considerably."

²⁷ Since each of the 26 Cantons has the prerogative to decide how to regulate prostitution, data collection may not be done in the same way, but it does not prevent each Canton to collect the data and agree on the same methodology. Also, it should be noted that it remains within the mandate of the federal authorities to take measures to better control prostitution Federal Report (2015), under point 2.5

²⁸ NAP23-27, p. 7, under 2.2

A recent study published by the Swiss Centre of Expertise in Human Rights (SCHR) in July 2022²⁹, proves informative: “The study examines the corresponding measures taken by the cantons and puts them in relation to the respective risk of human trafficking occurring more frequently in the canton in question. The risk of human trafficking occurring is related to the economic structure of a canton: *the more important the sex industry, the higher the risk of human trafficking for sexual exploitation (.....)*.” (italics added)

Here, the evident correlation between the size of the sex industry and the prevalence of HTfSE is clearly acknowledged and furthermore serves as the basis for the level of police resources a canton is willing to assign to combatting HT. The study also states, p. 9, that “The cantons combat human trafficking primarily through institutional arrangements, such as a round table on human trafficking or specific education and training of personnel”. While the cooperation between different actors involved in different aspects of combatting HT is evidently essential, it should be noted that the Round Tables only meet 1-2 a year, and little is known about the concrete outcomes of the meetings.

To accurately estimate the size of the dark field of HTfSE, there also needs to be an approximate assessment of the proportion of women in prostitution realistically falling into the category of victims of HTfSE.

2.5.1.3 Assessment from the police in Bern

Publicly, Swiss authorities are silent on this issue of dark numbers. One exception is Mr. Alexander Ott who has 30 years professional experience and is the Head of Residents' Services, Migration and Co-Head of the Aliens Police of the City of Bern.

The authorities in Bern have set up a special system in which every migrant woman who wishes to register for the 90 days right to stay and work in Switzerland undergoes a personal interview³⁰. Staff conducting these interviews receive specialist training. This approach supports the development of trust between the authorities and the women. It also gives the police an opportunity to assess the extent to which the woman might be controlled by pimps or traffickers. Therefore, the interview may also serve to prevent or discover potential cases of HTfSE. With over 3000 interviews conducted, Bern has an excellent insight in the degree of ‘voluntariness’ of these women. Mr. Ott confirms with certainty, that women *would not enter prostitution* if they had received an education and *entirely could decide for themselves*³¹.

This assessment challenges the idea that women are in prostitution voluntarily. It is more accurate to speak about *the degree of coercion, pressure, and force* that the women face. Most importantly, the Police in Bern, also assesses that 30-50% of all women are in *forced* prostitution i.e. controlled by pimps, traffickers and other profiteers³² and that about 90% of all women in prostitution are migrant women³³.

2.5.2 A suitable measure of failure or success in combatting HTfSE

In 2022, police statistics only listed 45 HTfSE cases out of a total of 63 *registered* HT cases³⁴. Note here, that ‘registered cases’ does not necessarily mean that these have led to prosecution.

²⁹ <https://skmr.ch/publikationen-dokumentationen/studien-gutachten/bek%C3%A4mpfung-von-menschenhandel> (accessed 9.5.23) Entitled: Combating human trafficking in the cantonal context, p. 9

³⁰ <https://www.bern.ch/themen/arbeit-und-steuern/sexarbeit> (accessed 10.5.23)

³¹ <https://www.evppev.ch/aktuell/akzente/> (accessed 10.5.23)

³² Wüst, A (2020). Piff, Paff, Puff. Prostitution in der Schweiz. Basel: Echtzeit. p.29

³³ other sources speak of 75% which is why we shall use the middle: 85%

³⁴ <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-straftaten/polizei/straftaten.html> (accessed 9.5.23). For the year 2021, the registered HT cases were 71 of which 31 were HTfSE cases corresponding to a 0,39 % chance for a victim of HTfSE to be discovered.

