



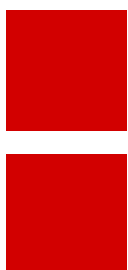
**Strengthening of HIV/STI interventions
in sex work in Ukraine and the Russian Federation**



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The European Union

POLICY PAPER

LAWS AND POLICIES AFFECTING SEX WORKERS' VULNERABILITY TO HIV/STIs IN THE RUSSIAN FEDERATION



This policy paper is based on contributions of Humanitarian Action, partner of the CONECTA project. It was compiled within the framework of the **CONECTA project** (January 2012-December 2013), under the coordination of:

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- **CONECTA website** | A tool for networking and sharing of information available in three languages: English, Russian and Ukrainian
- **CONECTA Mapping Reports on Sex Work** | Sex workers' working and living conditions in Ukraine and the Russian Federation | National reports and Regional trend report
- **Manual of Good Practices** | Collection of Good Practices
- **Educational Materials** | Leaflets and information for sex workers in Russian and Ukrainian
- **Booklet on Violence** | Analysis of the typology of violence affecting life and work experiences of sex workers in Ukraine and the Russian Federation

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ABOUT THE PAPER

The **main objective** of the project is to reduce the vulnerability of sex workers to HIV/STIs through the development of a model of integrated services based on human rights and addressing the problems associated with the effects of HIV/STIs among sex workers. The challenges addressed by these activities can be divided into three groups.

- Increasing the capacity for the dissemination of information and the development of a network of sex work projects;
- Improving the quality of services in response to the needs of sex workers; and
- Promoting an enabling legal and policy environment to enhance access of sex workers to HIV prevention, care and treatment.

Understanding the range of legislative and policy options for responding to sex work is critical to establishing policies consistent with respecting, protecting, and fulfilling the human rights of sex workers. Laws and policies on sex work should be based on the best available evidence about what works to protect health and rights.¹

The purpose of this policy paper is:

- to **inform** stakeholders about the legal and policy environment in the Russian Federation and its impact on sex workers' vulnerability to HIV/STIs; and
- to **call on** the Russian government to put human rights at the centre of the HIV response, particularly on matters that affect sex workers in the country.

This paper will examine the human rights impacts of laws and policies that affect sex workers in the Russian Federation, particularly those which increase their vulnerability to HIV/STIs and influence their right to health and life.

To tackle sex workers' vulnerability to HIV/STIs it is fundamental to consider the structural determinants that put them at risk of infection. As stated by the *Global Commission on HIV and the Law*: "there are instances where legal and justice systems have played constructive roles in responding to HIV, by respecting, protecting and fulfilling human rights".¹ Thus, HIV response is fundamentally about human rights.²

1 Global Commission on HIV and the Law, '*HIV and the Law: Risks, Rights & Health*', Executive Summary Report, p. 6.

2 UNAIDS, *Discussion paper*, 2013, p. 7.

Sex work

Sex workers are defined by UNAIDS (2012) as “female, male and transgender adults and young people (18 years of age and above) who receive money or goods in exchange for sexual services, either regularly or occasionally”³.

Sex workers are those who engage in sex work, which is defined by the WHO (2012) as: “(...) consensual sex between adults, which takes many forms, and varies between and within countries and communities. Sex work may vary in the degree to which it is more or less ‘formal’ or organized.”⁴

In the Russian Federation, national laws and policies do not refer to sex work as a form of labour, nor does it mention the term ‘sex work’ in its legal documents. The term ‘prostitution’ is used instead to describe a conduct which is prohibited under the Administrative Law (see the legal framework hereunder). According to this article, prostitution infringes on the health, sanitary and epidemiological welfare of the population and public morality.

This paper seeks to challenge this legal perspective by clarifying the importance of having a human rights-based approach to effectively respond to HIV prevention, care and treatment among sex workers. For this reason, the term ‘sex work’ will be used when referring to human rights and policy development; whereas the term ‘prostitution’ will be used strictly when referring to the legal terminology adopted by Russian Federation.

HIV Situation & Policy

Over two-thirds of all HIV diagnoses to date in Europe fall in Eastern Europe and Central Asia, and over 70% of these emanate from Russia.⁵ Concerns about public health have increased in the Russian Federation since the epidemic in the country remains to rise.

At the end of 2011 the registered number of people living with HIV in Russia amounted to 546 237 people. By 1 November 2012⁶, the total number of HIV-positive people in the Russian Federation reached 703,781 people, according to the Federal Scientific and Methodological

3 UNAIDS, *Guidance note on HIV and sex work*, 2012.

4 WHO, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries*, 2012.

5 European Centre for Disease Prevention and Control/WHO Regional Office for Europe. *HIV/AIDS surveillance in Europe 2010*. Stockholm: European Centre of Disease Prevention and Control, 2011; Department of Health and Social Development of Russian Federation, Federal Service for supervision of Consumer Protection and Human Welfare, Federal Government Central Science Research Agency Institute of Epidemiology, Federal Research and Methodological Center for Prevention and Control of AIDS. HIV Infection Newsletter N.35. Moscow, 2011.

