



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



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POLICY PAPER

LAWS AND POLICIES AFFECTING SEX WORKERS' VULNERABILITY TO HIV/STIs IN UKRAINE



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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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The **CONECTA** project - *Strengthening of HIV/STI Interventions in Sex Work in Ukraine and in the Russian Federation* - is implemented jointly by TAMPEP International Foundation (The Netherlands), Humanitarian Action Foundation (Russia), and SALUS Charitable Foundation (Ukraine).

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
- 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.

The purpose of this policy paper is:

- to **inform** stakeholders about the legal and policy environment in Ukraine and its impact on sex workers' vulnerability to HIV/STIs
- to **call on** the Ukrainian 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 Ukraine, 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 Ukraine, 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).

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 legal documents.

HIV Situation & Policy

In Ukraine the first cases of HIV infection were detected in the country in 1987. Epidemic spread of HIV happened in 1995 due to an outbreak of HIV among injecting drug users (IDUs). It is experiencing the most severe HIV epidemic in Eastern Europe and the CIS countries.⁵

As of **1st of October 2013, cumulative data** were the following⁶:

- Number of HIV-infected persons: 230,993
- Number of persons with AIDS: 59,935
- Number of persons who died from AIDS: 29,745

Patients who are under observation at the AIDS Centres:

- Number of HIV-infected persons: 134,302 (294.8 per 100.000 people among the population)
- Number of persons with AIDS: 27,181 (59.7 per 1000 people among the population)

Estimated number of PLHIV:

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 UNAIDS ‘*World AIDS DAY Report 2012*’ (2012, p. 43).

⁶ According to the data of the Ukrainian Disease Control Centre of the MOH of Ukraine, “HIV-infection in Ukraine / Information bulletin» (No40, 2013).

- 238,000 persons: persons of 15 years old and older

The region most affected by HIV/AIDS is the south (Kherson Oblast, Mykolaiv Oblast, Odessa Oblast, Sevastopol city, Autonomous Republic of Crimea), whereas northern (Zhytomyrs'ka oblast, Kyivs'ka oblast, Chernihivs'ka oblast, Sums'ka oblast) and western parts (L'vivs'ka oblast, Ivano-Frankivs'ka oblast, Ternopil's'ka oblast, Volyns'ka oblast, Rivnens'ka oblast, Zakarpats'ka oblast, Khmel'nyts'ka oblast, Chernivets'ka oblast) were less affected.

As for the **epidemic situation in 2013**, the following official national data are known:

- There were 15,880 new cases of HIV, 7497 of persons with AIDS registered, whereas 2,581 patients died from AIDS
- The prevalence of HIV numbered to 294.8 per 100,000 among population, AIDS - 59.7. Patients under observation at the dispensary - 134,302 HIV-positive persons, including 27,181 diagnosed with AIDS
- Rate of transmission of HIV from mother to child amounted to 4.7% (2011)

As for the dynamics of the registered new cases of HIV, during the period of 2005-2012 the decrease by 2.3 times the percentage of persons aged 15-24 years among HIV-infected patients aged 15 years and older could be observed. The predominant way of transmission of HIV infection in Ukraine observed since 2007 was sexual, by heterosexual contacts. However, currently a growing number of MSM contacts have been increasing HIV transmission.

The dynamics in the changes of the number of HIV-positive women of reproductive age and children born to HIV-infected women is concerning. According to the data available, the percentage of transmission from mother to child is high. Currently this percentage amounts to 3.5-4.5 %, as opposed to the planned 2 % by the National Program.

The **estimates of the number of most-at-risk populations (MARPs) in 2013** in the country are:

- IDUs: 310,000 persons
- SW: 80,000 persons
- MSM: 176,000 persons
- PLHIV: 234,000 persons

The number of IDUs has decreased in 2012-2013 as compared to 2002. The situation is different, however, with MSM, which has increased in the last years and is a trend, as well the number of sex workers (male, female, transgender) infected by HIV.