To put this into perspective: Based on old (conservative) estimates, there are 20.000 women in prostitution in Switzerland³⁵ and of these, an average of 40%³⁶ are considered by the police in Bern to be in forced prostitution, we arrive at an estimate of 8.000 women who are likely to be victims of HTfSE. 45 cases of HTfSE out of an estimated 8.000 women who – according to police estimates – are in forced prostitution means that there is an approximate **0,5 % chance for a victim of HTfSE to be discovered**³⁷. In this rough estimate we assume that those women who are likely to be coerced into prostitution, can be deemed victims of trafficking. This may not always be the case stricto sensu. However, this inaccuracy may be mitigated by the updated number of women in prostitution which would most likely be higher than the old estimates of 20.000 women. The darkfield of HTfSE cases would thereby be proportionally larger and consequently also the rate of undetected cases of HTfSE.

Another way of gauging efficiency is to look at the number of *convictions* of HT. As we have seen, the most recent publicly available data is from 2021. It amounted to only 13 convictions for the entire country³⁸. This number is not disaggregated into the different types of HT and thus convictions of HTfSE are highly likely to be *under* 13 convictions. Although there is no available estimate of dark numbers of traffickers to compare with the 13 convictions, it is evident that the remarkably low number of convictions in 2021 underscores the Swiss law enforcement's inability in holding traffickers accountable. Swiss courts' tendency to grant suspended sentences, even in cases of HT further sends a signal to potential perpetrators that engaging in trafficking carries little risk.

2.5.3 The failure to combat HTfSE

Even if the above calculation is only an estimate, it is a strong indication that there is widespread impunity for perpetrators of HTfSE and suggests that the Swiss Governments strategy to combat HTfSE has failed. This is the 'failure' mentioned in CEDAW General Recommendation 38 Point 30: "*Sexual exploitation persists due to the failure of States parties to effectively discourage the demand that fosters exploitation and leads to trafficking.Massive financial gains with few risks owing to impunity are still widespread. Under article 9 (5) of the Trafficking in Persons Protocol, States should adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. The need to address the demand that fosters sexual exploitation is especially important in the context of digital technology, which exposes potential victims to an increased risk of being trafficked.*"

As recently as October 2022, CEDAW stated the following in its Concluding Observations on the sixth periodic Report for Switzerland³⁹ :

45. The Committee is *concerned about the high incidence of exploitation of women in prostitution in the State party*. It notes with concern that approximately 85 - 95 percent of women in prostitution are migrant women, often in an irregular situation. It also notes with concern that an increasing number of women and girls who reside in the State party are *lured into the prostitution industry* through the so-called "loverboy" method. It further notes *with concern*:

(a) *The link between trafficking and exploitation of prostitution, with an estimated majority of women in prostitution having been trafficked into the State party;*

(b) Reports that women in prostitution are regularly subjected to psychological and physical gender-based violence, and that, according to a 2010 study by the Department of General and Social Psychiatry at the University of Zürich, many women in prostitution were displaying mental disorders related to gender-based violence and "the burden" of prostitution;

(c) That there is no system in place to help women in prostitution to leave prostitution if they wish so. (Italics added)

46. *The Committee recommends that the State party:*

(a) Carry out education and awareness-raising programmes to sensitize women and men on the high exposure of women in prostitution, in particular migrant women, to gender-based violence, exploitation and racial

³⁵ Federal Report (2015) p. 47 (under 4.1.2.1) we would again like to stress that the number 20.000 is outdated. The Report (2015) acknowledges this on p. 46 in footnote No. 97

³⁶ the middle of the of the assessment by the police in Bern, namely 30% and 50%= 40%

³⁷ Given the limitations of a small NGO (EDS) it has not been possible to make this calculation more precise. In the calculation it has been assumed that in each of the 31 cases of HTfSE registered by the police there was one victim. It has also been assumed, that police estimates from the Canton of Bern are representative for the rest of Switzerland

³⁸ <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/strafjustiz/verurteilte-erwachsene.assetdetail.22665318.html> (accessed 9.5.23)

³⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2582&Lang=en (accessed 9.5.23)

discrimination, *develop prevention strategies*, and *reduce the demand for prostitution* in the State party; (Italics added)

Also, Europol confirms in its SOCTA (2021)⁴⁰: "THB is a core activity of serious and organized crime in the EU and is set to remain a threat to the EU for the foreseeable future. *Sustained demand for sexual services will continue to drive the sexual exploitation of victims*" (Italics added)

However, Switzerland continues to ignore the urgency to act and to put measures in place to discourage demand: On the 8th of June 2022, the Swiss National Council voted with 172 against, 11 in favor and 4 abstentions against the criminalization of sex purchase. There was no discussion accompanying this vote⁴¹.