6 Partial data from 2012.

SEX WORK, HIV & HUMAN RIGHTS

Centre for the Prevention and Control of AIDS.⁷ While estimates vary, it is likely that today over one million Russians (950,000 to 1.3 million) were infected by HIV.⁸ AIDS-related deaths continue to raise in the Russian Federation, as well the newly diagnosed HIV infections reported by territorial centres for prevention and control of HIV.⁹

The most affected groups in the country are people who inject drugs, sex workers, and men who have sex with men. Among these groups there were revealed prevailing numbers of HIV infection; however there is a growing trend of infections among the general population. In the last years, there is no reliable epidemiological data about key populations at higher risk of HIV, including sex workers.

Noteworthy is that there are no official statistics of the prevalence of HIV infection among sex workers attributable to the occupational risk. Despite, a national surveillance study carried out in different cities in 2012 estimates HIV prevalence from 3.8% to 11.6% among sex workers.¹⁰ Still, it is estimated that HIV prevalence is higher among sex workers who inject drugs due to the overlapping between sex work and injecting drug use.

In spite of the critical situation in relation to HIV in the country, national policy on HIV has not improved its approach towards key populations at higher risk of HIV.

In 1995, the Russian Federation adopted comprehensive legislation prohibiting discrimination based on HIV infection or Acquired Immune Deficiency Syndrome ("AIDS") and a commitment to the provision of health services to people living with HIV.¹¹

The Federal Law *On the Prevention of the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV-Infection)* states in its Article 5 that HIV-infected citizens of the Russian Federation possess all rights and freedoms and carry obligations in accordance with the Constitution and legislation of the Russian Federation. It also states that restriction of the rights and freedoms of citizens, related to them having HIV-infection, is permissible only in cases stipulated in this Federal Law.

Despite this law, 18 years later, HIV still disproportionately affects groups that are socially marginalized and people who are socially stigmatized and/or criminalized: people who inject drug, men who have sex with men, sex workers, and other vulnerable groups. They often lack access to prevention services, diagnose and treatment for

7 Incidence rate in 2012 was 37.7 per one hundred thousand of the population. From an interview with the head doctor of the Federal Research and Methodological Centre for the Prevention and fight against AIDS V.V. Pokrovsky, newspaper "Komsomolskaya Pravda", 2012. <http://www.kp.ru> (accessed by 08.08.13)

8 <http://www.unaids.org/en/regionscountries/countries/russianfederation/> (accessed by 08.08.13)

9 <http://www.hivrussia.ru/stat/index.shtml> (accessed by 08.08.13)

10 The data from the national priority project "Health" of the Federal Service for Supervision of Consumer Rights Protection and Human Welfare, 2013.

11 Federal Law No 38-FZ of March 30, 1995 "On the Prevention of the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV-Infection)".

HIV. Where such services exist, they are limited and poorly integrated with other health services.

Additional structural barriers are due to the HIV/AIDS institutional structure that is based on a centralized system of regional and local AIDS centres, which are funded by federal, regional, and municipal budgets.¹² That means HIV prevention, care and treatment services are dependent on state budgetary approval, which are normally low. With the withdrawal of the Global funds from the country and other international donors, HIV-related services are often dependent on the state's budget.

The Russian policy on HIV is very political and depends on the governments' political interests and priorities. There is few power and authority for the national coordinating council on HIV/AIDS, which is the main policy-oriented committee that discusses policy trends in relation to HIV/AIDS in the country.¹³ The role of NGOs in this Council is fundamental for legitimizing non-medical aspects of HIV/AIDS, such as human and civil rights issues and challenges among key populations at a higher risk of HIV. However, power to influence and intervene is limited.

Policy-oriented documents

The main policy body on HIV/AIDS in the Russian Federation, albeit with limited power, is the **national coordinating council on HIV/AIDS**. Due to the weak position of this institution, regulations in relation to HIV/AIDS and vulnerable groups are drawn mainly by health and sanitary institutions.

The Order of the Ministry of Health of the Russian Federation of 30.07.2001 N 291 (as amended on 15.11.2001) *"On measures to prevent the spread of infections, sexually transmitted diseases"* prescribes that the structure of an STI clinic should include the department of primary prevention, where one of its functions is to provide sex education, free distribution of condoms, contraception among adolescents and young people, and information for key populations at a higher risk of HIV.

The Resolution of Chief State Sanitary Doctor of the Russian Federation of 11.01.2011 N 1, which perform state sanitary and epidemiological inspections, *"On approval of the sanitary regulations 3.1.5.2826-10" HIV Prevention "* (with "SP 3.1.5.2826-10 Sanitary Regulations ...") (Incorporated in Ministry of Justice on 24.03.2011 N 20263) contains the concept of commercial sex workers (CSW) without specifying gender, indicating the emergence of a tolerant attitude by public bodies toward people who provide sexual services.

12 Wallander, Celeste A. "The Politics of Russian AIDS Policy", 2005, p. 2.

13 Wallander, Celeste A. "The Politics of Russian AIDS Policy", 2005, p. 4.

However, evidence shows that there are few services targeting sex workers. And when services are available, some sex workers experience discriminatory attitudes of public health officials and have sometimes treatment and care denied.