Actions already in place in order to strengthen the system of counteraction to the epidemic of HIV/AIDS in Ukraine include:

- National programs on the provision of HIV prevention, treatment and care for periods of 2004-2008, 2009-2013, 2014-2018 have been introduced into the laws of Ukraine

■ A governmental body has been created to address these issues - the State Committee on HIV/AIDS prevention and other socially dangerous diseases under the Cabinet of Ministers of Ukraine (2011)

■ In order to strengthen the coordination of AIDS services in the country, Ukrainian Centre for Prevention and Control of AIDS was reorganised (2012)

Following the **key performance indicators of the National Program** the result can be list as:

■ Stabilization of the spread of HIV in the country

■ Antiretroviral therapy (ART) is received by 53,059 patients, including 3335 children

■ 134 sites created for methadone maintenance treatment (MMT) for 8048 IDUs

■ Due to the reform of health care system, decentralization and integration of care for HIV-infected persons is being done

■ Governmental AIDS service in the country extensively interacts with international and national NGOs

Lately, the epidemic also resulted resulted in a joint effort of 164 local NGOs in 302 cities in all oblasts of Ukraine with the ICF International HIV/AIDS Alliance ("Alliance Ukraine"). Together they provide comprehensive HIV/AIDS prevention services to 159.385 people who inject drugs, 28.636 sex workers, and 18.930 men having sex with men.⁷

The importance of creating an enabling environment to facilitate access to HIV services to key populations at higher risk of infection is also recognised by the Ukrainian civil society.

Due to this response, the HIV incidence in Ukraine has been decreasing since 2010 both among the general population and representatives of the vulnerable groups. The Global Fund Round 6 Program in Ukraine had a significant impact on the HIV epidemic and response in Ukraine from 2007 to 2012.⁸

Although discrimination against people living with HIV is prohibited under Article 14 of the Law of Ukraine "On Prevention disease Acquired Immune Deficiency Syndrome (AIDS) and social protection", still sex workers cannot benefit from this legal provision as their work is banned by the state and discriminated against by general society.

The Law of Ukraine "On Prevention disease Acquired Immune Deficiency Syndrome (AIDS) and social protection "

Article 14. Equality before the law and prohibition of discrimination people living with HIV and those who are increased risk of HIV infection.

⁷ See: <http://www.network.org.ua/media-en/news/the-close-out-conference-support-for-hiv-and-aids-prevention-treatment-and-care-for-most-vulnerable-populations-in-ukraine/>

⁸ CSIS 'Injecting Drug Use in Ukraine: the challenges of providing HIV prevention and care' (2012, p. 9).

1. People living with HIV and those who belong to groups high risk of HIV infection - the citizens of Ukraine , foreigners and stateless persons permanently residing in Ukraine , the person who applied for refugee status and who granted refugee status in Ukraine , asylum seekers , foreigners and stateless persons lawfully temporarily on the territory of Ukraine shall enjoy all the rights and freedoms provided by the Constitution (254k/96-VR) and laws Ukraine and other normative -legal acts of Ukraine .
2. State guarantees to all people living with HIV and persons belonging to the groups most at risk of HIV infection equal footing with other citizens opportunities to exercise their rights,in particular as regards the possibility of administrative and judicial protection their rights.
3. Discrimination against persons on the basis of the presence of her HIV and belonging to a person at increased risk HIV is prohibited. Discrimination is the act or omission that directly or indirectly creates constraints deprive a person of appropriate human or degrading to human dignity the basis of one or more attributes associated with actual or possible presence of having HIV or gives reason to carry a person to groups most at risk of HIV infection.

It is clear that to counteract the epidemic, new strategies need to be developed focusing on environment, community mobilization and support, and human rights-based approaches to sex work and HIV.

■ Sex Workers and HIV

Sex workers in Ukraine can be considered highly vulnerable to HIV/STIs infection (the rate of HIV prevalence is 9%) due to multiple factors, including large numbers of sex partners, unsafe working conditions, and barriers to negotiate consistent condom use.

