

Special Rapporteur on violence against women and girls
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneve 10

Subject: Input for SR on violence against women and girls' report on violence against women and 'prostitution'

Thanks

We would like to thank you for the opportunity to provide our input to the report of the Special Rapporteur on violence against women and girls to the Human Rights Council on prostitution and violence against women and girls.

About XENIA

The XENIA association was founded in 1984 with the aim of improving the working conditions of sex workers in Berne, Switzerland.

As a specialized agency, we advise sex workers in the canton of Berne, Switzerland, and make our expertise available to authorities, the media, politicians and other interested parties.

Health, debt restructuring, psychosocial counseling, referrals to doctors and lawyers or tax advice are topics that the counselors address with the sex workers. The work of the advice center also includes outreach work: this is how XENIA is made known among sex workers, initial contacts are established and a basis of trust is created. The counselors and mediators thus get to know the working situation of the sex workers and can also establish contact with the operators.

XENIA initiates a number of health promotion and AIDS/STI-prevention projects.

XENIA works with authorities and social institutions in Switzerland and abroad. The advice center is involved in cantonal working groups, carries out political work and makes information, knowledge and experience available to the authorities, media and interested parties.

Input to report

General comments

It is important to us that a distinction is made between sex work/prostitution and human trafficking for the purpose of sexual exploitation. A distinction must also be made as to whether the persons involved are minors or adults. Human trafficking for the purpose of sexual exploitation is a serious crime and a massive violation of human rights. The same applies to the recruitment of minors.

On the other hand, sex work/prostitution is legal gainful employment in Switzerland. The term "women and girls affected by prostitution" used in the report is vague and mixes up many different topics, which in our view is not conducive to an analytical discourse.

The term implies that sex work/prostitution is always violence, which is in no way consistent with our 40 years of counseling experience in Switzerland.

As a specialist agency with many years of experience, we are clearly of the opinion that sex work/prostitution may only be carried out by persons of legal age. Minors need special protection.

The following statements also refer to persons of legal age in sex work/prostitution, as this is our area of expertise.

Self-determined sex work/prostitution is not a rarity. Self-determined sex work/prostitution means that the workers themselves decide on the type of services, choose or reject the clients themselves, and decide how much and how long they work. Self-determined sex workers also have control over their own income.

Even in situations where sex work is chosen as a survival strategy, it can be practiced in a self-determined manner.

The vulnerability of many sex workers does not come from sex work itself, but is due to factors such as poverty, (multiple) discrimination and gender.

In this reality, sex work/prostitution can often also be a strategy to mitigate this vulnerability and achieve economic independence.

Assigning all people in sex work victim status and not trusting them to make rational decisions disempowers them.

If sex work/prostitution by persons of legal age is not clearly distinguished from human trafficking for the purpose of sexual exploitation, victims of human trafficking cannot be adequately protected and supported. In fact, the confusion leads to human trafficking being glossed over and sex work/prostitution being condemned.

In the following statement, we use the term "sex work", which is synonymous with the legal term "prostitution".

1. Provide examples of the hidden forms of prostitution, and explain to what extent they are recognized and dealt with as such?

Sex work is a legal activity in Switzerland and is taxed. Sex workers also pay social security contributions. Nevertheless, there is also hidden sex work: it is not possible for people from countries outside the EU/EFTA to obtain a work permit.

The legal framework varies from canton to canton. The high bureaucratic hurdles mean that it is challenging to comply with all the framework conditions. The complex bureaucratic hurdles and divergent practices cause legal uncertainty, promote illegalization, and prevent the social protection of sex workers.

In Bern, establishments require an operating license. The establishments are visited by the immigration police, the police and labor market control regularly. People from outside the EU/EFTA without a valid residence permit are at risk of deportation. Persons from the EU/EFTA without a work permit will be fined.

2. Describe the profile of women and girls affected by prostitution in your country, and provide disaggregated data, where possible.

There is no precise data on the number of people involved in sex work/prostitution in Switzerland. Bugnon/Chimienti/Chiquet (2009) estimate that between 13-20,000 people work in the sex industry.

sexworkers are heterogeneous: Women (cis & queer), men (cis & queer) and also non-binary people.

With regard to this question, we would also like to refer back to the introductory remarks, which is why the term

"women and girls affected by prostitution" is highly problematic.

There are two more studies from the Federal Council that we like to mention:

- Bader, D.; D'Amato, G (2013): Les caractéristiques et l'ampleur de la zone d'ombre de la traite d'êtres humains en Suisse. Une étude de faisabilité.
- Probst, J. (2022): La lutte contre la traite des êtres humains dans le contexte cantonal Facteurs de risque, nombre de cas et mesures institutionnelles

3. Describe the profile of those who solicit women in prostitution and whether such relations are regulated, and provide supporting data, where possible.

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4. What forms of violence are prostituted women and girls subjected to (physical, psychological, sexual, economic, administrative, or other)? 5. Who is responsible for the perpetration of violence against women and girls in prostitution? 6. Describe the linkages, if any, between prostitution and the violation of the human rights of women and girls.

