
Dear Ms. Alice Bah Kuhnke,

First of all we would like to thank you for inviting European Sex Workers Rights Alliance to contribute to the report on intersectional discrimination in the European Union. In this letter, we would like to propose several concrete provisions that we would like to see included in this important report.

The European Sex Worker’s Rights Alliance (ESWA) – previously the International Committee on the Rights of Sex Workers in Europe (ICRSE) - is a sex worker-led network representing 90+ organisations in 29 countries in Western, Eastern and Central Europe and Central Asia. Our aim is to ensure that all sex worker voices are heard, and that their human, health and labour rights are recognised and protected. With our actions and approach inspired by our membership community, ESWA works to build a strong, vibrant and sustainable network that mobilises national, regional and international advocacy activity towards long-term, systemic change.

We would like to propose the following provisions to be included in the report:

(EP) Recognises that structural and intersectional discrimination is cause and consequence of why people engage in sex work; is concerned that policies and laws established around prostitution are rooted in, and prioritise, a punitive approach that increases capacities and investments into police and immigration authorities; urges the Commission to establish a concrete framework for the rights and protection of sex workers by meaningful inclusion of sex workers in the development of said framework; further insists on the importance of including measures and strategies that are based in harm reduction and community interventions, and that tackle the discrimination and stigma faced by sex workers in access to funding, housing, healthcare, education and other services.

(EP) Calls on the Commission to conduct evidence-based research on the effects that national prostitution policies and laws have on sex workers’ human rights using an intersectional lens; calls on the Commission to conduct this research with meaningful inclusion of sex workers from different backgrounds – including refugee, migrant, precarious, LGBT+, racialized, street-based sex workers, and those working online.

(EP) Regrets that migrant, racialized women, LGBT+ people, and sex workers are disproportionately policed and criminalized; is concerned that disproportionate criminalization and restrictive migration policies leave migrant, racialized women, LGBT+ people, and sex workers more vulnerable to violence, exploitation and human trafficking; regrets that greater criminalization often places the same women at risk of state and institutional violence.

(EP) Regrets that under-reporting of crime is a problem area, related to the lack of a safe environment and personal safety for victims; recognizes that migrant and racialized women, women with precarious or undocumented migrant status, LGBT+ and sex workers lack trust in authorities due to their criminalization, intersectional discrimination,
stigma, rigid and harmful standards about what is considered appropriate behaviour for women, excessive surveillance, and unlawful and discriminatory profiling and over-policing.

(EP) urges the Commission and the Member States to enact crime prevention policies that prioritize an intersectional approach; that recognise the harms of intersecting structures of discrimination, including those enabled and created by states; and urges Member States to implement policies that are based on meaningful inclusion of marginalized communities, including migrants, racialized, LGBT+ people and sex workers. Recognises that only crime prevention policies informed by the concerns and experiences of people from the margins can provide viable solutions.

(EP) urges the Commission to enact safe reporting mechanisms, by amending the EU Victims’ Rights Directive to introduce a mandatory firewall between access to the justice system and immigration enforcement; calls on the Commission and the Member States to ensure that access to justice is physically, economically, socially and culturally available to all victims including undocumented migrants, sex workers, people from different cultural and socio-economic background, and those with disabilities; urges the Commission and the Member States to ensure the same standard in all EU countries, so that migrants with precarious and undocumented status can rely on the provisions of the Victims’ Directive without discrimination.

(EP) Regrets that women with migrant backgrounds, compounded by other personal characteristics such as racialized, LGBT+ status or because they are sex workers are impacted by intersectional discrimination, stigma, discriminatory laws, policies and procedures with regard to access to housing, healthcare, employment, education or other services; calls on the Member States to critically evaluate and review discriminatory policies and laws with meaningful involvement of affected communities.

JUSTIFICATION AND TERMINOLOGY:

The Joint United Nations Programme on HIV and AIDS (UNAIDS) Guidance Note on HIV and Sex Work defines sex workers to include female, male and transgender adults, over the age of 18, who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not self-identify as sex workers1. In terms of this definition, three elements are worth highlighting:

a) sex work and sex workers involve adults only;
b) sex work involves consensual acts between adults;
c) acts involving deceit, fraud, coercion, force or violence do not fall under the definition of sex work.

The 2015 UNAIDS terminology guidelines and the recommendations of the Global Commission on HIV and the Law advice against the use of the terms “prostitution” and “prostitute”, as they denote value judgement. We urge you to use the term ‘sex work’ or ‘sex workers’ in the report as we identify ourselves as such. The reason is that prostitution has connotations of criminality and immorality. Many people who sell sexual services prefer the term “sex worker”, and find “prostitute” demeaning and stigmatizing, which contributes to their exclusion from health, legal, and social services.

Sex workers are a heterogeneous group of people of all genders over 18 years old. Sex workers engage in sex work for many different reasons. Many sex workers enter the sex industry because they are excluded from the formal economy, or cannot access state benefits and therefore achieve a decent standard of living. For other sex workers, it may be the most acceptable of very few options available to them, enabling them to provide a living for themselves and their families. Some might decide to work in the sex industry because it allows for more flexible working hours and gives them greater control over their working conditions than other jobs. Others choose sex work because they find it financially rewarding. Marginalised groups and those facing discrimination constitute most of the people working in the sex sector, such as women and people already facing intersectional discrimination; including

1 See UNAIDS, 2012.
(undocumented) migrants, LGBT+ people, Roma and other minority ethnic groups, people who use drugs, homeless people, and others.