Specific sub-groups of sex workers are highly affected by discrimination such as migrant sex workers, sex workers living with HIV, and sex workers who inject drugs. Male and transgender sex workers have hardly any service targeting them; yet discriminatory attitudes from health-related services are common.

Main barriers

The actual Russian HIV/AIDS policy is regarded to be unfavourable for an effective HIV response. Key populations at higher risk of infection are hindered by multiple environmental barriers, including restricted access to services and adverse policy, laws and social environments. Thus, laws which safeguard dignity, health and justice are essential to effective HIV responses. In the Russian federation, criminalization policies and public health policies are the main barriers to tackle the epidemic.

■ **People who inject drugs** face national anti-drugs strategy and laws (including prohibition of harm reduction) instead of prevention, care and treatment for HIV.

■ **Sex workers** face national anti-prostitution strategy and laws, which outlaw their work, instead of enabling targeted HIV/STI prevention and treatment services. Migrant and mobile sex workers face adverse immigration law and regulations, as additional barriers for accessing health-related services.

■ **Men who have sex with men** face national anti-LGBTI strategy and laws instead of health support for this key population.

The current response to HIV among key populations at higher risk of infection is insufficient and hindered by multiple environmental barriers, including restricted access to services and adverse policy and laws or social environments stigma and discrimination.

HIV & Human Rights

The *Global Commission on HIV and the Law* states that legislation can protect the human rights of people living with and vulnerable to HIV. UNAIDS reinforces by stating that there is no excuse for governments to not consider human rights at the centre of any HIV response.¹⁴

¹⁴ Statement of Michel Sidibe, Executive Director, UNAIDS (2013).

Laws governing prostitution and law enforcement authorities also play a key role in the violence experienced by sex workers.¹⁵ Violence against sex workers hampers their ability to negotiate consistent condom use, and increases significantly their risk to HIV infection.

Other different factors heighten sex workers' vulnerability to HIV/STI infection that goes beyond behavioural approaches. The WHO states that migration status, mobility, and violence as a manifestation of stigma and discrimination experienced by sex workers are to be considered important drivers of the epidemics.¹⁶ It is observed that many migrant sex workers, particularly undocumented ones,

experience high levels of institutional repression from the part of law enforcement authorities and have health-related rights shortened. Thus, their risk to acquire HIV increases.

Confiscation of condoms

According to the report "*Criminalizing Condoms*", in the Russian Federation, 80 percent (8/10) of sex workers surveyed reported that police had taken condoms from them.

This happens in spite of the fact that international public health agencies as well as policy and public health experts recommend consistent condom use as vital to the effort to reduce the spread of HIV and protect public health.

Other 60 percent (6/10) of sex workers interviewed said that police had used condoms as evidence against them; all of these sex workers were then convicted on prostitution charges.

The multi-country report concludes that by hindering sex workers' ability to carry and use condoms, police actions increase sex workers' risk of exposure to HIV and other sexually transmitted infections, as well as unwanted pregnancies, compromising sex workers' health and the health of their sexual partners (OSI, 2013, pp. 11-13).

Evidence on violence against sex workers

The most significant factor regarding sex workers' vulnerability is the high level of violence and abuse by multiple perpetrators. This violence can be institutional (by law enforcement officials) and/or related to exploitative and unsafe working conditions (by third parties, managers of the sex industry, clients).

In 2012, *Humanitarian Action* carried out an assessment for **Conecta project** on the typology and the frequency of episodes of violence experienced by sex workers. The study was undertaken in 2012 in different cities of the Russian Federation and involved 102 street-based sex workers.

The questions were based on experiences that happened in the past year. The key findings of this study read as follows:

¹⁵ *Idem*.

¹⁶ WHO, *Violence Against Women and HIV/AIDS: Critical Intersections*, 2005, p. 1.

Physical violence

- 80% of respondents reported that they were beaten
- 43% of the respondents reported that they were forced to have sex
- 15% of respondents reported that they were threatened with weapons

Economic violence

- 56% of the respondents reported that they had their money or other valuables taken away
- 87% of the respondents reported that they were coerced to perform unpaid sexual services or paid below the agreed price

Verbal and psychological violence

- 100% of the respondents reported that they were insulted for being a sex worker
- 88% of the respondents reported that they were threatened
- 84% of the respondents reported to have experienced humiliation

The perpetrators are multiple and vary according to different settings and experiences of sex workers. However, sex workers in Russia often complain that law enforcement officials are the frequently perpetrators of violence against them. Clients of sex workers are also listed as common perpetrators. Still, violence can be perpetrated by third parties within the sex industry, managers of sex businesses, citizens, service providers, and others.

BOX 1

Violence against sex workers

One of the main consequences of legal systems that outlaw sex work is increased levels of violence against sex workers.

According to the WHO (2005), “Sex workers are therefore, frequently regarded as easy targets for harassment and violence for several reasons. They are considered immoral and deserving of punishment”

The sex worker-led organization *Silver Rose* states that violence is also consequence of law enforcement officials who implement the law arbitrarily. Many sex workers are unlawfully imprisoned for investigation in the country.

