

Shadow Report

SWITZERLAND

83RD SESSION OF THE CEDAW COMMITTEE

September 2022

This submission was prepared by End Demand Switzerland (EDS).

Other grassroots organizations, including survivors of prostitution, provided input.

EDS is a non-profit organization governed by the Swiss Civil Code.

Our overall objective is to reduce trafficking in human beings for 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 all demand for commercial sex. Without this demand there would be no trafficking for sexual exploitation.

Acronyms:

CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
CO:	Concluding Observation
LoIQ:	List of Issues and Questions
GR:	General Recommendation
6 th Report	Sixth periodic Report submitted by Switzerland
NAP2017-20	Swiss National Action Plan against Human Trafficking 2017-20
HT:	human trafficking
HTfSE:	human trafficking for sexual exploitation

This submission focuses on the realities of prostitution and trafficking of women and girls in relation to Switzerland's obligations under CEDAW Article 6, specifically taking into consideration GRs 19,35 and 38.

SUMMARY

1. While it is true that prostitution does *not always* constitute HTfSE, it should be recognized that the reality on the ground suggests an inextricable link between the two phenomena and the exploitation of prostitution of women.
2. Gender-based violence against women in prostitution constitutes discrimination in the sense of the CEDAW. Prostitution is fraught with violence. The violence has serious consequences for women's physical and, in particular, mental health. This is supported by Swiss academic studies¹ and survivors' testimonies. About 95% of all women in prostitution in Switzerland are (marginalized) migrants², half of these from low GDP Eastern European countries, often vulnerable, as well as from disadvantaged ethnic minorities.
3. Prostitution constitutes a barrier to gender equality. A study of online forums used by sex buyers reveals deep-rooted misogynist attitudes among these buyers who evidently think there is nothing wrong in 'rating' women as if they were merchandise.
4. Switzerland does not implement Art. 6 CEDAW and GR 38. Switzerland's prostitution policy fosters the normalization of prostitution, treating it as 'work' in every aspect and pretending the 'product' bought is comparable to any other 'service'. This is, in reality, incompatible with the State's obligation to 'discourage the demand that fosters exploitation and leads to trafficking'³.
5. While States are free to decide the way in which they implement the clearly defined obligation to discourage demand (GR 38(29,30)) there is an obligation to implement this *effectively*. Switzerland does not clearly communicate to the public that HTfSE can take place despite the victim's consent. Yet, this part of the definition is highly relevant in reality and plays a crucial role in understanding the phenomenon.
6. Switzerland should produce and publicize estimated data on the scale of prostitution, dark numbers, and the revenue of prostitution.
7. Law enforcement's extremely low registration of HTfSE cases indicate that Switzerland's strategy to combat HTfSE has failed. This failure is linked to the refusal to discourage demand (GR38(30)) and Switzerland's policy of normalizing prostitution including the de facto decriminalization of pimping and other forms of profiteering from the prostitution of others.

CONNECTION BETWEEN PROSTITUTION AND HTfSE

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. This interconnection is also reflected in the way Art 6 is phrased as it talks about suppressing 'all forms of traffic in women and exploitation of prostitution of women'. To focus on the conceptual distinction serves mostly the image of the sex industry, and in particular the profiteers of the prostitution of others as it appears to imply that prostitution is a legitimate job. This does nothing to help potential victims of HTfSE and it misleads the public in its understanding of HTfSE and its functioning. To combat HTfSE it is crucial to acknowledge and focus on *the connection* between prostitution, exploitation and HtfSE.

¹ Rössler, W. et al. (2010). The mental health of female sex-workers. ACTA Psychiatrica Scandinavica, 122(2), 143-152. DOI: <https://doi.org/10.1111/j.1600-0447.2009.01533.x>, accessed 12.12.23

² Wüst, A. (2020). Piff, Paff, Puff. Prostitution in der Schweiz. Basel: Echtzeit (p. 29)

³ https://www.osce.org/cthb/510278_p.11: "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"

Given that the majority of HT cases are found in prostitution⁴, it is evident that any strategy to combat HTfSE must be based on the factors that make the exploitation of prostitution of women *profitable*. By treating prostitution as a normal business and granting pimps and brothel-owners the status of businessmen of a legitimate industry, Switzerland is encouraging *the demand that fosters HTfSE*.