Any form of criminalization of sex work is one of the causes of violence against sex workers and prevents access to justice. In practice, we see that sex workers who can work legally and do not have to hide are more likely to report violence to the police.

Many sex workers experience high levels of physical, sexual and psychological violence. A report from the European sex workers Alliance (ESWA) in 2020 describes a strong correlation between sex work and violence. However, sex work is not the cause of the violence. The cause why so many sex workers experience different forms of violence, is that many sex workers belong to social groups that are already exposed to a high risk of violence from men, clients or police officers, including women, migrants, people without papers or trans people. It is a result of intersectional discrimination.

7. What links are there between pornography and/or other forms of sexual exploitation and prostitution?

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8. How is the issue of consent dealt with? Is it possible to speak about meaningful consent for prostituted women and girls?

Yes, most of the sex workers we are in contact with (around 1000 different people every year) negotiate a consent with the clients. Sex workers can withdraw their consent at any time, they have no obligation to perform. Consent in the context of sex work means voluntary and ongoing consent to sexual activity between adults.

Consent is the key factor in distinguishing between sex work, sexual exploitation, gender-based sexual violence and human trafficking.

The decision to offer sexual services can be influenced by factors such as poverty, (multiple) discrimination. However, these factors do not automatically impair the ability to reach consent.

If a customer in Switzerland does not pay for the service, the sex worker can sue for their wages. A court ruling in 2021 has clarified this. This landmark decision strengthens the position of people in sex work.

9. How effective have legislative frameworks and policies been in preventing and responding to violence against women and girls in prostitution?

Sex work is legal in Switzerland and protected by the right to economic freedom as long as the limits of criminal law are respected (e.g. no coercion, no pimping, no minors).

We very much welcome the clear stance of both the Federal Council and the government of the Canton of Bern that all forms of criminalization of sex work would harm sex workers and this is in line with the experience we have gained as a counselling centre in the 40 years of our work and the reports from for example Amnesty International or *médecins du monde*.

In addition to the legal regulation of sex work, current migration and immigration laws also have an impact on access to justice for sex workers: illegalized persons cannot turn to the police in the event of violence, for example, as they risk their own deportation.

10. What measures are in place to collect and analyse data at the national level with a view to better understanding the impact that prostitution has on the rights of women and girls?

see question 2

11. What measures are in place to assist and support women and girls who wish to leave prostitution?

Sex work in Switzerland is often precarious work. Individual, low-threshold support is key for those sex workers who wish to change jobs.

XENIA has been offering this support to sex workers from the beginning in the 1980th. However, there is a lack of sufficient funding to be able to offer a long-term, targeted program.

In addition, as most sex workers are migrants - often with a precarious residence status, lack of language skills and financial difficulties - they fall through the cracks. Only if exit offers are linked to legal/regulated residence, training and good career prospects are they attractive to migrants. Alternative jobs are not attractive or possible for everyone. Therefore, support services for professional reorientation and good working conditions in sex work are needed at the same time.

12. What are the obstacles faced by organizations and frontline service providers in their mission to support victims and survivors of prostitution?

We would like to point out again that the question is unclear due to the choice of words. Since the main focus of our organization is advising people in sex work, I will limit the answer to the obstacles for sex workers and for organisations supporting sex workers

- unclear and complicated legal situation between different legal areas makes it difficult to access your rights and often makes advice complex
- unclear or precarious residence status
- the fear of punishment for illegalized activities
- the lack of knowing their rights
- and the lack of access to support in case of a violent situation

13. What are some of the lessons learned about what works and what does not when it comes to stemming any negative human rights consequences from the prostitution of women and girls?

Legal work and good working conditions provide the best protection. Prohibitions neither prevent prostitution nor curb its negative effects. Where coercion and violence actually play a role, bans offer no protection.

For many sex workers, the greatest risks are not related to exploitation by clients or pimps, but to repressive migration policies and police controls and repression

14. Are frontline organizations and survivors' organisations sufficiently included in policymaking at the national and international level?

No. Far too often the decisions are made without including sex workers. It is essential that the voices of sex workers and front line organizations are heard, taken seriously and are included in political decision-making.

15. What recommendations do you have to prevent and end violence associated with the prostitution for women and girls?

The best protection against violence and exploitation is legal migration and work opportunities. Criminalization of sex workers, including through a sex purchase ban, worsens the situation of sex workers and weakens their rights. The Swedish Model has a negative impact on the health of sex workers and on the prevention of violence in the sex industry. For this reason, major UN- and human rights organizations oppose this model. States must ensure that sex workers can carry out their work safely and without stigmatization, criminalization, and discrimination. We advocate for a society in which poverty, gender inequality and racism are combated, and migration is legalized. A society in which the fundamental rights of sex workers are respected. The complete decriminalization of sex work offers the best conditions for achieving this.

We kindly thank you for your attention

A handwritten signature in blue ink, appearing to read 'Ch. X', followed by a long horizontal line extending to the right.

Christa Ammann
Director