Access to justice and respect of human rights of sex workers remains critical issues to be addressed by governmental bodies and comprehensive HIV programs.

For more information:
<http://www.silver-rose.org/>

It was stated by all sex workers that unsafe working environment is the reason for several violations and abuses against them. For example, 35% of the respondents reported that they had their documents

Hence, sex work in the Russian Federation is associated with extremely high levels of violence. This policy paper investigates the relationship between this evidence, the legal environment and international human rights obligations.

illegally confiscated. This practice is directly related to unsafe working environment. Thus, lack of labour rights and unfavourable conditions to work endangers sex workers to various forms of violence.

Human Rights

Several recent reports of UN Specialized agencies such as WHO, UNDP, and UNAIDS underline the importance of including human rights violations as a main risk factor for sex workers' vulnerability to HIV/AIDS. Violence is not the only human rights violation but it can lead to several of them.

Considering that the actual international policy on HIV and sex work has human rights at its very centre, it should be clear to which extent the Russian government is accountable to the evidence on violence against sex workers, including their heightened risk to HIV/STI infection.

The fact is that the Russian Federation is party to several international and regional human rights treaties¹⁷. In other words, human rights are not alien to the Russian legislation having the state committed itself to the various conventions that prescribe fundamental rights of all citizens such as rights to life, health, non-discrimination, liberty, information, expression, privacy, association, participation, among many others (see Box 2).

Considering the scope of this publication, the right to highest attainable standard of health (also referred to as 'right to health'), will be examined in light of the actual legislation on prostitution in the Russian Federation.

It is important to initially frame what are the normative content of this right and clarify its relation to HIV and sex work.

BOX 2

Human Right Treaties

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- European Social Centre
- European Convention for the Promotion of Human Rights and Fundamental Freedoms

¹⁷ UNAIDS, *Discussion paper*, 2013, p. 6.

Right to health: the key right

The investigation of the right to health (as a human right) reveals the framework under which states can develop their national public health programmes and laws.

Several important human rights documents shed light on the importance of the right to health as a core human right, such as the WHO Constitution¹⁸ and the Universal Declaration of Human Rights (Article 25.1)¹⁹.

The first binding international document in relation to the right to health is the International Covenant on Economic Social and Cultural Rights (ICESCR). The Russian Federation is party of this treaty.

The ICESCR provides the most comprehensive article (12) on the right to health in international human rights law and a monitoring Committee²⁰ for monitoring the implementation of this article, among others.

The indicators to the right to health and its specificities have been shaped by other relevant human rights treaties²¹ that have a provision on the right to health. However, for understanding the relation between the right to health, HIV and sex work Article 12 of the ICESCR is plentiful.

ICESCR | Article 12

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

18 According to the WHO's Constitution, the right to health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".

19 According to the UDHR, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

20 Monitoring of States parties' compliance with treaty provisions is primarily done through the examination of their regular reports on how they are implementing the rights nationally. The Committee examines these reports together with other relevant information submitted by United Nations agencies and civil society organizations (these are also called shadow reports or parallel reports).

21 International Convention on the Elimination of All Forms of Racial Discrimination (Articles 11.1 (f)); the Convention on the Elimination of All Forms of Discrimination against Women (Article 12); the Convention on the Rights of the Child (Article 24); and several regional human rights instruments.

Obligations towards sex workers

The right to health has specific normative content which has to be taken into consideration by the Russian state when designing public health laws and HIV programmes. As stated by the UN Committee on Economic, Social and Cultural Rights (CESCR) “Health is a fundamental human right indispensable for the exercise of other human rights”.²² Its realisation is also considered a precondition for living a life in dignity.

A fundamental characteristic of this right is that it is **universal** and **non-discriminatory**, as other human rights. Therefore, **all sex workers are entitled to the right to health** and cannot be discriminated against. Sex workers living with HIV are particularly protected by human rights and the right to health, since discrimination on the ground of health status, including HIV status, is prohibited.²³

It is a programmatic right that demands progressive implementation and efficient laws. Moreover, this right has a **socio-economic dimension** and should always consider key populations in its implementation (principle of inclusiveness).

To fulfil its international obligations the Russian state is obliged to respect, protect, and fulfil the right to health of every person, including (migrant) sex workers. When the state fails to do so, it violates the right to health of people.²⁴ The implications of this international legal framework to sex workers in the Russian Federation, reads as follows.

Respect

The Russian state should respect the right to health of all its citizens with no discrimination²⁵, which means, objectively, that it should “refrain from interfering directly or indirectly with the right to health.”²⁶

States have the duty to respect sex workers’ rights by enabling an environment in which they are able to fulfil their fundamental rights, and be free from practices that put them at risk of HIV/STI infection.

22 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, paragraph 1.

23 UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 31*, 2008.

24 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, paragraph 52.

25 “Abstaining from enforcing discriminatory practices as a State policy” (UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, paragraph 34).

26 UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 31*, 2008, p. 25; and M Daniel, S Sangeeta, S Sandesh, 2010, pp. 130-131.

Protect

The Russian state should protect the right to health of all their citizens with no discrimination, which means objectively that states should “prevent third parties from interfering with the right to health.”²⁷ The Russian state needs to proactively ensure that persons within their jurisdiction do not suffer from human rights violations at the hands of third parties.

