**Call for input to the report of the SR VAW to the Human Rights Council on prostitution and violence against women and girls**

Dear Madam, dear Sir,

Please find below the contribution made in my *personal* capacity, based on the knowledge and experience gathered in the course of my activities, as co-editor of the CEDAW Commentary[[1]](#footnote-1), as a two-terms member of the CEDAW Committee and previously as Director of the Federal Office for Gender Equality of Switzerland. In the last 2 activities I was involved with the protection and promotion of the rights of women in the sex industry, as sex workers or as victims of trafficking and exploitation of prostitution. For a more detailed legal analysis I refer to the submission made by the International Commission of Jurists.

Part I addresses deficiencies in the legal analysis; the lack or voluntary ignorance of evidence-based data and studies; the ideologically driven approach and use of obfuscating ideology. Part II answers some questions and regrets their vagueness and the word limitation. Part III concerns the future report.

1. **General remarks**

Wanting to address the “global phenomenon of prostitution and violence against women and girls” means that the CFI obfuscates the complexity of the issues dealt with, mainly it fails to distinguish between forced prostitution and voluntary prostitution. It doesn’t use the terms sex work and sex workers which are often used to describe the adult persons involved in selling sexual services on a consensual basis.

The CFI contains a misrepresentation of international human rights law which does **not** presently consider that all forms of prostitution are “incompatible with the dignity and the worth of the human person.” The reference to the 1949 Convention obfuscates that this Convention is considered by many human rights experts as outdated in view of its prohibition of voluntary prostitution; that is has been superseded[[2]](#footnote-2) by the Palermo Protocol which deals with forced prostitution but does not outlaw voluntary prostitution; and contradicts the CEDAW Convention, whose Article 6 makes States responsible to “ suppress all forms of traffic and exploitation of prostitution of women” but not prostitution per se.[[3]](#footnote-3) The CFI relies heavily on CEDAW Committee General Recommendation 38 without any mention that the abolitionist approach adopted there, linked with the “reduction of demand that fosters exploitation and leads to trafficking,” is contested and doesn’t reflect the position Committee had held during decades.[[4]](#footnote-4)

The last paragraph of the “Background” acknowledges the existence of differing views regarding criminalization of prostitution but in such a way as to conceal a central element. With its vague and imprecise formulations, also in the “Questions”, the CFI conflates sex work with trafficking and exploitation of prostitution. It reflects the abolitionist position advocated for by the Special Rapporteur on violence against women.[[5]](#footnote-5)

The CFI ignores the evidence-based knowledge that has been developed in the last 20 years on the gender-based violence due to trafficking in women and girls in *all forms of labour*, not only for exploitation of prostitution or other sexual exploitation, and that gender-based violence and sexual exploitation exist in these other fields of labour.

The negative impacts of criminalization of all or some aspects of sex work on the human rights of sex workers are also excluded, although they have been documented sufficiently to disprove the implicit pitch made in favour of criminalizing the purchase of consensual sexual services. The evidence-based positions of many stakeholders including UN agencies (UNAIDS, WHO) and the Working Group on Discrimination Against Women and Girls[[6]](#footnote-6) on decriminalization of sex work as a strategy for harm reduction and as indispensable for the protection and promotion of human rights of the persons involved are also ignored.[[7]](#footnote-7)

The use of the terminology in “Background” and “Questions “of “prostituted women and girls” and of “women and girls in prostitution” reveals conflation and imprecision. “Prostituted women” implies their lack of agency, obscuring the reality that adult women voluntarily earn or supplement their living by selling sexual services without being coerced. This approach deprives sex workers of their agency, right to privacy, security and livelihood and negates the existence of the sex workers movement and its important role in the fight against trafficking and exploitation of prostitution. As for girls, if they are “affected by prostitution”, “in prostitution” or “prostituted”, it means they are victims of trafficking, as sex work can only exist for adult persons engaging in it on a consensual basis with the clients. They should therefore be dealt with separately in questions2, 5, 6, 9, 10, 11, 13, and 15.

This terminology also erases the differences in the situation of victims of trafficking and exploitation of prostitution/sexual exploitation, who can be women or girls, and the situation of sex workers, that is **adult** women. If they can all experience gender-based violence, the different legal regimes applied to sex work can make the experiences of these women very different from those of women and girls victims of trafficking, in particular where sex work is entirely decriminalized, as in New Zealand, or in some countries where sex work is regulated so that sex workers access police protection, justice, health and social services in a way inaccessible for victims of trafficking, exploitation of prostitution, sexual exploitation.

The refusal to consider voluntary sex work also renders invisible the forms of violence sex workers experience, in particular from law enforcers, policemen often being the main perpetrators[[8]](#footnote-8) of violence as they can often act in full impunity. Even when the selling of sex is not criminalized, the police may harass sex workers, deprive them of housing opportunities and expose the most vulnerable sex workers, that is migrant women, to heighted risks, including of deportation.

1. **Answers to Questions**

Most of the questions are formulated in a general and imprecise way and/or would need more that the 2000 words limitation to provide an answer at least to some of the 15 questions. Other Calls for input foresee a higher number of words for the submissions and/or limit the number of questions.

Question 1 is unclear. If the forms are hidden, can they have been recognized, and “dealt with as such” – as being hidden or recognized, or in another way?