Chapter III - Measures to protect and promote the rights of victims, guaranteeing gender equality

3.1 Art 10 - Identification of the victims

3.2 Conceptual remarks

The identification of victims is obviously of fundamental importance. If states fail to identify victims, they automatically fail to protect and grant them their rights⁴² the latter being *an added value* and essential part of the Convention. Due to the nature of HTfSE, detection/identification is particularly difficult for law enforcement. Victims hardly ever report to the police. According to the testimonies we have received from women in prostitution and the accounts from some of our own members with lived experience in prostitution, an important difference between HTfSE and other forms of trafficking is that there is often an *emotional bond* between the trafficked women and her trafficker. In numerous cases trafficked women are unaware of their own victimhood. Frequently, we have heard from women: "but I agreed to it". In the mind of the victim this places all responsibility on her and exonerates her trafficker. In many cases, the emotional bond is so strong that the victim actively seeks to defend and protect her trafficker (in cases where law enforcement or other agencies have suspicion of HTfSE and are in contact with the victim). This represents a barrier to justice that is very difficult to overcome in real life situations.

Here, we would like to draw attention to the connection between given consent, lack of awareness of victimhood and problems related to victim identification. Based on the testimonies we have received by women in prostitution in Switzerland, it appears that there are numerous cases in which consent *or rather a degree of consent* is given. This obscures the exploitative nature of the arrangement with the trafficker. This circumstance represents a serious additional obstacle for law enforcement to identify victims and *again underscores the importance to focus on prevention* and align prostitution policies with Art 6.

3.3 Swiss law enforcement

The Federal Report (2015) states⁴³ : "The way in which controls of the sex market take place is defined by cantonal and communal decrees. According to the study by the University of Geneva, both in the cantons with and without prostitution regulations, the control activities of the authorities concentrate on checking residence and work permits. The working conditions and *the presence of signs of human trafficking or promotion of prostitution are hardly checked in practice*. The reasons for this are the *lack of resources and low priority among the police*, the orientation of the regulations towards residence and employment status, and the *unwillingness of possible victims of pimps or traffickers to cooperate and*

⁴⁰ Europol (2021), European Union serious and organized crime threat assessment p. 70,

⁴¹ <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20204216> (accessed 9.5.23)

⁴² Council of Europe Treaties Series – N. 197, Warsaw 16.V.2005 point 126: "...identification of victims of trafficking as being essential if they are to be given the benefit of the rights laid down in the Convention." And point 51 "...added value of this instrument...is..a special on assistance to victims and on protection of their human rights"

⁴³ p. 58 under 4.8 in the original German version and p.59 in the English translation

testify in court proceedings.....When registering via the Internet, such persons often only indicate the first salon in which they work. If they change, which often happens, their trail is quickly lost. The great mobility of prostitutes is generally a problem for effective control of prostitutes. Another difficulty is communication with prostitutes who are foreign speakers. In addition, there are cantonal differences in the enforcement of foreign law: here, some cantons suffer under the pressure of other cantons. There is a lack of common understanding and political will to tackle the problem of illegality in prostitution.” (Italics added)

Evidenced by the above quotes, Swiss authorities acknowledge that police rarely check signs of trafficking and concentrate simply on checking residence and work permits. Mostly, it remains undetected when a trafficker is behind a woman in prostitution who directs her and profits from her. In the Swiss framework it is simply ‘assumed’ that the woman is ‘self-employed’. People from our network confirm that there is an exploiter behind most women in prostitution⁴⁴.

The high mobility of women in the sex industry serves pimps and traffickers. Not only is it more lucrative to change from one brothel to another but it makes it also impossible for a woman to build up a social network and find people she can trust and confide in. In addition, as we have seen, the high mobility further undermines the police’s ability to detect cases of HTfSE.

We believe Swiss police are faced with a close to impossible task when it comes to combatting HTfSE. The reason for law enforcement’s inability to effectively combat HTfSE lies mainly in Swiss prostitution policy that conceptualizes prostitution as ‘work’, maintains excellent conditions for those who benefit financially from the prostitution of others and endorses sex purchase.

HT will always remain a crime that is hidden, difficult to uncover and to successfully prosecute. This is particularly true for HTfSE as many victims cooperate with the trafficker and may even have an unhealthy emotional bond with the same.