Sex workers are often exposed to violence and to health-related risks because of lack of laws protecting them against abuses committed by third parties. State laws have the duty to refrain from violence that put sex workers at risk to HIV infection.

Sex workers are often exposed to violence and to health-related risks because of lack of laws protecting them against abuses committed by third parties. States have the duty to refrain from violence that put sex workers at risk to HIV infection.

Fulfil

The Russian state should fulfil 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.”²⁸

Sex workers in the Russian Federation are often excluded (or discriminated against) when accessing public health support (when available).

Sex workers who inject drugs and live with HIV face higher challenges to obtain treatment and support. These measures should be programmatic and proactively implemented for reaching better public health goals, which are in line with human rights standards.

²⁷ Toebe, 1999, p. 26.

²⁸ UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 31*, 2008, p. 27.

This policy paper is mainly concerned with legal issues around sex work and how these impact on sex workers' human rights and increases their vulnerability to HIV/STIs.

Above we examined in which way the human rights framework embraces the issue of right to health applied to sex workers.

Hereunder, the Russian legislation on sex work was reviewed in order to verify to which extent the government should be held accountable for several human rights violations and abuses against sex workers and provide further recommendations for national HIV policy. This analysis will consider legal documents but also legal practice and law enforcement.

High levels of stigma, discrimination, and marginalization of sex workers will be analysed as sub products of the actual legal framework on sex work.

This is critical for understanding how the legal frameworks increases sex workers vulnerability to HIV/STIs in the country. This

analysis also highlights the importance of scaling up an enabling legal environment to achieving an effective HIV response.

According to the sex worker-led organization *Silver Rose*, the law itself is not the only reason for the systematic and widespread violations against sex workers in the country. Law enforcement agents are particularly responsible for arbitrariness in the use of existing laws.

LEGAL ENVIRONMENT

Administrative Liability

People who engage in sex work in the Russian Federation are liable to administrative prostitution charges, according to Article 6.11 of the Code of Administrative Offences ("CAO").²⁹ Thus, prostitution is punishable by an administrative fine in the amount of one thousand five hundred to two thousand rubbles.

Although there is no definition of prostitution in the law, the majoritary jurisprudence and doctrine understands that, for the recognition of the offence, the sexual service needs to be carried out for a fee more than two or more times (systematically). Thus, carrying sexual services once is not to be considered an offence.

As a consequence, systematically selling sex is regarded to be an administrative offence under the Russian legislation. Sex workers are not permitted to work, nor tolerated by the state. There is a clear state prohibition of their economic activity.

²⁹ The national law does not mention sex work, but prostitution. When referring to the legal environment this report will use the term 'prostitution' instead of sex work.

Noteworthy is that attempting to sell sex is also not enough to prosecute. Sexual services need to be consummate in order to prosecute someone for prostitution under Article 6.11 of the CAO. This excludes prosecution for sex work advertisement, for instance.

The CAO in its Article 6.12 states "Getting income from prostitution, if that income is associated with the occupation in prostitution of another person" as an offense subjected to an administrative fine of two thousand to two thousand five hundred rubles or administrative arrest for a term of ten to fifteen days in the case of its infringement.

In principle, Article 6.12 of the CAO applies to any person who is getting income from prostitution of others; however this same matter can be considered under Article 241 of the Criminal Code ("CC"). The majoritary jurisprudence and the doctrine understands that Article 6.12 of the CAO should be applicable when the conduct is committed only once; whereas Article 241 of the CC is to be considered a systematic conduct of getting income from prostitution of others (see further explanation on Article 241 of the CC hereunder). To date, no cases were considered under Article 6.12 of the CAO.

In sum, an administrative liability is applied to all sex workers under Article 6.11 of the CAO. Those who enforce this law are the police. The organization *Silver Rose*, which advocates for the rights of sex workers in the country, denounces the discretionality of the police in the application of the administrative charges.

When arrested, many sex workers are frequently blackmailed and forced to undergo unpaid sexual services. The organization reinforces that part of police authorities systematically make use of this law to violate and abuse sex workers.

According to the testimony of female sex workers collected by *Humanitarian Action*, in Saint Petersburg, large numbers of sex workers are forced to have sex with police officials in exchange for the opportunity to engage in sex work.

Sex workers reported that coercion is not an isolated fact. It is claimed to be a wide-spread practice on behalf of some police officials. In this context, rape (coerced sex) is fed by high levels of stigma and discrimination against sex workers. Some sex workers also complain of false accusation of possession and commercializing drugs.

From the sex workers' experience, the administrative law (6.11 and 6.12) and the lack of access to justice together create an environment which disempowers them before the police. Therefore, the law itself is not to be considered the only reason for these violations, but the arbitrariness in its application.

Due to the precarity of the system, different informal agreements are commonly done between some police and sex workers, which allow sex workers to work. This is done mainly based on a percentage of their earning to the police officials or free of charge sexual services.

