

Joint submission for the Pre-sessional Working Group for the 71st session of the CEDAW Committee to generate list of issues to the Sixth Periodic Report of the Republic of Tajikistan

(Geneva, Switzerland; 12 – 16 March 2018)

Condition of sex workers in Tajikistan

submitted by Shah-Aiym Network NGO and Apeyron NGO

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Introduction

1. This review has been prepared jointly by two organizations - Shah-Aiym Network and Apeyron NGO. The Shah-Aiym Network unites sex workers and their allies from Kyrgyzstan, Tajikistan and the Russian Federation. The activity of Apeyron NGO is aimed at HIV/STI prevention with sex workers in Tajikistan. The organization was providing services to sex workers for more than 10 years and has a network of NGO partners working in this area. HIV prevention and human rights protection of sex workers are priorities of the organization.

2. The proposed review describes situation of sex workers and raises issues related to the implementation of the CEDAW Committee Concluding Observations to the combined Fourth and Fifth Periodic Reports of Tajikistan regarding the **Article 6** of the CEDAW Convention. It also proposes to consider consequences of sex workers' persecution with regard to health (**Article 12**) and violations of fundamental human rights and freedoms (**Article 3**).

Article 6. Implementation of CEDAW Committee Concluding Observations upon 56th Session (2013) and upon consideration of the Follow-up report (2016)

3. The CEDAW Committee in the Concluding Observation #20 recommends the Republic of Tajikistan to review legal framework on prostitution, in order to ensure that women in prostitution are not criminalized. The concept "criminalization" includes both administrative and criminal punishment of sex workers. As of 2013 sex work is punished according to the Code of Administrative Offenses under Art. 130. Punishment is the fine in sum 400 to 800 tajik somoni (85-170 US dollars).

4. The National Action Plan to implement recommendations of the The Committee on the Elimination of Discrimination against Women (CEDAW) to the combined fourth and fifth periodic report of Tajikistan was approved in 2014. It includes an activity to implement Concluding Observation # 20 named "Establishment of the working group to review the legislative framework on prostitution and study the issue of sanctions for buyers of sexual services" for the period 2014-2016¹.

Question to the State party: what are results of the review of the legislative framework on sex work?

¹ The National Action Plan to implement recommendations of the The Committee on the Elimination of Discrimination against Wome to the combined fourth and fifth periodic report of Tajikistan (2014). Source: <http://khit.tj/rus/nacionalnyy-plan-deystviy-4/> (available as of January 23, 2018)

5. Administrative punishment for sex workers was toughened in 2015. Before the tightening the Administrative Art. #130 provided punishment for sex workers only in the form of fine of ten to twenty indicators for calculations².

According to the official information on the Ministry of Justice website, the new Law of the Republic of Tajikistan # 1234 as of November 23, 2015 came into force to amend the Article # 130 of the Administrative Code of Republic of Tajikistan by following changes³:

- The main text of article is considered as Part 1: Prostitution is punishable by a fine of ten to twenty indicators for calculations⁴.
- To introduce Part 2 with the following content:
- The same act envisaged in part 1 of this article, committed repeatedly within one year after an application of the administrative penalty, punishable by a fine of twenty to forty indicators for calculations⁵ or an administrative arrest from ten to fifteen days⁶.

It means that in case of repeated arrests, the fine was increased twofold.

Question to the State party: Is the toughening of administrative punishment for sex workers based on conclusions&recommendations done by the working group which activity is envisaged by the National Plan on implementation of CEDAW recommendations?

6. Upon review the State Party's Follow-up Report and alternative sources the CEDAW Committee considered that Concluding Observation No. 18 regarding the development of the comprehensive national plan to prevent all forms of violence against women, to protect and support those who suffered from violence, has not been implemented, because the State party provides protection from violence only to women and girls in the domestic sphere and does not cover all forms of violence against women, including violence against sex workers⁷.

Question to the State party: which measures have been undertaken to protect sex workers from violence by state actors including police and non-state actors under the comprehensive plan to prevent all forms of violence against women?

7. The State party indicates in the Sixth Periodic Report the following:

p. 67. Legislation of the Republic of Tajikistan does not provide criminal liability for prostitution. According to the Criminal Code the involvement in prostitution, brothels keeping and the pimping are crimes (Articles 238 and 239).