It is precisely for these reasons that efforts need to focus on keeping the darkfield to a minimum. This logically means de-motivating traffickers by reducing demand for their ‘product’.

Unfortunately, there are extremely few law enforcement officers tasked with controlling sectors of the sex industry who speak publicly about their observations. EDS has spoken to some of them, but they prefer to remain anonymous. They confirm the view of the Police in Bern but feel uncomfortable speaking out of fear being reprimanded. Many observe the extent to which women are controlled by pimps and traffickers, but they know that speaking out publicly would not align with the Swiss official policy, namely preserving the liberal prostitution policies at any price. Also, it falls outside the police’s mandate to be critical of the policies put in place by legislator.

ACT212⁴⁵ is a national helpline for anyone who wishes to report a suspicion about a HT case, anonymously or not. According to the latest statistics published on the ACT212’ website, 79 reports were made (during the last 5 years the reporting rate has remained relatively stable). The reports corresponded to 99 persons who, according to the website, fell victims of human trafficking. After the reporting is made, the reports are referred to the police who decide if an investigation is made. What is left unanswered is, how many of the referrals made to the authorities through the hotlines resulted in prosecutions and what the outcome was. Such data is essential to evaluate the utility of such hotlines and should be made publicly available.

3.4 Switzerland’s lack of efforts to reduce the darkfield

Contrary to other types of serious crime, victims of HTfSE typically do not report the crime - either because they are not physically able to do so, out of fear, because they do not see themselves as victims of a crime or for other reasons. Based on information from our networks we believe that HTfSE in Switzerland follows the same trend described by Europol in its SOCTA Report (2021), p 71:” Exploiters increasingly seek to exploit their victims in the context of *supposedly voluntary business*

⁴⁴ This appears to be confirmed by A. Ott who say that according to his estimate “in 80 percent of all cases there is someone behind who profits”, <https://www.evppev.ch/aktuell/mitgliedermagazin-akzente/> Issue: 03.2021 p. 5 (accessed 9.5.23)

⁴⁵ <https://www.act212.ch/en>

agreements. As part of these arrangements, the victims agree to engage in prostitution and hand over a share of their earnings in exchange for protection and support with administrative issues such as tax declarations, registration with chambers of commerce, or pension arrangements. *This type of exploitation is particularly common in jurisdictions where sex work has been legalized.*" (Italics added)

Simultaneously, it is widely acknowledged that detected cases are the 'tip of the iceberg'⁴⁶, i.e. the dark field is huge compared to many other types of serious crimes.

These atypical crime characteristics ought to *influence* the strategy to combat this particular crime. While crime prevention is a measure which is generally important, it is even more imperative in relation to this crime due to the above-mentioned atypical characteristics and the gravity of the crime. As we have seen, the urgent need for effective crime prevention reducing the darkfield is huge.

However, Switzerland is not putting in place any measures suited to prevent HTfSE because this would conflict with their liberal prostitution policies.

Because sovereign States have the right to determine their own national legislation, national laws *undermining* international obligations are often overlooked in an analysis how well or how badly states are doing in fulfilling their international obligations.

3.5 Pimping

The way in which a country legislates about the profiting from someone else's prostitution (pimping) is also highly relevant to the prevalence of HTfSE because the decriminalization of pimping encourages traffickers to operate unhindered. Frequently, traffickers and pimps work hand in hand or might even be one and the same.

Pimping, i.e., living from the earnings of a woman in prostitution is legal in Switzerland. Art 195 Swiss Penal Code only criminalizes a pimp who has *led* a woman into prostitution by exploiting her dependence or with intent of financial gain or limits her freedom of action while in prostitution. Given that 'intent' is extremely difficult to prove, legislation has almost de facto decriminalized pimping. Unsurprisingly, the police only registered 50 cases of pimping in 2021. The fact that only 21 persons were sentenced in 2021 shows the virtual impunity of pimps and renders the legal protection of exploited women illusory while *undermining* legal obligations under Art. 6 in the Convention. Evidenced by the testimonies of survivors that have been given EDS, this motivates exploiters to actively recruit more women. The combination of de facto letting pimps and sex buyers go free promotes the sex industry and increases HTfSE.

