

## **Input for SR VAWG's report on violence against women and prostitution**

This statement has been prepared by SekswerkExpertise, Dutch Platform for the advancement of sex workers rights, and the Dutch CEDAW Network.

Some preceding remarks:

### **Use of terms**

Throughout the document we use the term sex work and sex workers as this is the term sex workers themselves prefer. The use of the term 'prostituted women' reduces sex workers to passive victims and denies them agency. We suggest that the SR in her report uses language that acknowledges women as rights-bearers and avoids victimising and stereotyping language such as 'prostituted women'.

### **International law**

Contrary to what the SR suggests, there is no recognition in international law that sex work is incompatible with human dignity. The SR is referring to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This 75-years-old Convention makes no distinction between trafficking and sex work and considers any distinction based on the consent or will of the woman concerned to be irrelevant – a view of women that is unacceptable today - and has only been ratified by a limited number of states.

The UN Trafficking Protocol, on the other hand, makes a clear distinction between human trafficking and sex work, taking the use of coercion, abuse and deceit as the defining element of trafficking. Although it mentions the 'exploitation of the prostitution of others and other forms of sexual exploitation' as one of the purposes of trafficking, it must be combined with the use of one of the deceptive or coercive means listed in the definition in order to be classified as trafficking. The terms 'exploitation of the prostitution of others' and 'sexual exploitation' have been deliberately left undefined, leaving it to the discretion of individual states to decide how to deal with prostitution in their domestic laws (Interpretative Notes (A/55/383/Add.1/Addendum)).

Contrary to what the SR suggests, art. 3 of the Protocol holds that the consent of the person is only irrelevant if one of the deceptive or coercive means is used. This is legally self-evident as the use of coercion or deceit vitiates any consent: one cannot consent to coercion or deceit.

### **Background**

In the questions we miss a reference to the precarious status of women's work, in particular a gendered labour market, the lack of recognition of women's work, including in the care, domestic, entertainment and sex sector, and the ensuing lack of labour rights and -protections and the lack of legal labour migration opportunities.

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

There is no universal profile of sex workers. Sex workers are not a uniform group, but have different backgrounds, motivations, genders, classes, ethnicities and nationalities. Working conditions and income also vary widely.

**Question 4. What forms of violence are prostituted women and girls subjected to (physical, psychological, sexual, economic, administrative, or other)?**

Research by SoaAids and Proud showed that stigma, discrimination and lack of rights result in sex workers being disproportionately affected by various forms of violence. Physical violence varies from having one's hair pulled to severe abuse. Sexual violence goes frequently hand in hand with physical violence. Sexual intimidation is particularly common. Almost three out of four sex workers experienced this over the last year. More than half of them experienced financial-economic violence. For example, clients who refuse to pay or steal money. A quarter of the sex workers experienced financial and/or economic exclusion. They were, for example, refused by a bank or insurance company due to their work. The form of violence sex workers most frequently experienced was social-emotional violence. Sex workers frequently deal with intrusive and unwanted questions, harassment and humiliation as well as violations of their privacy and stalking. The largest category of perpetrators of violence against sex workers are clients, but also friends or acquaintances, intimate partners, employers, operators or authorities like the police are mentioned, e.g. for intrusive questions or violating sex workers privacy.<sup>1</sup>

As for trafficking, during 2015–2019 about 180 trafficking cases (suspects) per year were registered at the Public Prosecution Service (PPS). About 80% of these cases concerned sexual exploitation; in about one fifth of the cases the victim was a minor.<sup>2</sup> While it is difficult to make a reliable estimate of the actual number of victims of trafficking and/or exploitation in the sex sector, research consistently reveals low prevalence figures, varying from 4% to 10%. The 2006 evaluation of the lifting of the ban on brothels has found some indications of involuntary prostitution or prostitution by minors, but to a very limited extent. Similarly, the 2014 evaluation found no indications of the large-scale existence of trafficking or prostitution of minors.

Analysis by the National Rapporteur on Trafficking in Human Beings of the coercive means applied in 111 cases of sexual exploitation in 2009-2010 showed that only 22% of the criminal charges (and 16% of the proven cases) related to deception regarding the nature of the work.<sup>3</sup> This means that, contrary to the stereotype of the 'innocent' victim being forced into prostitution against her will, the majority of cases do not concern coercion into prostitution, but coercion and exploitation within prostitution. That is, people who consciously choose to work in prostitution, but who subsequently end up in a situation of exploitation, where they are forced to work under unfree and abusive conditions and/or are forced to hand over their earnings.

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

On 1 October 2000 the Dutch Parliament lifted the general ban on brothels. This allowed for the regulation of sex businesses under administrative and labour law and for the treatment of sex work as labour. Ever since, the Dutch Penal Code no longer treats organising the voluntary prostitution of adult persons as a crime. This means that it is legal to operate a sex business, when it takes place on a consensual basis and involves persons above 18 years of age. At the same time the exploitation of involuntary prostitution and of minors became more strictly penalized, as were clients of minors. The abolition of the ban on brothels served three major aims: to control and regulate voluntary

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<sup>1</sup> SoaAids (2018), Sex work, stigma and Violence in the Netherlands.