² The indicator for calculations became 50 tajik somoni since January 1, 2017 (according to 23d of January 2018 exchange rate 50 Tajik somoni = 5.7 USD)

³ Zakon Respubliki Tadjikistan ot 23 noyabrya 2015 goda, № 1234 "O Vnesenii Izmeneniya I Dopolneniya V Kodeks Respubliki Tadjikistan Ob Administrativnykh Pravonarusheniyakh". Source: http://www.adlia.tj/show_doc.fwx?Rgn=125508 (available as of January 23, 2018).

⁴ The indicator for calculations became 50 tajik somoni since January 1, 2017 (according to 23d of January 2018 exchange rate 50 Tajik somoni = 5.7 USD)

⁵ Ibid

⁶ The whole text of the Article #130 is available here in Russian - http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=4&language=ru (available as of January 23, 2018)

⁷ CEDAW Follow-up Letter upon consideration of the Follow-up State Party Report, - May 13, 2016. Source: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TJK/INT_CEDAW_FUL_TJK_23901_E.pdf

p. 68. According to the Article # 130 of the Code of Administrative Offenses the prostitution is only administrative offence and punished by the fine or administrative arrest for 10 to 15 days⁸.

It is not indicated in the Sixth Periodic Report that administrative liability for sex workers was toughened in 2015. These changes in legislation are in contradiction with the CEDAW Concluding Observation on ensuring that sex workers are not criminalized.

Question to the State party: what are the grounds to toughening the liability for sex workers? This legislative change contradicts to the CEDAW Concluding Observation #20.

Legal condition of sex workers

8. The level of stigma, discrimination, violations of human rights and violence against sex workers remains high. The main perpetrator of violence is the police. The police continues to operate based on the concept of "crimes against morality" even though there is no legal basis for such a concept⁹.

9. After toughening administrative liability for sex workers in 2015, the condition of sex workers deteriorated noticeably. Based on documented cases of human rights violations of sex workers, interviews with sex workers and information by a number of NGOs, the main human rights violations by the police include:

- **Extortion.** This is common police practice while interacting with sex workers. The police extort money openly during detaining in exchange that sex worker will not bring to the police station or will be released if the detention has already occurred. Sometimes police do not even have to resort to open extortion, since police officers keep contact with a certain number of sex workers who are promised police assistance in the event of raids and detentions in exchange for regular payments.
- **Threats, blackmailing and pressure.** After tightening administrative liability for sex work, the police received more opportunities to blackmail sex workers. Earlier sex workers feared detentions, which are usually accompanied by humiliation, now the police threaten to arrest up to 15 days if police officers conditions are not met. If a sex worker does not have money, the policeman demands "paying off" by provision of sexual services, regular reporting on wealthy clients. These clients are further also subjected to blackmail and extortion. As before police officers threaten to inform sex workers' relatives about their occupation.
- **Verbal humiliation, inhuman degrading treatment.** The police offend sex workers, using degrading and obscene words and shame for doing sex work. At the same time police officers visit sex workers and require sexual services for free using their official position, perpetrating violence and blackmailing.
- **Arbitrary detentions** during which sex workers are filmed and fingerprinted. Police raids aimed at so-called "fight against prostitution" usually take place with violations of the law. During raids sex workers are arbitrarily taken from streets, nightclubs without any evidence of violating Article 130 of the Administrative Code (prostitution). If sex workers ask to explain grounds according to which they have been detained, police officers explain it like this: "we know perfectly well what you are doing" or "normal people do not walk at night along the street".

⁸ Sixth Periodic Report of the Republic of Tajikistan on Compliance with Clauses of the Convention on the Elimination of All Forms of Discrimination against Women. - p.13.

⁹ Joint submission by partners in the Sexual Rights Initiative. Universal Periodic Review of Tajikistan. 25th Session, April/ May 2016. Source: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2581&file=EnglishTranslation> (available as of January 27, 2018)

- **Physical violence (beating).** There are also facts of beating sex workers by police officers, at the same time sex workers try not to report this even to NGO, fearing additional police violence.