Rules and regulations designed to promote and normalize commercial sex are in place because legislators *chose* to enact them. Legislation is changeable and it is in the hands of the political representatives to propose legislative change that would align with Switzerland's international obligations to reduce demand.

1. PROSTITUTION IS GENDER-BASED VIOLENCE AGAINST WOMEN

As a frontline NGO, EDS is in frequent contact with women in prostitution and those who have managed to exit prostitution (survivors). In its Shadow Report of 2021 to the Istanbul Convention, EDS has outlined why prostitution constitutes gender-based violence against women in the sense of GR(19,35)⁵ and detailed how Switzerland's prostitution policy creates excellent conditions for the sex industry and thereby sets the stage for the exploitation of women in prostitution. Also, in GR (38(10)) the Committee affirms that *discrimination* against women and girls *includes* gender-based violence.

It is undisputed that violence is widespread in prostitution and the vast majority of persons who sell sex acts are female while sex buyers are male. It is, therefore, established that we are dealing with a highly *gendered* phenomenon, and that the exploitation of prostitution of women and the connected trafficking *affects women disproportionately* (GR(19,35)).

In 2010, a study was conducted on the mental health of women in prostitution by the University of Zürich⁶. The study found that women in prostitution displayed high rates of mental disorders which were related to *violence* and the 'burden' of being in prostitution. The study concludes that the findings represent *a major public health problem*.

Prostitution is officially portrayed, referred to and administratively treated as 'work' like any other. The harm done to women in prostitution and the violence inherent in prostitution is an issue that has not been addressed by the Swiss Department for Health.

This conclusion must be seen in the context of a society where prostitution is highly regulated in one of the richest countries in the world with a nation-wide system of well-funded organizations that are available to 'assist' women in prostitution. If prostitution has been normalized for decades, how can it continue to be a 'major health problem'? Because violence in prostitution is *inherent*. The sex act is performed over and over again despite the lack of sexual attraction to the men it is sold to. Advisory services' advice pertaining to improved sanitization, provision of free condoms, more panic buttons, 'increased professionalism', or de-stigmatization, change little in relation to the inherent violent character of prostitution.

2. PROSTITUTION HINDERS GENDER EQUALITY

The Swiss policy normalizes prostitution and thereby deepens the inequality between men and women by encouraging/reinforcing male sexual entitlement and the objectification and sexualization of women rooted in the system of prostitution. This is evidenced by online forums where men rate women in prostitution.⁷ A society that

⁴ Schweizerische Kriminalprävention | Faqs,

<https://www.skppsc.ch/de/haeufigefragen/fokus/menschenhandel/#menschenhandel>

⁵ End Demand Switzerland October 2021 - Council of Europe, <https://rm.coe.int/shadowreport-switzerland/1680a45421>

⁶ "The Mental Health of Female Sex Workers." *Wiley Online Library*, onlinelibrary.wiley.com/doi/10.1111/j.1600-0447.2009.01533.x

⁷ www.Sexy-Tipp.to/, www.sexy-tipp.to/.

strives towards gender equality cannot at the same time reserve spaces of power for men in which sexual access to women's bodies is purchasable.

LoIQ.2019(1): EDS believes 'substantive equality between women and men' should include the most vulnerable and marginalized groups of women. Women in prostitution manifestly belong to this group. Yet, in the National Action Plan 2022-26⁸, this group is not mentioned.

(LoIQ,2019,3) Women who want to exit prostitution are not offered accommodation in shelters (or other support), unless they are considered HTfSE victims. Accordingly, the violence inherent in prostitution is generally not considered sufficient reason to leave prostitution.