3.6 Discouraging demand is no optional policy

Switzerland's liberal prostitution policy aimed at normalizing prostitution in society has resulted in an expansion of the sex industry, thus fueled demand for commercial sex, which in turn results in more cases of HTfSE. The FEMM Study (2021) assessed prostitution regulations in EU member states and the current situation of sex trafficking. Although outside the EU, we believe the insights equally apply to the situation in Switzerland. The study states p. 26: "*Sex trafficking is firmly linked to the EU Member States' prostitution markets at destination. These markets are characterized by an increasing volume of "foreign prostitution" activities and are therefore populated by a great number of non-national prostitutes. Traffickers abuse victims of sexual exploitation in different clandestine as well as legitimate settings, both indoor (hotels, bars, restaurants, sauna clubs, strip clubs, night clubs, massage parlors and prostitution windows) and outdoor.*" (Italics added) Crucially, it also confirms that: "clients who often buy sexual services from foreign prostitutes (they are the great majority) very likely buy them from trafficked victims" (p.28)

Swiss authorities continue to ignore the real issue: the demand that *fosters* exploitation and *leads to* trafficking. In the context of HTfSE this means *all* demand for commercial sex because *all* increase of

⁴⁶ this a description is used by the ACT212 hotline <https://www.act212.ch/en> p. 1 in the column under 'human trafficking' quote: It is to be assumed that the official statistics only grasp what can be considered the tip of the iceberg unquote

demand affects the supply and motivates traffickers to supply more women to the Swiss sex prostitution market.

The Swiss Government appears to believe that their obligation to discourage demand is limited to the demand *for HT victims*. This is not the case. Art. 6 formulation is *identical* to that of the Palermo Protocol⁴⁷ and must therefore be interpreted the same way. The OSCE (2021) makes this very clear: “this agreed-upon language establishes a concept of demand that moves beyond only the “demand *for trafficking*” or the “demand *for sexual exploitation*,” to address demand that *encourages* exploitation that in turn leads to trafficking. This creates an obligation to discourage demand that extends beyond the knowing use of trafficking victims to any act that encourages exploitation of the prostitution of others.”⁴⁸

Conclusion

Switzerland's prostitution policy normalises sex buying in society. The policy approach has resulted in the expansion of the sex industry, fuelling demand for commercial sex, leading to more cases of HTfSE.

The Swiss authorities continue to ignore the core concept of cause. The demand that fosters exploitation and leads to trafficking. In the context of HTfSE, this means all demand for commercial sex because any increase in demand affects the supply and motivates traffickers to supply more women to the Swiss prostitution market.

Swiss authorities are unwilling to learn from comparable States' experience; failing to meet the expectations of the Convention as to international cooperation and information-sharing; this requirement is not limited to police files but experience and data as well.

Swiss decision-makers prioritize men's dubious 'right to buy sex' above the rights of women not to be trafficked and to be protected from the system of prostitution.

Switzerland must be held accountable for its lack of political will to put in place policies suitable to prevent HTfSE. Its deficient institutional arrangements, unmeasurable measures, self-sustained lack of reliable data, focus on many legal obligations except prevention, and liberalised prostitution policies are incompatible with the Convention's legal obligation to deploy demand-reduction to address trafficking in human beings.

Recommendations

1. Criminalize the buyers of sexual acts and all those who profit from the prostitution of others.
2. Introduce anti-sexist education in schools as integral part of the curriculum, wide-spread awareness campaigns about the connection between demand for prostitution and HTfSE.
3. Proactively encourage the media, and civil society to efficiently communicate that demand for prostitution is one of the root causes of trafficking in human beings that can be eliminated.
4. Provide all relevant data relating to combating HTfSE (see 2.5) and make the data publicly available.
5. Encourage survivors of HTfSE to share their experience with political decision-makers and recognize survivors as experts.
6. Recognize prostitution as gender specific violence.
7. Create comprehensive and case specific exit programs for women in prostitution. Protection and support the persons concerned.
8. Provide adequate training of legal and other professionals in the field of HT. Such actions must be country wide and an integral part of the curriculum.
9. Follow the CoE Resolutions and Recommendations mentioned in the Conventions Preamble.
10. Create the position of a Swiss independent national rapporteur for combatting HT.

⁴⁷ Art. 9(5) Palermo Protocol

⁴⁸ OSCE (2021) p. 11 and p. 29