Moreover, sex workers often have little control over these factors because of social marginalization and criminalized work environments. Alcohol, drug use, and violence in some settings may further exacerbate their vulnerability and risk.

Main barriers

The actual Ukrainian HIV/AIDS policy is regarded to be insufficient for an effective HIV response. Multiple environmental and legal barriers

hinder key populations at higher risk of infection, including restricted access to services and adverse social environments.

Although laws, which safeguard dignity, health and justice, are essential to effective HIV responses, in Ukraine, criminalization and public health policies remain a challenge to tackle the epidemic.

■ **Sex workers** face national anti-prostitution strategy and laws, which outlaw sex work, instead of promoting an enabling environment to targeted HIV/STI prevention and treatment services.

■ **Migration** and **mobility** of sex workers remains a barrier for efficient health service provision. Conecta's mapping report estimated that 9% of Ukraine's. Large majority of migrant sex workers (about 94%) come from near European countries (Russia, Moldova, Armenia, Belarus, and Romania). Depending on the nationality, migrant sex workers may face adverse immigration law and regulations, including in the health care sector.

■ **Injecting drug use** considerably increases sex workers' vulnerability to HIV/STIs. Conecta's mapping report highlighted that about 91% of the respondents reported that outdoor-based sex workers use injecting drugs at a significantly higher or higher levels than the general population.

The use of other drugs (e.g. cocaine, alcohol) also diminishes sex workers' ability to negotiate consistent condom use and exposes them to riskier situations and possible violent acts.

■ **Male** and **transgender** (particularly male to female) sex workers may face additional national anti-LGBTI strategy and laws instead of rights and health support services.

On 02 October 2012 the Ukrainian Parliament voted in favor of the draft law #8711 "On Introduction of Amendments to Certain Legislative Acts of Ukraine (to protect the children's rights to the safe information sphere)" that bans "propaganda of homosexuality" and makes it a criminal offence to convey any type of Lesbian, Gay, Bisexual, and Transgender (LGBT) related information with a fine of up to 300 times the legal minimum income, and penalty of up to five years imprisonment. This law is accused to violate i) Freedom of speech and expression; ii) Right to peaceful assembly and association; and iii) Right to self-determination.

The draft law will encourage blackmail, expression of hatred against LGBT, homophobic violence, as well as censor mass media, limit and put a pressure on human rights organization and activists. For male and transgender sex workers this consists in an additional barrier.

■ **Young persons who engage in selling sex** have also been reported as greatly at risk group, being targeted by specific national projects in Ukraine (see Conecta's Good Practice Manual).

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.⁹

Laws governing prostitution and law enforcement authorities also play a key role in the violence experienced by sex workers.¹⁰ 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 reaffirmed 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."**¹¹

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, *SALUS Charitable Foundation* 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 Ukraine and involved 87 sex workers.

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

Physical violence

■ **40%** of respondents reported that they were beaten

⁹ Statement of Michel Sidibe, Executive Director, UNAIDS (2013).

¹⁰ *Idem*.

¹¹ WHO, *Violence Against Women and HIV/AIDS: Critical Intersections*, 2005, p. 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 *Legalife* underscored that violence is also consequence of corrupt law enforcement officials who implement the law arbitrarily. The illegality of sex work is used to legitimate and abuse rights violations. Many sex workers are unlawfully imprisoned for investigation in the country, affirmed the organization.

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

- **40%** of the respondents reported that they were forced to have sex
- **23%** of respondents reported that they were threatened with weapons

Economic violence

- **19%** of the respondents reported that they had their money or other valuables taken away
- **73%** of the respondents reported that they were coerced to perform unpaid sexual services or paid below the agreed price

Verbal and psychological violence

- **70%** of the respondents reported that they were insulted for being a sex worker
- **15%** of the respondents reported that they were threatened
- **44%** of the respondents reported to have experienced humiliation

“Katya went with a friend to Moscow to earn more money. Immediately upon arrival they were taken to a country house where about 25 clients were drunk. Katya and her friend were raped.”