3. LEGAL AND POLICY FRAMEWORK

3.1. TRAFFICKING AND EXPLOITATION OF PROSTITUTION OF WOMEN

Under **CEDAW Art. 6** "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." (GR) 38 specifically states that "*Strategies aimed at preventing trafficking must take into account demand as a root cause. Failure to recognize the demand is acknowledged to be one of the barriers to States addressing human trafficking*" (point 29). "*Sexual exploitation persists due the failure of State parties to effectively discourage the demand that fosters exploitation and leads to trafficking*" (point 30)

The Palermo Protocol (Art.9.5), the Council of Europe Convention on Action against Trafficking in Human Beings (2005) Art. 6., the OSCE (2021)⁹ repeats this obligation.

Measures to discourage demand taken by Switzerland are extremely modest¹⁰: An awareness campaign informing about HT generally¹¹. No discouragement of demand can be found therein. The 'awareness campaign' obscures the fact that the vast majority of victims of HT are found in HTfSE and are female. This contributes to making the real scale of the exploitation of prostitution of women invisible. Crucial information, such as the irrelevance of consent to exploitation, is omitted, thus cementing an unfortunate misconception about the nature of HTfSE. Another 'measure' consists of a website¹² informing sex buyers of signs that should raise suspicion of HTfSE and how to react. Besides the fact that sex buyers cannot determine whether a woman is trafficked or not, this measure clearly falls short of the obligation to 'discourage demand'.

Traffickers/pimps have long understood that physical evidence of mistreatment is not good for business and therefore to be avoided. In practice, coercion is subtle and effective, as one Swiss police officer puts it: 'the chains are inside the head'.¹³ In addition, many sex buyers are well-aware of the involuntary nature of the women's participation but their own interest overrides such reflections¹⁴. The EU Socta Report (2021) states: "Exploiters increasingly seek to exploit their victims in the context of supposedly voluntary business agreements."¹⁵

⁸ ebg.admin.ch, www.ebg.admin.ch/ebg/de/home/themen/recht/internationales-recht/euoparat/Istanbul-Konvention.html.

⁹ "Discouraging the Demand That Fosters Trafficking for the Purpose of Sexual Exploitation." OSCE, www.osce.org/cthb/510278.

¹⁰ "Discouraging the Demand That Fosters Trafficking for the Purpose of Sexual Exploitation." OSCE, www.osce.org/cthb/510278, p. 24ff.

¹¹ "18 Octobre." IOM Switzerland, www.18oktober.ch/en/counter-trafficking-weeks.

¹² Prostitution without Compulsion and Violence, www.verantwortlicherfreier.ch/en/index.html.

¹³ www.evpev.ch, www.evpev.ch/fileadmin/user_upload/evpev/PDF/Akzente/de/Akzente_2021-03-def-ohne-Schnitt.pdf.

¹⁴ Farley M. et alia: Men who pay for sex in Germany & what they teach us about the failure of legal prostitution: A 6-country study of the sex trade from the perspective of the socially invisible 'freiers' p.25-26

¹⁵ "European Union Serious and Organised Crime Threat Assessment (SOCTA) 2021." Europol, www.europol.europa.eu/publication-events/main-reports/european-union-serious-and-organised-crime-threat-assessment-socta-2021.

Swiss authorities conveniently fail to address 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 demand affects the supply and motivates traffickers to supply more women to the Swiss sex industry. Switzerland appears to believe that their obligation to discourage demand is limited to the demand for HT victims. The State obligation clearly extends to all demand for commercial sex as implied in GR38(29,30) and spelled out in OSCE (2021): “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.”¹⁶

Switzerland’s liberal prostitution policy aimed at normalizing prostitution in society results in an expansion of the sex industry, and thus fuels demand for commercial sex, which in turn increases the exploitation of prostitution of women and results in more cases of HtfSE.¹⁷

The definition of HT (Palermo Protocol Art.3) is not fully incorporated into national law. Crucially, the **irrelevance of the victim's consent** to exploitation in the offence of HT is not explicitly mentioned in Art 182 Penal Code. This omission reinforces a general misconception of what can constitute HTfSE. This omission also impacts the public’s understanding of the *reality of prostitution*. It feeds into the wrong idea that HTfSE does not take place if prostitution is consented to.