Questions to the State party: How many sex workers were charged on the Article 130 in the first time and repeatedly in 2016 and 2017? What's the cumulative fines sum paid in favour of State budget disaggregated by 2016 and 2017? How many administrative cases were heard in the court for repeated violation of the Article 130 for the period 2016 and 2017?

Article 3. Guarantees Basic Human Rights And Fundamental Freedoms On An Equal Basis With Men.

10. Sex workers along with police violence face violence and isolation within the families. It is known that after detention and personality identification of sex workers police send letters to relatives informing them about occupation of women. During one of the raids in 2016 in Kurgan-Tube City 182 sex workers were detained; they came to the oblast center from nearby localities. The police sent letters to relatives of all 182 women demanding "to return their relatives [detained women] to the right way, otherwise they will be fined"¹⁰. The Committee on Women and Family Affairs under the Government of Tajikistan also reports: "If the guilt of detained [sex workers] is proven, information about them is sent to the parents"¹¹.

11. The Office of Women's Affairs of one of the oblasts initiated "lessons on morality" for sex workers detained during police raids on nightclubs. The head of the Office reports: "The purpose of such lessons is to prevent the spread of prostitution among women and their moral upbringing. Each lesson takes more than an hour with participation of representatives of local deputies, doctors, women activists and employees of public organizations. Women are told about the ethics of behavior in society, moral grounds and call for "right" life¹². This initiative doubtful will lead that women leave sex work, as the majority of them is only breadwinner for their family and parents. At the same time this approach of solving problem is harmful, and it is the result of the patriarchy of society and the historical inequality of women when a woman is disproportionately high burdened by society to deal with existing social issues.

12. There is plenty of mass media publications portraying sex workers as source of STI and HIV, threat to moral norms of the society, therefore fueling further persecution of sex workers. Foto and video materials with sex workers faces filmed during raids are leaking to mass media outlets¹³.

Article 12. Healthcare And Family Planning

13. Sex workers are forcibly HIV¹⁴ and STI tested during police raids. It is known about a major police raid in Dushanbe (Capital City) in January 2018. All 80 detained sex workers were STI tested. Many of

¹⁰ Iz Kurgan-Tyube vydvorili prostitutok (in Russian), dated April 22, 2016. Source: <https://rus.ozodi.org/a/27689911.html> (available as of January 27, 2018)

¹¹ Eksperty rasskazali, chto yavlyayetsya prichinoy prostitutsii v Tadjikistane (in Russian), dated November 25, 2017. Source: <http://ru.sputnik-tj.com/country/20171125/1023988009/ehksperty-rasskazali-chto-yavlyaetsya-prichinoy-prostitucii-v-tadjikistane.html> (available as of January 27, 2018)

¹² Khatlonskim prostitutkam prepodadut "uroki nraivstvennosti" (in Russian), dated April 6, 2016. Source: <http://www.news.tj/ru/news/khatlonskim-prostitutkam-prepodadut-uroki-nravstvennosti> (available as of January 25, 2018).

¹³ Joint submission by partners in the Sexual Rights Initiative. Universal Periodic Review of Tajikistan. 25th Session, April/ May 2016. Source: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2581&file=EnglishTranslation> (available as of January 27, 2018)

¹⁴ Joint submission by partners in the Sexual Rights Initiative. Universal Periodic Review of Tajikistan. 25th Session, April/ May 2016. Source: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2581&file=EnglishTranslation> (available as of January 27, 2018)

detained sex workers are not in touch with NGOs implementing HIV prevention programs, therefore they do not have access to the necessary means of protection. The lack of contacts is also due to NGOs are subjected to police pressure. The police detain outreach workers and come in the NGOs offices without any legitimate reasons.

14. The practice of compulsory HIV and STI testing is not only in the capital. In one of the regions during regular raids sex workers are first taken to the police station, where they are subjected to degrading and cruel treatment, and then the police bring detainees to the State STI Medical Centre (STI Dispensary) to take HIV and STI tests.

15. The practice of compulsory medical examination, the pressure to NGOs which implement HIV programs along with strong conservative social attitudes and normalization of violence against sex workers create serious access barriers¹⁵ for sex workers to quality and non-discriminatory sexual and reproductive health services.