Therefore, the actual administrative law does not allow sex workers to work, associate, and contributes to the arbitrariness of some police officials. It shortens sex workers capacity to claim for their rights both in Court and at the police station. Moreover, it contributes to impunity and lack of redress to victims of serious crimes committed against sex workers.

Criminal Liability

The Criminal Code ("CC") in its Article 240 "Engaging in prostitution" states the following:

Whereas in some countries, such as in the Netherlands (2000) and Germany (2002), profiting from prostitution of others is not a crime; in the Russian Federation it is. Any profit coming from prostitution of others could be considered a crime under Article 240 of the CC.

Considering the different legal approaches to those who manage sex businesses, one can be an employer (with obligations under labour law) or a criminal (with no obligations due to the illegality of the business). This differentiation depends on the legal framework adopted by each country. Evidence reveals that sex workers are more unsafe in regimes that criminalize the managers of the sex industry.³⁰

As a matter of fact, Article 240 of the CC intends to combat the conduct of those who seek to involve sex workers in the sex industry and take economic advantage from them. It is otherwise known as "pimping" article which is found in several criminal codes across the world.

Article 240, CC

1. Involvement in prostitution or forced continued engagement in prostitution are punishable by a fine of up to two hundred thousand rubbles or the salary or other income for a period of eighteen months, or restraint of liberty for a term not exceeding three years, or by compulsory works for a term of up to three years, or imprisonment for the same term.

2. The same acts committed:

- a) with the use of violence or threat of violence;
- b) moving the victim across the state border of the Russian Federation or illegally keeping him/her abroad;
- c) by a group of persons by prior conspiracy, - shall be punished by imprisonment for a term not exceeding six years from the restraint of liberty for a term up to two years, or without it.

3. Acts stipulated by the first or second paragraph of this Article, if committed by an organized group or against a minor - shall be punished by imprisonment for a term of three to eight years, with deprivation of the right to occupy certain positions or engage in certain activities for a term of fifteen years, or without it, and with the restriction of freedom for up to two years, or without it.

³⁰ <http://newsroom.unsw.edu.au/news/health/sex-work-nsw-healthiest-world> (accessed by 08.08.13)

The CC in its Article 241 "The organization of prostitution" prescribes, right after, the following:

Article 241 of the CC refers to running a sex business. There is no permission to set up any sex businesses. This article also considers sex business management as those who search for premises, select sex workers, security guards, etc.

To be charged under Articles 240 and 241 of the CC (as well as 6.12 of the CAO), one must have the *intention* to commit the prohibited conduct. The intent of the perpetrator to realize the crime is fundamental for presenting charges under these articles. For instance, a taxi driver that collects a sex worker and rides to the clients address is not to be considered a criminal, unless this situation is known and intended.

Under the scope of the CC, sex workers can either be considered witnesses or victims. It does not matter whether the sexual services are delivered voluntarily or not; the criminal responsibility may only increase to a certain degree based on violence, intimidation, fraud, etc.

Sex workers are guilty under the Criminal Law only if they fulfil the requirements of Articles 240 and 241. For instance, a sex worker that rents an apartment to provide sexual services and later invites other sex workers to work in such apartment can be charged under Article 241 of the CC. The administrative liability (Article 6.12 of the CAO) has no criminal penalty whatsoever.

Article 241, CC

1. Acts aimed at organizing prostitution by others, as well as maintenance of brothels for prostitution or systematic provision of premises for prostitution shall be punished by a fine of one hundred thousand to five hundred thousand rubbles or the salary or other income for a period of one to three years, or hard labour for a term not exceeding five years, or imprisonment for the same term.

2. The same acts committed:

- a) by a person using his official position;
- b) with the use of violence or threat of violence;
- c) using minors for prostitution, - shall be punishable by imprisonment for up to six years, with deprivation of the right to occupy certain positions or engage in certain activities for a term not exceeding ten years, or without it, and with the restriction of freedom for up to two years, or without it.

3. Acts stipulated by the first or second paragraph of this Article, committed with the use of prostitution of persons under the age of fourteen, - shall be punishable by imprisonment for a term of three to ten years with deprivation of the right to occupy certain positions or engage in certain activities for a period of up to fifteen years or without it, and with the restriction of freedom for a term of one to two years, or without it.

The actual prostitution legal framework on prostitution is the result of a combination of administrative and criminal law. Although sex work – as labour – is not regarded to be crime under the Criminal Law, it is outlawed by the Administrative Law. The effects of this prohibition are similar to legal systems that criminalize sex work under the Criminal Code.

IMPACTS ON SEX WORKERS

Criminal law is generally a society's strongest expression of disapproval of an action, to be reserved for the most heinous misdeeds. United Nations leaders and other experts have questioned the application of harsh criminal laws to sex work. They note that criminalization impedes sex workers' ability to negotiate condom use with their clients and may force them to work in hidden or remote places where they are more vulnerable to violence.

Police abuse and extortion of sex workers both in and out of detention is facilitated when sex work is criminalized.

Sex workers who are regarded as criminals often face abusive or judgmental treatment in health services and cannot enjoy the benefits of social services or of regulations that protect other workers.