Pimping, ie. living from the earnings of a woman in prostitution is legal in Switzerland. Art 195 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, legislators have almost de facto decriminalized pimping. Unsurprisingly, the police only registered 50 cases of pimping in 2021.¹⁸ The fact that only 21 persons were sentenced in 2021¹⁹ is a testament to the virtual impunity of exploiters of prostitution of women and renders the legal protection of exploited women illusionary while undermining obligations under CEDAW. Evidenced by the testimonies survivors have given EDS, this motivates exploiters to actively recruit more women. Police from Bern estimates that in 80% of all cases the profit goes to someone else.²⁰ The combination of de facto letting pimps and sex buyers go free fuels the exploitation of prostitution of women and HTfSE.

3.2. LACK OF OFFICIAL DATA

There are no official statistics about the approximate **scale of prostitution** in Switzerland. Many Cantons collect statistics on women in prostitution *but do not make them public*. The Federal Report on Prostitution and HTfSE (2015) only refers to old external sources from 2008 and 2013²¹. Often an estimate of 20.000 women in prostitution is quoted. Estimates of **dark numbers** relating to prostitution/HTfSE are not publicly available. Yet, these are crucial in the elaboration of strategies to fight HTfSE.

Switzerland has a flourishing sex industry. In 2005, the National Security Report estimated the **revenue** generated in the sex industry to be 3.2 billion CHF²². More recent reports remain silent about the proceeds of prostitution and who exactly benefits. The Federal Report 2015²³ confirms that prostitution contributes approximately 3 billion CHF

¹⁶ Organization for Security and Co-Operation in Europe | OSCE, www.osce.org/files/f/documents/7/f/489388_2.pdf, p. 11

¹⁷ See also: <https://www.sciencedirect.com/science/article/pii/S0305750X12001453>

¹⁸ Statistik, Bundesamt für. “Geschädigte Personen.” Bundesamt Für Statistik, www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/polizei/geschaedigte.html.

¹⁹ Statistik, Bundesamt für. “Strafjustiz.” Bundesamt Für Statistik, www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaetstrafrecht/strafjustiz.html.

²⁰ Foto: Zvg Profit Oder Jugendschutz? - EVP Pev, www.evpppev.ch/fileadmin/user_upload/evpppev/PDF/Akzente/de/20220111_AKZENTE_2022-01_def-V3.pdf, p. 5

²¹ Polizeidepartement, Eidgenössisches Justiz- und. Startseite EJPD, www.ejpd.admin.ch/ejpd/de/home.html, p. 4

²² Federal Office for Police, Report on National Security, 2005, May 2006, p. 62

²³ Federal Report (2015) on prostitution and HTfSE, p.65

yearly to Switzerland's GDP, (0,5%). Switzerland gains substantially financially, and discretely, through the prostitution of others. Our partners in the field confirm that it is hardly the women in prostitution who benefit financially from their own prostitution but brothel owners, pimps, human traffickers, other profiteers, and the Swiss State. This reality became particularly visible during the covid pandemic which left many women in prostitution destitute.

3.3. SWITZERLAND'S RECORD IN FIGHTING HTfSE

The Swiss strategy to combat HT is outlined in the NAP (2017-20). The NAP (2017-20) underwent an internal evaluation in 2021.²⁴

The Evaluation lists correctly the reasons for HTfSE, including poverty, lack of available work opportunities in countries of origin, violence, and demand for 'sexual services'. Crucially, it is only the latter Switzerland is potentially able to influence by introducing laws accordingly. Yet, 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.²⁵ There was no discussion accompanying this vote.

Relating to the impact of the NAP (2017-20), the evaluation concludes that the NAP lacks indicators which renders the measurement of impact impossible.

