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conecta

STRENGTHENING OF HIV/STI INTERVENTIONS IN SEX WORK IN UKRAINE AND IN THE RUSSIAN FEDERATION

BRIEFING PAPER

Regarding criminalization of sex work, violence and HIV

17 December 2012

Conecta project (“Conecta”)¹ is concerned with the high rates of violence experienced and reported by sex workers² in Ukraine. In our view, violence against sex workers leads to violation of human rights protected under international law and fuels the HIV epidemic in the country. Recently, UNAIDS and the Global Commission on HIV and the Law called upon the fact that violence is to be understood as a main factor to sex workers’ vulnerability to HIV.³

Violence against male, female and transgender sex workers occurs in different ways and to different degrees across the country. Violence takes multiple forms (physical, economic, verbal, etc.) and can be institutional (e.g. police, public authorities), but also related to exploitative working conditions (e.g. pimps, traffickers or clients).

Moreover, one type of violence is often related to other forms of violence. Sex workers in the Ukraine reported, as part of this project, to have experienced i) rape and torture from police and officials; ii) extortion by criminals and police; iii) arbitrary confiscation of property and robbery; iv) deprivation of medication (including HIV therapy); v) forced registration and medical procedures (including HIV testing); vi) sexual exploitation; and vii) confiscation of condoms.

¹ See website: www.conectaproject.eu

² Sex worker organisations understand sex work as a contractual arrangement where sexual services are negotiated between consenting adults.

³ See report: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf (UNAIDS, 2012); See recommendations of the report: <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf> (Global Commission on HIV and the Law, 2012, p. 43).

Legal Review

The legal framework governing prostitution in Ukraine is referred to in Article 181.1 of the Code of Administrative Offences. According to this article, engaging in prostitution shall entail warning or imposition of a fine from five to ten tax-free minimum incomes of citizens (i.e. from 85 to 170 UAH). The same actions repeated within a year following the imposition of an administrative penalty shall entail the imposition of a fine in the amount of eight to fifteen tax-free minimum incomes of citizens (i.e. from 136 to 255 UAH).

There are, however, two other types of criminal responsibility related to prostitution in the Penal Code. Those are as follows: a) Creating or running brothels (Article 302 of the Criminal Code); b) Pimping (Article 303 of the Criminal Code).

In spite of that, the most vulnerable before the Law are sex workers themselves, who are often prosecuted under Article 181.1 of the Administrative Code.

Furthermore, the Ukrainian specific law on HIV prescribes in its Article 14 criminal responsibility for conscious exposing to danger of infection or infection of other person (persons). Based on this law, sex workers are often arrested and forced to test for HIV. This procedure violates their bodily integrity and autonomy.

The actual legislative framework gives no chance for sex workers to perform their work in safety and good working conditions. Moreover, this sort of set of laws puts a burden of sex workers as 'pool of contagion' as if they – the 'sex workers' – are the responsible for the HIV epidemics and public health concerns in the country.

On top of this, violence against sex workers must be understood in the wider context of stigma and gender based violence. These create an environment which results in a lack of personal autonomy and weak legal protection, both of which impact heavily on sex workers' vulnerability to violence and HIV. In the country, other factors also add to sex workers' vulnerability, such as homophobia, laws against homosexuality, drug use, lack (or denial) of health care services.

Conecta is further concerned that, as a result of criminalization of sex work and sex workers, an environment that permits violence is being condoned by the Ukrainian government and public authorities. As such, sex workers routinely do not report abuse because it would expose them to mistreatment and disclosure of their identities, subjecting them to further danger. Criminalization also reinforces social stigma, unequal access to protection by law enforcement, and reduces sex workers ability to organize.

Criminalisation of sex work and the application of non-criminal laws to sex work exacerbate the stigma and moral judgementalism experienced by sex workers. Law and law enforcement practices often open sex workers to extra-legal abuses, including sexual and physical abuse by police and violations of due process. In many ways, including by undermining sex workers' ability to organise to help each other, these violations of sex workers' rights are barriers to their access to comprehensive HIV services (UNAIDS Guidance Note, 2012, p. 6)

Hence, the current legal environment fails to respect the rights of its citizens by i) forcing them to work in clandestine and unsafe places; ii) reducing their access to health care and prevention measures; iii) restricting sex workers ability to perform safer sex (e.g. sex workers avoid carrying condoms due to police arrests); iv) denying them access to justice; and v) undermining their dignity.