Sex worker | Ukraine

The perpetrators are multiple and vary according to different settings and experiences of sex workers.

89% of respondents of Conecta’s mapping reported that acts of violence against sex workers were committed by clients, 66% by law enforcement officials. Only 8% mentioned as violators partners, relatives or acquaintances, 5% – pimps, 3% – drug dealers.

It was affirmed by 32% that unsafe working environment is the reason for several violations and abuses against sex workers in Ukraine. For example, 5% reported that sex workers have their documents illegally confiscated. This abuse relates directly to unsafe working environment and criminalization of sex work. Consequently, lack of rights and unfavourable conditions to work puts sex workers at risk of various forms of violence.

Sex work in Ukraine is associated with high levels of violence. This policy paper investigates the relationship between this evidence, the legal environment and international human rights obligations.

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 Ukrainian government is accountable to the episodes of violence against sex workers**, including their heightened risk to HIV/STI infection.

The fact is that Ukrainian state is party to several international and regional human rights treaties¹². In other words, human rights are not alien to the Ukrainian 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.

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

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 and evidence on violence in Ukraine

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

¹² UNAIDS, *Discussion paper*, 2013, p. 6.

Right to health: the key right

The investigation of the key 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 Constitution¹³ and the Universal Declaration of Human Rights (Article 25.1)¹⁴.

The first binding international document in relation to the right to health is the International Covenant on Economic Social and Cultural Rights (ICESCR). The Ukrainian state 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 Committee¹⁵ for monitoring the implementation of this article, among others.

Several relevant human rights treaties that have a provision on the right to health have shaped the right to health indicators and specificities.¹⁶ 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.

¹³ 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".

¹⁴ 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."

¹⁵ 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).

¹⁶ 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 Ukrainian government when designing public health laws and HIV programmes.

As enforced 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”.¹⁷ 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.¹⁸ Any discrimination on that ground can be reported to the Committee.

It is also 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 Ukrainian 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.¹⁹ The direct implications of this international legal framework to sex workers in Ukraine, reads as follows.

Respect

The Ukrainian state should respect the right to health of all its citizens with no discrimination²⁰, which means, objectively, that it should “refrain from interfering directly or indirectly with the right to health.”²¹

The Ukrainian state has the duty to respect sex workers’ rights by enabling legal and policy environment in which sex workers are able to fulfil their

¹⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, paragraph 1.

¹⁸ UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 31*, 2008.

¹⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, paragraph 52.

²⁰ “Abstaining from enforcing discriminatory practices as a State policy” (UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, paragraph 34).

²¹ 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.

fundamental rights, and work freely from practices that put them at risk of HIV/STI infection.

Protect

The Ukrainian 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.”²² The Ukrainian state needs to proactively ensure that persons within their jurisdiction do not suffer from human rights violations at the hands of third parties.

Because of legal and policy environment sex workers are often exposed to violence and to health-related risks in Ukraine. There are no domestic laws protecting them against abuses committed by third parties. Ukrainian laws have the duty to refrain violence that put sex workers at risk to HIV infection.

Fulfil

The Ukrainian 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.”²³

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

LEGAL ENVIRONMENT

This policy paper is mainly concerned with legal issues around sex work and how these impact negatively on sex worker. Above we examined in which way the human rights framework embraces sex worker protection, particularly regarding their right to health.

Hereunder, the Ukrainian legislation on sex work will be 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.

²² Toebe, 1999, p. 26.

²³ UN Office of the High Commissioner for Human Rights, *Fact Sheet No. 31*, 2008, p. 27.

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 Legalife, the law itself is not the only reason for the systematic and widespread violations against sex workers in the country. Law enforcement agents in the use of legal instruments are particularly responsible for arbitrariness and abuse. One sex worker said: “I am 33 years old and I have drug addiction. The policemen constantly bother me by the road and I have to pay them bribes to work; otherwise they would park a few meters away and I would get no work at all because the clients would be too scared to stop by. I am afraid to complain”.

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; whereas brothel owners are rarely punished.