Open Society Foundation, *Laws and Policies Affecting Sex Work*, 2012

BOX 3

Sex worker expert opinion

Silver Rose recommends sex workers to have (or request) a lawyer upon arrest due to contradictory judicial practice, uncertainty of the definition of prostitution and other legal terms, and high levels of corruption among police officials.

The sex worker-led organization also expresses its concern regarding the different types of evidence used for conviction. As a rule, the police cannot carry out investigations under Administrative Law; therefore all proof of evidence must be available at the moment in papers, testimonies, internet sites (with advertisement and photo of the sex worker), etc.

In spite of that, in some cases Articles 240 and 241 of the CC have been used to lawfully carry out such operations and find evidence for prostitution. For the purpose of investigation under Criminal Law, other forms of evidence are allowed to be collected through wiretapping, secrets and information disclosure, and forcible entry. If there is no evidence of a crime found, the police can still charge sex workers under the Administrative Law (Article 6.12) for prostitution based on the evidence collected.

In most cases, the police rely merely upon the lack of legal knowledge and position of sex workers to take advantage and/or present charges.

Criminalization of sex work has been criticized by international health agencies and stakeholders for not being the most adequate response to reach public health goals and respect the right to health of sex workers.

Moreover, the CAO that defines sex work as an activity that infringe on the health, sanitary and epidemiological welfare of the population is not the most effective HIV response. It is otherwise

contrary to public health efforts and is based on a moralistic perspective of sex work. It fraudly calls on sex workers as vectors of the epidemics, instead of recognizing them as partners in the fight against HIV/AIDS.

This policy paper highlights that the effects of this legislation goes beyond the prohibition of sex work. Due to the fact that sex work is prohibited under administrative law and combated on the ground by the police its impacts are far-reaching.

Impacts on sex workers

- Stigma and violence against sex workers is fuelled.
- Sex workers are denied protection by police and the courts.
- Sex workers must work under unsafe conditions and are denied protection under labour law.
- Sex workers are discriminated against and face social exclusion.
- Sex workers' access to social and health care are hindered.
- Increase of police corruption and arbitrariness in the application of the law.
- Sex workers capacity to perform safer sex and negotiate consistent condom use is reduced.

Considering the legal framework and the structural barriers around sex work in the Russian Federation, different challenges can be encountered by sex workers to access on an equal footing medical, social and legal services (when available ³¹).

Stigma, discrimination and other human rights abuses impede the HIV response.³² These characteristics are enrooted in several public institutions and in some NGOs and for this reason many sex workers do not have access to medical, social and legal services. Because stigma and discrimination is so high, many sex workers avoid seeking for services.

BARRIERS TO ACCESSING SUPPORT

BOX 4

Detoxification treatment

A necessary condition for the treatment of substance abuse is the need of registration at a medical facility, which entails a number of negative effects. The presence of substance abuse diagnosis severely restricts the rights of a citizen: including deprivation of parental rights, a medical contraindication to adopt a child or to establish guardianship or trusteeship. If a sex worker is a mother, and drug user, the chances of losing parental rights are very high. This compromises the pre- and post- treatment. This process can also be bureaucratic. There are waiting lists for starting a process of detoxification and rehabilitation.

Access to Health Care

In the Russian Federation citizens receive medical care free of charge on the basis of the policy of health insurance. However, sex workers often face discrimination when seeking health care services and few are reported to receive proper sexual and reproductive medical care.

Sex workers who inject drugs face specific

challenges for having harm reduction treatment and rehabilitation. Evidence shows that sex workers who inject drugs and live with HIV are denied the right to medication and treatment.

Sex workers without documentation (identity card and insurance certificate) are also impeded to access health care. The same happens with sex workers who do not have a fixed residence or registration (due to lack of papers). Civil society and governmental organisations can play a key role in supporting the most vulnerable sex workers to overcome barriers within the health care system.

³¹ According to Silver Rose, services are not available in all cities of the country.

³² WHO, *Action Plan Europe*, p. 39.

In this health system, migrants³³ and mobile sex workers do not have access to free-of-charge health care. Only in emergency cases they have access to medical services and ambulance.

Many sex workers also fear deportation when seeking emergency health services. Migrant sex workers living with HIV are particularly threatened to deportation, since the Article 11 of the *Federal Law on the Prevention of the Spread in the Russian Federation of Diseases Caused by the Human Immunodeficiency Virus* permits state officials to do so, as a consequence of detection of HIV-infection.

Access to Social and Legal Services

Statutory restrictions on the provision of social support (benefits, pensions) to sex workers does not exist, however in practice may be limited from accessing social support because of the prejudice of the officials, approving the allowance. This process can also be bureaucratic due to lengthy paperwork.

In public and private centres for women in crisis, there are rules that prohibit stay of the sex workers who inject drugs. Thus, the sex workers who inject drugs, victims of violence and their children are deprived of the right to assistance in a crisis situation. In the treatment of drug addiction the disability benefits are not paid, which is an additional obstacle to obtaining drug treatment.



When seeking legal support, sex workers experience the same barriers: stigmatizing and discriminatory attitudes. In some cases, sex workers do not want to address their problems to lawyers, for the fear of disclosure of their activities, law enforcement scrutiny and public condemnation. Meanwhile the legal aid is often needed in cases of violent crimes committed against them, rape, etc.

