



GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A HEARTLAND ALLIANCE PROGRAM

Human Rights Situation of Women Sex Workers in Paraguay

**Suggested list of issues submitted to the Working Group on the
Paraguay review**

Human Rights Committee

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INTRODUCTION

Civil society organizations Red de Trabajadoras Sexuales de Latinoamérica y el Caribe (RedTraSex), Akahatá - Equipo de Trabajo en Sexualidades y Género, and Heartland Alliance for Human Needs & Human Rights submit this document to bring to your knowledge the realities faced day to day by women of legal age who have willingly decided to engage in sex work as a livelihood. Our goal is that at the time of reviewing the State of Paraguay, the Committee asks about the State's position with regard to this issue and encourages it to take steps to improve the quality of life of women of legal age who have willingly decided to engage in sex work across Paraguay.

RedTraSex was created in 1997 when women sex workers (WSWs) from across the region met in Costa Rica. We began to know each other and realized that in spite of living in different countries we shared similar realities, had the same needs, suffered the same injustices and fought for the same goals.

Now, 19 years later, RedTraSex brings together national women sex workers' organizations (NWSWSOs) from 14 countries in Latin America and the Caribbean¹. Our goal is to see the human rights of women sex workers recognized and respected in the region. We particularly advocate for our right to work, without putting other fundamental rights aside, such as equality between men and women, and we fight for non-discrimination, freedom, and sexual and reproductive health.

Everywhere in Latin America governments jeopardize our rights and our life; we suffer violence by State action and inaction. We want to be treated on equal conditions with the rest of the population. We want to be recognized as workers and be able to contribute to building more fair and egalitarian societies.

The information included in this report was gathered by UNES - Unidas en la Esperanza - the organization representing women sex workers in the country for the Human Rights Committee 118 session in which implementation of the International Covenant on Civil and Political Rights (ICCPR) by Honduras will be examined.

¹ RedTraSex comprises of the following organizations: Asociación de Mujeres Meretrices de Argentina (AMMAR, Argentina), Tikum Olam (Belize) Organización Nacional de Activistas por la Emancipación de la Mujer (ONAEM, Bolivia), Fundación Margen de Apoyo y Promoción de la Mujer (Chile), Asociación de Mujeres Buscando Libertad (ASMUBULI, Colombia), Asociación de Trabajadoras Sexuales La Sala (Costa Rica), Movimiento de Mujeres Unidas (MODEMU, Dominican Republic), Movimiento Orquídeas del Mar (El Salvador), Organización Mujeres en Superación (OMES, Guatemala), Red Nacional de trabajadoras Sexuales de Nicaragua, Red Nacional de Trabajadoras Sexuales de Honduras, Mujeres con Dignidad y Derechos (Panama), Unidas en la Esperanza (UNES, Paraguay) and Red Nacional de Trabajadoras Sexuales de Perú,.

1- Equality and non-discrimination (Articles 2 and 26 of the ICCPR)

In Paraguay, autonomous² sex work is a licit activity according to the current Constitution³ and Penal laws⁴. However, sex workers are constantly stigmatized and discriminated against and every day we have to face mistreatment by State authorities and bodies by action or omission.

This situation is made possible, to a great extent, by the lack of clear norms regulating this activity and providing a framework to protect the rights of sex workers. The lack of regulation has direct, negative and ongoing consequences for our population: women sex workers do not enjoy the same protection before the law as all other workers do and we are exposed to ongoing discrimination in health-care facilities. It also allows some members of the security forces to take advantage of our situation and demand bribes from us.

UNES' files show how discrimination in health care facilities is an everyday matter. Throughout 2015, women sex workers (WSWS) have complained about Fernando de la Mora Hospital (Central district), where whenever the staff learns that they are sex workers, it refuses to provide health services with the excuse that because of their profession they should be cared for by Pronasida (National Programme to Combat AIDS and STIs).⁵

Discrimination by security forces is also usual. In our country, WSWs often suffer violence at the hands of police officers who instead of assisting them when they try to report pimps or traffickers, they ignore such complaints and even abuse them verbally and physically just for being sex workers, while protecting the owners of reported brothels. Abusing their power, police forces stop WSWs from conducting their trade, threaten to arrest them or demand sexual favours in exchange for not arresting them.⁶

These complaints usually reach UNES but not the judicial system because WSWs don't feel safe to approach it, in part because the security forces threaten them with reprisals if reported so WSWs never bring these incidents to the judicial system or quickly desist from following-up on their complaints.

Another element contributing to discriminatory practices are the different local ordinances. One such example is the ordinance regulating sex work in an important municipality, Encarnación - Ordinance 240/2014

² 'Autonomous' sex work means that the sex worker is not managed by a pimp /procurer and/or works for a establishment (brothel, bar, etc.)