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.

In November 2011 the Prime Minister submitted a Draft Law on Amendments to the Code of Administrative Offences to the Parliament in order to stiffening the penalties for prostitution and related matters of jurisdiction (№ 9406 from 03.11.2011). This included attempts to increase and make mandatory administrative penalties for sex work from 85-170 hryvnias to 340-1700 hryvnias (the latter being the equivalent of what a SW earns per one week).

In 2010 Ukrainian feminist organization FEMEN urged the Parliament to consider the bill on criminalization of clients of sex workers (thus calling to follow the so-called Scandinavian model). The existing legislation and the attempts to toughen it, has a negative impact on the well-being of sex workers by deterring the ability of sex workers to refuse "dangerous" clients; the existence of more serious risks to health and safety of SW; additional physical and moral burden. Fortunately, none of these draft laws or attempts has found support in the majority of Members of Parliament of Ukraine, however these trends are very alarming.

Noteworthy is that 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.

The Impacts on Sex Workers

The actual prostitution legal framework is the result of a combination of administrative and criminal law. Although sex work – as an occupational activity – is not regarded to be crime under the Criminal Law, the Administrative Code of Offences outlaws it.

International United Nations agencies and stakeholders have criticized criminalization of sex work for not being the most adequate response to HIV/STI. Contrary, it fosters an environment that puts all citizens at health risk.

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.

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

According to Research of Legalife “Identifying barriers that limit access of sex workers to social, preventive and medical services” (2011), 75% of SW were subjected to various kinds of illegal actions and abuse by police officers; 68.5% of SW noted that illegal actions against them were performed regularly; 88.5% of SW believed that such illegal actions were performed due to the fact that they provided sex services.

This policy paper suggests that the effects of this legislative model that prohibits sex work in all levels impact negatively on sex workers. It also questions the grounds in which criminalization of sex work operates, as morality should not serve as a barrier for human rights of sex workers.

Impacts on sex workers

- Stigma and violence is fuelled
- Police and national courts deny right to protection – violence practiced by police is rarely investigated
- Unsafe work conditions and lack of labour rights exacerbate violence and vulnerability to HIV/STIs
- Discrimination, marginalisation and social exclusion
- Hindered access to social and health care services
- Increased corruption and arbitrariness by law enforcement agents
- Reduced capacity to negotiate consistent condom use

BARRIERS TO ACCESSING SUPPORT

Considering the legal framework and the structural barriers around sex work in Ukraine, sex workers while accessing health, social and legal services, can encounter different challenges.

Stigma, discrimination and other human rights abuses impede an adequate HIV response.²⁴ These attitudes are many times enrooted in several public institutions and in some NGOs. For this reason many sex workers do not have access to services, either because there are not offered to this population or because they are discriminated and humiliated when accessing. Stigma and discrimination is so high that in certain cases sex workers avoid seeking for rights and health services. Domestic laws and HIV programmes existing in the country should challenge these impediments.

²⁴ WHO, *Action Plan Europe*, p. 39.

KEY FINDINGS

- Need for a comprehensive, non-judgemental and targeted HIV prevention programmes responding to the needs of sex workers
- Structural determinants increase the vulnerability of the sex workers to HIV/STI infection
- The legal environment reinforces marginalisation, stigmatisation and discrimination against sex workers
- Migration status, mobility, lack of access to justice, and unsafe working conditions increase sex workers' vulnerability to HIV/STIs
- Human rights can and should shape national laws and public health programmes, including HIV/STI programming
- Decriminalisation 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 Ukraine neither favors nor protects labour and civil rights of sex workers
- Violence against sex workers is widespread and involves law enforcement officials, managers of the sex industry, and people posing as clients
- Sex workers cannot openly advocate for their rights, being right to association and participation restricted and controlled by the state
- 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

RECOMMENDATIONS

Drawing from the assessment of Ukrainian legislations and policies on sex work, and building upon the principles of a human rights framework, the Conecta project puts forward the following recommendation 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 Ukraine 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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