16. Leading international health organizations are urging States to abandon laws and practices which persecute key populations, including sex workers, and to ensure the implementation of HIV and STI programs based on human rights. Only human rights based programs will allow sex workers as a group facing intersecting forms of discrimination get access to quality health services¹⁶.

New legislative initiatives that would aggravate sex workers' condition

17. The Prosecutor General Office intends to initiate a bill that punishes men who use services of sex workers. Respective amendments to the Code of Administrative Offenses were to be submitted to the Parliament in early 2018. This initiative was announced in mass media¹⁷.

18. It is known the police extort money not only in sex workers, but also clients are extorted. One sex worker agreed to give a comment to correspondent of mass media on this initiative: "During raids only a part of caught girls is recorded, the rest are simply sharing their nightly earn. Police takes two hundred somoni in men, threatening to inform wife, job manager. Introducing new norm [punishment of clients] will change nothing"¹⁸.

19. There is sufficient evidence as of today that laws punishing sex workers' clients worsen the situation of sex workers themselves, including health, rights and living conditions. The concept of "reducing demand" by punishing clients does not lead to decreasing level of sex work. If clients of sex workers are legislatively oppressed, sex workers will have even fewer opportunities to insist on condom use, the risk

¹⁵ Joint submission by partners in the Sexual Rights Initiative. Universal Periodic Review of Tajikistan. 25th Session, April/ May 2016. Source: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2581&file=EnglishTranslation> (available as of January 27, 2018)

¹⁶ Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions (SWIT). - WHO, UNFPA, UNAIDS, NSWP, World Bank, UNDP. - 2013. Source: http://www.who.int/hiv/pub/sti/sex_worker_implementation/en/ (available as of January 27, 2018)

¹⁷ Bor'ba s prostitutsiyey: ne peregnut' by palku (In Russian), dated December 4, 2017. Source: <https://news.tj/ru/news/tajikistan/society/20171204/borba-s-prostitutsiei-ne-peregnut-bi-palku> (available as of January 23, 2018)

¹⁸ "Ya ne ot khoroshey zhizni poshla na panel". V Tadjikistane predlagayut nakazyvat' i prostitutok, i ikh kliyentov (in Russian), dated December 11, 2017. Source: <http://theopenasia.net/articles/detail/ya-ne-ot-khoroshey-zhizni-poshla-na-panel-v-tadjikistane-predlagayut-nakazyvat-i-prostitutok-i-ikh-/> (available as of January 25, 2018)

to meet dangerous client is higher. Places of meetings of sex workers and clients will be hidden, including for organizations that provide health services, as well as social and legal support¹⁹.

20. Taking into account the current situation when additionally to legislative oppression of sex work the punishment for clients is proposed to introduce, it can expect further deterioration of sex workers condition. Sex workers are oppressed by the police and additionally will be subjected to pressure of clients, since the latter will be afraid of application of new legislation to them.

Conclusion

21. According to the General recommendation No. 35 on gender-based violence against women (updating general recommendation No. 19), the point 29 (c) (i): State parties are recommended to repeal all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence, including punishment of sex workers and any other legislation provisions that affect women disproportionately²⁰.

22. Amnesty International adopted in 2016 the Policy on full decriminalization of sex work based on collected evidences, including global consultations with sex workers. This policy has been developed in recognition of the high rates of human rights abuses experienced globally by individuals who engage in sex work. The policy calls States to repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration²¹.

23. We would like to pay special attention on following:

- toughening of the administrative punishment of sex workers, stipulated in Article 130, actually created even more conditions for police abuses towards sex workers. This article serves a cover for regular extortion and sexual violence under the threat of fines, detentions, arrests up to 15 days, disclosure of information about the way of earnings to relatives.

- the concept of fighting with "crimes against morality" diverts attention from more serious social problems: lack of access to quality education, early marriages that prevent women from getting even basic education in order to be able to read and write, high levels of poverty and consequently labor migration which often resulting that many women are left alone, and have to feed their family on their own.

¹⁹ Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers. - NSWP. - 2015. Source: <http://www.nswp.org/resource/the-real-impact-the-swedish-model-sex-workers-advocacy-toolkit> (available as of January 27, 2018)

²⁰ Committee on the Elimination of Discrimination against Women. General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. Source: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en

²¹ Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, - 26 May 2016. Source: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>