<sup>2</sup> National Rapporteur Trafficking in Human Beings and Violence against Children (2021), *Human Trafficking Offenders Monitoring Report 2015-2019*. The Hague.

<https://www.dutchrappiteur.nl/publications/reports/2021/01/21/human-trafficking-offenders-monitoring-report-2015-2019-summary>.

<sup>3</sup> National Rapporteur on Trafficking in Human Beings and Violence against Children (2012). *Jurisprudentie mensenhandelzaken 2009-2010. Een analyse*, p. 57.

<https://www.nationaalrapporteur.nl/Publicaties/Jurisprudentie-Mensenhandel-2009-2012/index.aspx>.

prostitution; to combat trafficking and other 'unacceptable' forms of prostitution (minors, undocumented sex workers) more effectively; and to protect the position of sex workers.

The discussion on the abolition of the ban on brothels originates in the second feminist wave which put violence against women on the political agenda. Dutch feminists started to question the traditional divisions between 'good' women who deserved protection and 'bad' ones who could be abused with impunity. By challenging the 'whore stigma' as an instrument to control female sexuality and mobility they made prostitutes' rights central to all women's rights. Sex worker and feminist activists argued that the principle of self-determination should also apply to prostitution and that the right of women to physical and psychological integrity and to have control over their own bodies should also give them the right to choose prostitution as a profession. Not prostitution as such, but violence and coercion needed to be combated. At the same time women's groups and third world solidarity groups drew attention to the exploitation of migrant prostitutes who were working under slavery-like conditions and called for harsher penalties for trafficking in women. This debate was the cradle for the Dutch approach towards sex work: a sharp division between voluntary and involuntary prostitution, between consent and coercion. If a person considers prostitution an option to earn a living, he or she should be able to work under proper conditions and should have the same rights and the same protection against violence and abuse as any worker has. If a person is forced into prostitution or faces violence, abuse or deceit in the course of their work, the law should protect them.

A recent study carried out by SoaAids and Proud, the sex workers organisation, showed that sex workers felt safer working in the windows, in clubs and private houses or in recognised street walking areas, because of the presence of other people, the possibility to press an alarm button and the opportunity to screen clients and to reject them. Sex workers who operate outside licensed working places, like hotel rooms, massage parlours or at home, face an increased risk of violence. They are also less likely to report violence to the police for fear of negative repercussions. Violent clients and thugs know this and take advantage of it.<sup>4</sup> In a study aimed at migrant sex workers in the Netherlands, respondents confirmed that they felt safer working in licensed places, due to the presence of alarm buttons and cameras, but also having colleagues around increased their sense of safety.<sup>5</sup>

Since the legalization of sex work in the Netherlands the CEDAW Committee has devoted attention to the situation of sex workers in the Netherlands in several of its Concluding Observations on the Netherlands. In none of these has the CEDAW Committee suggested that the Dutch policy of legalizing sex work violates Article 6 of the Convention which obliges States Parties to 'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'. Instead, the CEDAW Committee has repeatedly expressed concerns about efforts by the Dutch government to restrict sex workers' liberties and rights, e.g. through the proposed introduction of mandatory registration (CEDAW/C/NLD/CO/5, para 30).

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

In order to protect sex workers against violence and other human rights abuses we strongly recommend that sex work policies are rights-based and guided by the available scientific knowledge

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<sup>4</sup> Kloek M. & M. Dijkstra (2018). *Sex work, stigma and violence in the Netherlands*. SoaAids Nederland/Aidsfonds, Proud, Dutch Union for sex workers. <https://aidsfonds.org/resource/sex-work-stigma-and-violence-in-the-netherlands>.

<sup>5</sup> James J. & M. Hamburg (2020). *The situation of migrant sex workers in the Netherlands*. <https://stichtingsexpower.nl/the-situation-of-migrant-sex-workers-in-the-netherlands/>.

of the effects of different sex work policies on the safety, health and working and living conditions of sex workers.

Two key components are the distinction between sex work and trafficking and the meaningful participation of sex workers as partners in the development, implementation and evaluation of sex work related policies. The persistent conflation of trafficking and sex work leads to the abuse of anti-trafficking measures to police and punish female (migrant) sex workers and restrict their freedom of movement. Failure to involve sex workers in the development of policies may mean that even well-intended laws and policies may negatively impact on the safety and health of sex workers and increase their exposure to exploitation, violence and other human rights violations.