Finally, one of the biggest barriers in the last years is the lack of political commitment and governmental responses focused on reducing sex workers' vulnerability to violence as an important factor affecting the vulnerability of sex workers to HIV/STI and the absence of adequate public health approaches that are appropriate for HIV and violence prevention programmes.

In this context, Conecta is concerned that penalizing sex work risks further exposing sex workers to violence and deterring them from filing complaints about abuses against them on the part of police and others.

THE HUMAN RIGHTS STANDARDS

State laws have the duty to protect sex workers' rights by enabling an environment where they are able to fulfill their fundamental rights, and be free from practices that put them in risk. Vulnerability is a phenomenon that can be reduced by applying good practices in governance and lawmaking, which are in line with international standards of health, safety, and well-being. Criminalization of sex work and sex workers puts several human rights protected by international law in danger. Some that can be mentioned, in relation to the violations mentioned above, are as follows:

- **Right to Equality and Non-discrimination** (ICCPR⁴, Articles 3 and 26; ECHR⁵, Article 14)
- **Right to Security of Person** (ICCPR, Article 9; ECHR, Article 5)
- **Right to Freedom from Torture and Cruel, Inhuman, and Degrading Treatment** (ICCPR, Article 7; ECHR, Article 3)
- **Right to Life** (ICCPR, Article 6; ECHR, Article 2)
- **Right to the Highest Attainable Standard of Health** (ICESCR⁶, Article 12; CEDAW⁷, Article 12; ESC⁸, Article 1)

Among many other human rights that are violated by state authorities and third parties, the Right to the Highest Attainable Standard of Health ("Right to Health"), which is protected by different human rights treaties, deserves a special attention when dealing with the issue of criminalization, violence, and HIV. In relation to this right, the Ukrainian state should:

- **Respect** the right to health of all its citizens with no discrimination, which means objectively that states should refrain from interfering directly or indirectly with the right to health.

Laws that criminalize sex work directly impact sex workers' enjoyment of the right to health, since it increases sex workers' vulnerability to violence and HIV.

- **Protect** the right to health of all its citizens with no discrimination, which means objectively that states should prevent third parties from interfering with the right to health.

Laws that criminalize sex work limits sex workers autonomy and does nothing to protect sex workers from violence that can affect sex workers' health.

- **Fulfill** the right to health of all its citizens with no discrimination, which means objectively that states should adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to health.

Laws that criminalize sex work on the basis of public health concerns do not favour an environment where sex workers can enjoy their human right to health.

⁴ International Covenant on Civil and Political Rights (ICCPR)

⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

⁶ International Covenant on Economic, Social, and Cultural Rights (ICESCR)

⁷ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

⁸ European Social Charter (ESC)

This briefing paper recognizes that it is primarily for the state to define the framework of collective life that constrains certain rights. However, criminalizing sex work does not lead to solving the dramatic situation of the HIV epidemic in Ukraine (see legal review). It is a limitation that poses severe consequences for sex workers' enjoyment of their human rights and that does not reflect any legitimate social priority.

In conclusion, this briefing paper concludes that criminalisation of sex work is the most powerful factor in making sex workers vulnerable to HIV. Ukraine should be kept accountable for the systematic human rights violations against sex workers that originate from this measure.

ACTION NEEDED NOW

The Ukrainian organisations involved in Conecta project recognize sex workers human rights and violence as one of the major factors of the sex workers' vulnerability.



They urge the Ukrainian authorities to comply with the international standards on human rights and to respect and protect the rights of the sex workers at all administrative levels, and include in the agenda legal and political reforms, namely the exclusion of administrative responsibility for prostitution (article 181-1 of the Code of Ukraine on Administrative Offences).

Therefore, we call upon the Ukrainian Government to ensure an effective and sustainable response to HIV that is consistent under international human rights law.

- Publicly speak out against violence against sex workers, including from state actors, and include the elimination of violence against sex workers in all HIV prevention programmes and include sex workers' vulnerability to violence and HIV in all violence prevention programmes. Effective HIV prevention programmes need to be strengthened and scaled up.
- Recognize that sex work interventions must be central to scaling up the HIV and enforcement practices that violate their human rights and hamper progress on HIV. For this reason, the involvement sex worker led organisation is crucial.
- Enable sex workers to openly access prevention services with dignity must be part of every national HIV programme. Revising and enacting new laws and policies that enable structural responses which prevent violence will enhance the effectiveness of HIV prevention, improve access to health services, including reproductive health, and reduce violence against sex workers.

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