In 2021, police statistics only list **31** HTfSE cases out of a total of 71 *registered* HT cases.²⁶ (Based on the fact that *the majority of HT cases* are to be found in prostitution, this is a clear indication that the Swiss police is unsuccessful in identifying victims of HTfSE. 31 HTfSE are the tip of the iceberg as dark numbers are acknowledged to be high. To put this into perspective: According to old estimates there are 20.000 women²⁷ in prostitution in Switzerland and of these an average of 40% are considered by the police to be in forced prostitution,²⁸ we arrive at an estimate of 8.000 women who are likely to be victims of HTfSE. 31 victims out of an estimated 8.000 women who – according to police estimates – are in forced prostitution means that there is a 0,39 % chance for a victim of HTfSE to be discovered. In reality, this virtually decriminalizes HTfSE in Switzerland and suggests that the Swiss Governments strategy to combat HTfSE has failed. **This is the 'failure' mentioned in GR 38(30).**

Evidenced by the above calculation, we believe 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 the Swiss prostitution policy that conceptualizes prostitution as 'work' and maintains excellent conditions for those who benefit financially from the prostitution of others and endorses sex purchase.

Only a comprehensive policy focusing on reducing demand and thereby preventing trafficking can justifiably be said to *combat* HTfSE. However, while reducing demand is precisely the policy option that would be in harmony with Switzerland's international obligations and recommendations this would be in contrast with Switzerland's current prostitution policy.

²⁴ Bundesrat, Der. Nationaler Aktionsplan Gegen Menschenhandel Wird Neu Lanciert, www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-85419.html.

²⁵ Geschäft Ansehen, www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20204216.

²⁶ Federal Crime Statistics

²⁷ Federal Report (2015) on prostitution and HTfSE, p. 47: the Report's source is the AidsHilfe Schweiz which estimates are from 2013; current numbers are likely to be considerably higher.

²⁸ Wüst, A. (2020). Piff,Paff, Puff. Prostitution in der Schweiz. Basel: Echtzeit (p. 31). The Police in Bern assess 30-50% of all women in prostitution to be in forced prostitution, we take the median (40%).

CONCLUSION

EDS believes that a society should prioritize the protection of the most vulnerable and in the context of prostitution and its connected phenomenon of HTfSE. This means implementing a fundamental policy shift from preserving male entitlement to purchasable sexual access to women's bodies to a zero-tolerance policy to the purchase of sexual acts.

The Swiss Government's complicity in the exploitation of women in prostitution lies in the refusal to acknowledge the system of prostitution,²⁹ i.e. the (structural) factors that drive women into prostitution, and the framing of prostitution as 'work'.

Switzerland is obviously not responsible for all root causes in the system of prostitution. However, it is responsible for politically facilitating the one root cause that is the *sine qua non* in the exploitation of women in prostitution: *the demand that fosters exploitation and leads to trafficking*.

SUGGESTED QUESTIONS:

Does the Swiss Government recognize that:

- all demand for commercial sex increases the sex industry?
- traffickers react to this demand by supplying more women to the sex trade?
- this leads potentially to an increase of victims of HTfSE?
- among all root causes for HTfSE, demand is the only "sine qua non" root cause?
- in relation to HTfSE, demand for commercial sex is the only root cause that unfolds in Switzerland and that demand for purchasable sex is almost exclusively based on male sexual behavior of buying sexual access to women's bodies?
- this behavior is significantly influenced by the current prostitution policy and what is currently legally permitted?
- male sexual behavior can in principle be influenced (and potentially changed) through education about the harm done to women in prostitution and its negative effects on gender equality?
- it is therefore necessary, to develop an educational strategy with measurable impact to discourage all demand for commercial sex to ensure a complete understanding of Art.6, GR (29)(30)?
- the prevention of HTfSE has a higher priority than legally endorsing men's sexual access to women's bodies for money and preserving potential customers for women who enter the sex industry entirely freely and in harmony with this freedom have alternative means of income?

Is the Swiss Government willing to:

- criminalize all forms of profiteering, directly and indirectly from the prostitution of others?
- make existing data on the scale of the sex industry, segregated into sex, nationality, and estimates of dark numbers of HTfSE public?

²⁹ End Demand Switzerland October 2021 - Council of Europe, rm.coe.int/shadowreport-switzerland/1680a45421, p. 4

- ratify the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV) of 2 December 1949?)

AMENDED VERSION