Question 3. Anyone… In Switzerland, sex work is legal and regulated very differently in the 26 cantons. In 2021, the Federal Court (highest Court), reversing its prior jurisprudence on prostitution as an immoral activity, recognized sex wok as work, and condemned for fraud a client who had refused to pay for the sexual service he had received.

Question 5. The State is a main perpetrator, through laws that criminalize sex work, loitering, etc., and refuse to ensure sex workers access to occupational health and safety, health and social services, and implementation of labour and social laws. Among the most frequent perpetrators of violence as persons are the members of the police, in the countries where “prostitution” is criminalized. The criminalization of sex work/prostitution exposes the persons to police raids, extortion, violence, sexual abuse, and for undocumented migrants to the risk of deportation to their country.

Question 8 is an additional example of ideological assumptions, questioning the very capacity to decide for oneself to engage in sex work: using the terms prostituted women and girls, equating sex work with being trafficked deprives sex workers of existence, and therefore autonomy of decision.[[9]](#footnote-9)

Question 9 is vague. The 2022 “Baseline Evaluation Report Switzerland Report of GREVIO”, regarding the implementation of the Istanbul Convention in Switzerland, contains a few mentions regarding women exposed to intersectional discrimination, including women in prostitution.

Question 11 : generally speaking, when measures exist, they are in most countries too few, too limited, not sufficiently financed or coordinated. Very often, measures are implemented by civil society organizations, with few resources. Women wanting to leave prostitution must often stop practicing prostitution *before* being eligible to any measures, such as professional insertion programs or support for housing. “Rescue” measures are used against sex workers who may be detained as a result, and especially migrant women, who also face deportation.

Question 12. The organizations and frontline service providers and the obstacles they face may be different whether they work with victims of trafficking or with sex workers. A common obstacle is sufficient financing by the State or private donors.[[10]](#footnote-10) For organizations supporting sex workers, the criminalization of sex work, complete or partial, may represent the main obstacle: when sex work is driven underground, it becomes (more) difficult to support the persons active in an activity condemned both by the law and “morality”. The providers of support are then helpless to ensure the protection that occupational safety, labour and social laws bring to persons in “legitimate” fields of labour.

Question 13. The evidence is now sufficient to affirm that a main contribution to improving the human rights of “women in prostitution” is to recognize sex work as work, to name it as such and to cooperate with the sex workers movement in all its gender, trans and racial diversity, in particular to modify the laws and regulations that discriminate against them, directly or indirectly and to take measures to improve their ESCR rights and participation in public and political life at the national and international levels. Indeed, the criminalization of sex work increases or maintains the stigmatization and marginalization of the persons involved in it, and exposes them to violence by private actors, and by the police.

Question 14. See above, and here again, let me express my disappointment that sex workers organizations are not expressly mentioned, although they are directly concerned and deal with so many of the human rights issues sex workers face. Under “Type of submission”, only “organizations that facilitate the recovery of women and girls who have been prostituted; as well as from survivors” are mentioned. What about the presently active sex workers?

Question 15: the same recommendations as to end gender-based violence in general, see for instance CEDAW GR 35.

1. **Final remarks:**

The CFI gives a distorted view. I fear that that the future report will replicate its lack in rigor and outdated views and will contribute to the exposure to GBV, stigmatization and marginalization of the very women and girls the Special Rapporteur proclaims to want to protect, by advocating for the criminalization of clients, and ignoring the sex workers movement.

30.01.2024

1. The Convention on the Elimination of All Forms of Discrimination Against Women and Its Optional Protocol. A Commentary. Second edition. Ed by P. Schulz, R. Halperin-Kaddari, B. Rudolf, M.A. Freeman [↑](#footnote-ref-1)
2. Lex posterior derogat legi priori, according to article 30, Vienna Convention on the Law on Treaties [↑](#footnote-ref-2)
3. Attempts made to address voluntary prostitution during the drafting of the Convention were unsuccessful [↑](#footnote-ref-3)
4. J. Chuang, S. Sarugaser-Hug, “Chapter 6” in The Convention on the Elimination of All Forms of Discrimination Against Women and Its Optional Protocol. A Commentary”, see FN 1 above [↑](#footnote-ref-4)
5. See the “Statement on French Law 2016-444 - Strengthening the Fight Against the Prostitution System and Providing Support for Prostituted Persons in France” of 27 October 2023. [↑](#footnote-ref-5)
6. 2023 Guidance document, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/241/61/PDF/G2324161.pdf?OpenElement> [↑](#footnote-ref-6)
7. See for instance The 8 March Principles for a Human-Rights Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drue Use, HIV, Homelessness and Poverty, published by the International Commission of Jurists ICJ after a lengthy process of consultation [↑](#footnote-ref-7)
8. “Getting Away With It, Impunity for Violence against Sex Workers”, Meena Saraswahthi Seshu and and Laxmi Murthy, in *Breaching The Citadel*, ed. by Urvashi Butalia and Laxmi Murthy, Zubaan 2018 [↑](#footnote-ref-8)
9. “Sex work, Trafficking and Human Rights”, Sandhya Rao and Cath Slugget, p. 148-174; “How Sex Workers Expand Feminist Concepts of Choice and Consent”, Srilatha Batliwala,p. 125-147, both in *The Business of Sex,* ed. by Laxmi Murthy, Meena Saraswahthi Seshu, Zubaan 2013 [↑](#footnote-ref-9)
10. “Revolting Prostitutes. The fight for sex workers’ rights”, Molly Smith and Juno Mac, Verso, 2020, p. 151-156 [↑](#footnote-ref-10)