Sex work is very much connected to female poverty, and women’s position in the labour market. For instance, it has been shown that in times of economic crisis and austerity in many European countries, an increasing number of women engage in sex work. Many of them had worked before in professions that are traditionally viewed as gendered, and thus underpaid and exploitative. Austerity measures impact women disproportionately, especially women of colour, disabled women, trans women, or any other sub-group of women traditionally marginalised in society. Sex work therefore intersects with many other social issues that impact women, such as the gender pay gap, social benefits for women, childcare support, education exclusion and segregation, minority rights, the situation of asylum seekers, refugees and migrants and homo- and transphobia.

Estimates indicate that in some Western-European countries, migrant women, often in irregular situations without valid residence and work permits, constitute a significant portion of sex workers.

ESWA opposes punitive prostitution and anti-trafficking policy frameworks that target sex workers’ workplaces and their clients, rather than offering them viable solutions to protect themselves from violence. ESWA calls for the meaningful inclusion of sex workers in policy making including anti-trafficking and anti-violence policies and their development at local, national and European/international levels.

ESWA is far from alone in our call for sex work inclusion. Based on comprehensive research, Amnesty International released its ‘Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers’ in 2016, acknowledging that the “conflation of human trafficking with sex work can result in broad and over-reaching initiatives that seek to eradicate all commercial sex as a means to end trafficking. Such approaches work in practice to violate sex workers’ human rights, and in general can make sex workers and people who have been trafficked more vulnerable to violence and harm.”

The recent increase in migration flux and a punitive approach to migration, including the exclusion of undocumented migrants from the labour market, has led - and will continue to lead - to an increase in undocumented migrants, asylum seekers, refugees (and people falling in and out of documentation) selling sexual services in order to generate income. This lived reality of migrants led to PICUM developing its first policy, ‘Safeguarding the human rights and dignity of undocumented migrant sex workers’, where it joins the call for the removal of all criminal and administrative prohibitions and penalties on sex work related to sex workers, clients and non-exploitative third parties (including laws targeting brothel owners).

Another pan-European network, ILGA-Europe, has recognised that sex work is a multigendered phenomenon: sex workers of all gender identities, sexual orientations and sex characteristics face serious human rights violations and violence. As an LGBTI organisation, ILGA-Europe gives visibility to the high number of LGBTI people in sex work and their specific vulnerabilities, and needs. It notes that 88% of murdered trans people in Europe were sex workers and that racism, sexism, homophobia, transphobia and xenophobia, exacerbate LGBTI sex workers’ vulnerability to violence. Despite these facts, sex workers are considerably less likely to report abuse where sex work is criminalised. They are also likely to have no engagement or solely negative encounters with police forces. This has led ILGA-Europe to introduce clear policy that supports sex workers’ rights and calls for decriminalisation of sex work.

In line with ILGA-Europe’s reasoning, Transgender Europe (TGEU) has recognised that sex work is a trans rights issue. Trans people engage in sex work for a variety of reasons, most commonly because they live in a transphobic society in which they face structural barriers to education and employment, and thus have limited economic and employment

---

2 Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, 26 May 2016
4 Empowering LGBTI sex workers towards the full respect of their human rights ILGA-Europe’s position paper (Spring 2018)
opportunities. Trans sex workers are burdened by laws that are both transphobic and anti-sex work, and being under extreme economic pressure they are unable to escape persecution. At the same time, non-sex working trans people are oftentimes perceived as sex workers, and their social inclusion and acceptance are undermined by whorephobia. TGEU calls for the full decriminalisation of sex work, including the decriminalisation of sex workers, clients, third parties, families, partners, and friends, and all operational aspects, such as soliciting, advertising, selling, and purchasing sexual services (indoors and/or outdoors) or working collectively with other sex workers.\(^5\)

As one of the leading European organisations advocating for the rights of people living with or at risk of contracting HIV, the European AIDS Treatment Group (EATG) has expressed profound concern that the current criminalisation and legal oppression of sex work undermines, rather than supports, the reach and impact of health programmes for sex workers. Consequently, it supports decriminalisation of sex work.\(^6\)

There are many other European NGO platforms that advocate for sex workers’ rights and full decriminalization of sex work, including the anti-trafficking organisation La Strada International\(^7\), The Equinox Initiative for Racial Justice\(^8\), the European Network Against Racism, Trans United Europe, International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO), the International Planned Parenthood Federation – European Network, and Correlation – European Harm Reduction Network, to name but a few.

We remain at your disposal.

In Brussels, February 4, 2022

---

\(^5\) Transgender Europe (TGEU) – Sex Work Policy
\(^6\) THE IMPACT OF PUNITIVE SEX WORK LAWS AND REGULATIONS ON HUMAN RIGHTS AND PUBLIC HEALTH, EATG Position Paper Sex Work Policies, December 2018
\(^7\) La Strada International: STATEMENT 17 DECEMBER: INTERNATIONAL DAY TO END VIOLENCE AGAINST SEX WORKERS
\(^8\) Equinox Initiative for Racial Justice: Towards Gender Justice Rethinking EU Gender Equality Policy From an Intersectional Perspective, 2021