³³ Migrants are those who were born outside the Russian Federation.

Need for a comprehensive, non-judgemental, and targeted HIV prevention programmes responding to the needs of sex workers and other vulnerable groups.

KEY FINDINGS

- Structural determinants – such as the actual legal framework – increase the vulnerability of the sex workers to HIV/STI infection.
- Marginalisation, stigmatisation and discrimination against sex workers are reinforced by the legal environment.
- Migration status, mobility, lack of access to justice, and unsafe working conditions increase sex workers' vulnerability to HIV/STIs.
- Human rights provide principles and guidance to which states are bound when safeguarding the right to health and life of sex workers, and enacting national laws and developing public health programmes.
- The fight against HIV is not only a public health concern but also a human rights matter.
- Decriminalisation and depenalization of sex work is necessary to increase efficacy of HIV/AIDS education and prevention programmes by enhancing sex workers' access to public health interventions, reducing in this way their fear of police harassment, violence, stigma, and discrimination.
- The current legislation in the Russian Federation neither favours nor protects labour and civil rights of sex workers.
- Violence against sex workers is wide-spread and involves law enforcement officials, managers of the sex industry, and clients.
- Sex workers cannot openly advocate for their rights. There is no right for association of sex workers, nor participation in the policy development.
- Lack of political commitments in supporting sex workers against violence and combating their vulnerability to HIV/STIs.
- Criminalization and judgemental laws and policies are in conflict with public health interest and constitute the main barriers to tackle the epidemics.
- Criminalization of sex work is spreading the negative attitude of different actors towards sex workers, creating dangerous atmosphere around them – both in terms of violence and health risk.
- AIDS epidemic can be controlled, and the risk of infection can be avoided by appropriate legislation ensuring the protection of the rights of sex workers in health care, violence-free life and autonomy.



Drawing from the assessments of Russian legislations and policies on sex work, and building upon the principles of a human

RECOMMEN- DATIONS

rights framework, the **CONECTA project** puts forward the following recommendations in order to support and stipulate further action. The recommendations summarize key issues of concern regarding the equal treatment of female, male and transgender sex workers – including migrant and mobile sex workers – and the full protection of their human rights. They are directed at policy makers and specifically address representatives of governmental bodies, national public authorities and the health care sector.

The **CONECTA project** urges the implementation of the following recommendations:

General recommendations

- While sex workers are marginalised and discriminated against through social stigmatisation and (legal) exclusion, they are, at the same time, part of the 'general population' and have the same needs and rights as other individuals. Do not exclude sex workers by treating them as a threat to public health and security; instead ensure that public policies take into account the health, well-being and security of vulnerable groups, including sex workers.
- Include sex workers and sex workers' projects as experts into all phases of policy design, development, implementation and evaluation that affect sex workers and their well-being.
- Together with sex workers and sex workers' organisations, ensure the continued monitoring of policies, their implementation and outcome with respect to the full protection of sex workers' human rights, including their access to public health and social care services.
- Provide sufficient resources for sex workers' organisations and (health and social care) services in order to ensure the availability and accessibility of non-discriminating support services.

Recommendations regarding **SEX WORK policies**

- Acknowledge the realities of sex work in the Russian Federation and implement inclusive politics that protect the human rights of sex workers. Adopt a stance that actively seeks to protect the human rights of sex workers and is based on non-discrimination and inclusion.
- Abolish laws and policies that criminalise sex workers, in particular all punitive measures that violate sex workers' human rights.

- Respect and protect the human rights of sex workers, including the right to work, the right to free choice of employment and the right to just and favourable work conditions.
- Sex work policies should provide empowerment and legal protection. These are core elements for ensuring autonomy and independence and preventing dependencies and exploitation.
- Respect and protect the human rights of (migrant and mobile) sex workers, including the rights to freedom of movement and residence, the right to equal protection under the law and the right to the highest attainable standards of physical and mental health.

Recommendations regarding POLICY MAKERS

- Develop a structural HIV intervention within the consideration of the environmental factors that impact upon HIV risk. For reducing vulnerability to HIV/AIDS it is imperative to understand and remove structural barriers.
- Review and reform legislation and regulations that present obstacles to effective HIV prevention, treatment, care and support to sex workers.
- Strengthen the enforcement of protective laws and regulation
- Strengthen civil society's involvement in the HIV response for vulnerable populations,
- Ensure equality in access to HIV and health-related services;
- Combat stigma and discrimination and guarantee equal access to justice for sex workers.

Recommendations regarding the PUBLIC HEALTH care sector

- Base public health services on the principles of universal accessibility. The use of all services must be non-judgemental and equal to all citizens.
- Ensure sex workers' access to public health services independent of their legal, insurance and/or occupational status.
- Ensure immediate and comprehensive STI, HIV and AIDS treatment, care and support – independent of legal, insurance and/or occupational status, sexual orientation, and/or gender.
- Provide periodic sensitisation trainings on the issues of sex work for the staff of public health care services in order to reduce stigmatisation and discrimination of sex workers. Ensure the inclusion of sex workers as experts in the design and implementation of such trainings.

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