Research shows that criminalisation of sex work does not lead to less prostitution but has a significant negative impact on the situation of sex workers. There is an increasing body of evidence, including scientifically rigorous research, which shows that any criminalisation of sex work, including of clients, has a negative impact on the safety, health, access to services and rights of sex workers.<sup>6</sup> Research in countries that have adopted the Swedish model shows that criminalisation of clients forces sex workers to work in hidden and isolated places which makes them more vulnerable in their relationships with clients. It increases the risk of violence, robbery and STI/HIV infections and gives clients a means to force sex workers into unprotected sex or other unwanted services. It reinforces discrimination and stigmatisation, makes it more difficult for sex workers to report or seek police assistance in cases of coercion or violence, and limits their access to prevention and care.<sup>7</sup> As you are aware, the ECHR in April 2023 reconfirmed the admissibility of a case brought against the French state by 261 sex workers and 19 sex workers, health and feminist organisations against the criminalisation of clients of sex workers, ruling that the applicants had made it sufficiently plausible that the criminalisation of clients violated Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment) and 8 (right to private life) of the European Human Rights Convention (ECHR (2021). *M. A. and Others v. France. Appl. No. 63664/19, 64450/19, 24387/20 et al.*).

Criminalisation of sex work is also diametrically opposed to the call of sex workers for the decriminalisation of adult consensual sex work and policies that focus on destigmatisation and non-discrimination of sex workers, and in which sex workers have the same protections, rights and obligations as other people.

The call for decriminalisation of adult consensual sex work is supported by human rights organisations such as Amnesty International and Human Rights Watch, UN agencies, (WHO), the UN Population Fund (UNFPA), and the UN Development Programme (UNDP), the Special Rapporteur on Health, the UN Working Group on Discrimination against Women and Girls, anti-trafficking organisations such as the Global Alliance Against Traffic in Women (GAATW) and La Strada International (LSI), and the International Commission of Jurists (ICJ), which see decriminalisation of the sex industry as the most

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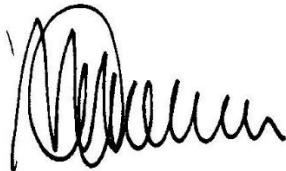
<sup>6</sup> See e.g. Platt, L. et al. (2018). Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLOS Medicine*, which compares research data of 33 countries; Oliveira, A., et al. (2023). Understanding the Impact of EU Prostitution Policies on Sex Workers: A Mixed Study Systematic Review. *Sexuality Research and Social Policy*.

<sup>7</sup> See for research on the effects of criminalisation of clients e.g. Amnesty International (2016). *The human cost of "crushing" the market. Criminalization of sex work in Norway*; Amnesty International (2022). "We live within a violent system". *Structural violence against sex workers in Ireland*; Dodillet, S., & Östergren, P. (2011). *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*; Fuckförbundet. (2019). *Twenty years of failing sex workers. A community report on the impact of the 1999 Swedish Sex Purchase Act*; Holmström, C., & Skilbrei, M.L. (2017). The Swedish Sex Purchase Act: Where Does it Stand? *Oslo Law Review*, 4(2); Le Bail, H., Giometta, C., & Rassouw, N. (2018). *What do sex workers think about the French Prostitution Act? A study on the Impact of the Law of 13 April 2016 against the "Prostitution System" in France*; GAATW (2011), "Moving Beyond Supply and Demand Catch-Phrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking'.

effective approach to combat abuses and exploitation such as human trafficking and to safeguard the human rights of sex workers.<sup>8</sup> According to the WHO, decriminalisation of sex work could lead to a 46% reduction in the number of new HIV infections over a period of 10 years. Eliminating violence against sex workers could lead to a 20% reduction in new HIV infections.<sup>9</sup>

Also recently, the ECHR stipulated in its ruling in the case of *Krachunova v. Bulgaria* (appl. 18269/18, <https://hudoc.echr.coe.int/eng-press?i=003-7811893-10838069>) that human rights should be the main criterion in designing policies on prostitution and trafficking.

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<sup>8</sup> Amnesty International (2016). *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*; Human Rights Watch (2019). *Why Sex Work Should Be Decriminalized / Questions and Answers*; UNAIDS (2021). *Hiv and Sex work. Human Rights Factsheet Series*; Global Alliance Against Traffic in Women (GAATW) (2015), GAATW-IS Comment: *Amnesty International calls for the decriminalisation of sex work*; Global Commission on HIV and the Law (2018). *Risks, Rights and Health; supplement*; UNAIDS (2023). *Save Lives. Decriminalise*; UNAIDS, UNHCR, UNICEF, WFP, UNDP, UNFPA, UN Women, ILO, UNESCO, WHO, OHCHR, IOM (2017), *Joint United Nations Statement on Ending Discrimination in Healthcare Settings*; UN Special Rapporteur on the right to health. Grover, A. (2010). *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN GA A/HRC/14/20; UN Working Group on discrimination against women and girls (2023). *Eliminating discrimination against sex workers and securing their human rights*; ICJ (2023). *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*.

<sup>9</sup> The Lancet (2014). Series on HIV and sex workers, <https://www.thelancet.com/series/hiv-and-sex-workers>; The Lancet Editorial. (2023). Protecting the health of sex workers in the EU. *The Lancet*, 401.