³ National Constitution Art. 9: "*Nobody is forced to do what the law does not mandate, or deprived of what it does not forbid*".

⁴ Penal Code (Law 1160/1997): art. 1: "*Nobody will be punished without the grounds for the punibility of his/her behaviour and the applicable punishment be explicitly and strictly defined in a current law issued before the action or omission causing the punishment occurred*".

⁵ The incidents related have been reported by WSWs to UNES and are to be added to similar ones already compiled in the "Study on stigma and discrimination against women sex workers in Latin America" available (in Spanish) at http://www.redtralsex.org/IMG/pdf/paraguay-_estudio_ss.pdf

⁶ <http://www.abc.com.py/especiales/fin-de-semana/dictadura-no-acabo-1420751.html>

In its Article 4, the Ordinance says: "*Promoting, enabling or providing sexual services in public spaces, provided it disturbs the peace and/of safety of citizens either because it stops or hinders the circulation of pedestrians and/or vehicles or because it causes such noise that becomes incompatible with the citizens' rest, will be punishable*".

As it can be seen, the language contains undefined clauses to impose punishments, that is, it fails to strictly and explicitly describe the action that would amount to a crime. It refers to indeterminate actions such as "disturbing the peace", leaving it for the security forces to determine which actions can or cannot constitute a breaking of the law, that is, when a particular action disturbs the citizens' peace or safety.

This Ordinance also punishes the actions of the person engaged in sex work, as if s/he were the only factor disturbing the citizens' peace or safety, without alluding to the other party that necessarily must intervene in the transaction, that is, the client demanding such services.

By using undefined clauses, security forces are given free rein that usually translates into demand for undue payments from those engaged in sex work in exchange for the police officer to interpret that she/he is not disturbing the peace or safety of the public, that is, to not consider her/his actions as illicit ones.

From the information gathered among WSWs in Encarnación, what municipal officers do is to stop those working in the streets from conducting their trade, forcing them to move to more unsafe locations, under the threat of punishing them under the above mentioned disposition.

The visibility given by UNES to these situations of permanent human rights violations has led to the passing of a norm⁷ in Asunción that, while aimed at regulating the operations of motels, night clubs and similar establishments, somehow also provides a framework for recognizing rights of the population engaged in sex work. However, this ordinance only applies in Asuncion and it is not acceptable that discriminatory norms remain in other parts of the country such as the one described in Encarnación.

2.- RIGHT TO PRIVACY (Article 17 of the ICCPR)

As stated earlier, the lack of a law clearly indicating that it is legitimate to engage in sex work enables the existing confusion between licit work and other criminal activities such as sexual trafficking and exploitation. Given this confusion, it is common that police operations purporting to investigate the commission of crimes and/or combating criminal networks end up going over their mandate to illegitimately intrude into WSWs' homes.

UNES has received several complaints about undue searches conducted in the homes and establishments in which WSWs work. For instance, it was reported to UNES that in 2015 security forces intruded violently and without

⁷ Ordinance 573/2015 sets out the requirements to operate motels, night clubs and similar urban establishments in Asunción and for sex workers to conduct their trade. It replaces Ordinance 278/2013 and introduces a new definition of "sex work" by which those who engage in this activity willingly and for their own benefit are considered "sex workers". Its Article 5 establishes the municipal government's obligation to promote "voluntary, free and confidential HIV testing". To this end, it must conduct awareness campaigns on why it is important to be tested and enter into the institutional agreements necessary to this end, with public and private institutions. The Ordinance also adds that "under no circumstances public officers will overstep their mandates, interrogate or threaten to punish women sex workers in the facilities under their inspections, as their labour is addressed mainly to the business owner or manager".

exhibiting a court order in an establishment called Parada 3100, in the town of Fernando de la Mora, allegedly to conduct a search. They broke doors, confiscated cell phones and the earnings the WSWs had obtained through a whole week's work. No evidence of illicit activity was found but still, and to terrorize them, few week later the same operation was repeated with the same amount of violence. Once again, no crime was found to have been committed.⁸

This lack of concrete measures on the part of the State to diminish stigma and discrimination suffered daily by those engaged in this activity enables those who want to extort favours or money from WSWs to threaten them with publicizing their occupation.

UNES has received a complaint from a group of WSWs who used to work at an establishment called DESEO, in Asunción, that was searched by the Anti-Trafficking Unit of the Prosecutor's Office without finding any evidence that a crime had been committed. The policemen who were involved in the operation went back to the establishment the next day, pretending to be clients, and demanded from WSWs that they provide them sexual services for free under the threat to disclose their legal names that they had come to learn through the previous day's procedure.⁹

All these situations in which the right to privacy of WSWs is actually put at risk or threatened are common but, as it is well known, the fact that the perpetrators are mainly security forces personnel make it very hard for WSWs to start and/or go through with submitting a complaint to the legal authorities, because of the certainty that doing so will bring reprisals against them.

3- RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING PUNISHMENT OR TREATMENT (Articles 3, 6 and 7 of the ICCPR)

The right to life is the most fundamental right of every human being and every country must do its utmost to protect and guarantee its enjoyment by all persons. Along the same lines and in order to guarantee such enjoyment, all precautions must be taken by the State to avoid torture and/or other cruel or degrading treatment that must not be tolerated under any circumstance.

In the case of Paraguay, UNES has reported that since 1989 more than 55 women sex workers have been murdered and none of those crimes have been solved as yet¹⁰. This denial of rights persists, as these crimes continue to happen¹¹. Even though the organization estimates that the actual number is much higher, unfortunately when victims are sex workers they tend not to be included in existing State registries.

⁸ http://www.codehupy.org/upload/pdf_bibliotecas/DDHH%202015_web.pdf

⁹ http://www.codehupy.org/upload/pdf_bibliotecas/DDHH%202015_web.pdf

¹⁰ <http://www.efecom.com/efe/america/cono-sur/trabajadoras-sexuales-reclaman-en-el-centro-asuncion-una-ley-que-regule-sus-derechos/50000553-2944419>

¹¹ <http://www.tnpress.com.py/v7/index.php/policiales/judiciales/crimenes/3115-asesinan-con-dos-balazos-en-la-cabeza-a-una-prostituta,-dentro-de-un-lupanar-en-santa-rita.html>

Some of these crimes make it to the media but there are also others that, as we said earlier, are reported by the victim's colleagues or friends to UNES but not to the judicial system because security forces are involved in them and there is a well-founded fear of reprisals.

BASIS FOR OUR PROPOSED QUESTIONS

In 1998, the International Labour Organization (ILO) began a series of actions and recommendations based on research done by an expert recommending that the sex industry be included in governments' official accounts not only because it makes huge contributions to regional economies but, particularly, as it is the only way to improve the situation of those employed in the industry.

In 2009, UNAIDS stated that: *"In many countries laws, policies, discriminatory practices, and stigmatising social attitudes drive sex work underground, impeding efforts to reach sex workers and their clients with HIV prevention, treatment, care and support programmes. ... Inadequate service access is often compounded by abuse from law enforcement officers"*¹². In the same document, it also addressed the dangers of linking sex work to illicit activities: *"The persistent confusion and conflation between trafficking in persons and sex work leads to laws and interventions that negatively impact sex workers, and at the same time undermine efforts to stop trafficking"*¹³.

In 2012, the United Nations Development Programme's (UNDP) Global Commission on HIV and the Law issued a report stating that: "Decriminalisation is the first step towards better working conditions - and with them, less HIV risk"¹⁴. The report also says, "Criminalisation, in collusion with social stigma makes sex workers' lives more unstable, less safe and far riskier in terms of HIV. There is no legal protection from discrimination and abuse where sex work is criminalised"¹⁵.

In August 2015, Amnesty International issued a resolution supporting decriminalisation of sex work with a clear purpose: to protect the rights of those voluntarily engaging in this work. Amnesty states that the policy takes into account *"The starting point of preventing and redressing human rights violations against sex workers and in particular the need for states to not only review and repeal laws that make sex workers vulnerable to human rights violations, but also refrain from enacting such laws"*.¹⁶

It is imperative for Paraguay to pay special attention to the serious situation WSWs are facing and by which their lives are at risk, along with providing due care to the conditions in which they live and engage in their work.

We believe it is key to pass a law regulating sex work in order to reduce stigma and discrimination that women and men sex workers face daily. Also, such a law will guarantee a minimum baseline of rights in accordance with those recognized for the entire population at the national and international level.

¹² Joint United Nations Programme on HIV/AIDS (UNAIDS): UNAIDS Guidance Note on HIV and Sex Work, 2009-2012. p.7. http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.

¹³ UNAIDS op.cit, Annex 3: Differentiating sex work and trafficking, p. 41

¹⁴ Global Commission on HIV and the Law: Risk, Rights and Health. United Nations Development Programme (UNDP), 2012, p. 40. <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights---health.html>.

¹⁵ Global Commission on HIV and the Law, op. cit. p. 36-37.

¹⁶ Amnesty International: Decision on State obligations to respect, protect and fulfil the human rights of sex workers. <https://www.amnesty.org/en/policy-on-state-obligations-to-respect-protect-and-fulfil-the-human-rights-of-sex-workers/>

We believe that such a law must be drafted with wide and direct participation by organizations representing women and men sex workers in order to guarantee that State officials concerned will get an adequate knowledge of the realities our population faces and of the specificities of sex work in Paraguay.

SUGGESTED QUESTIONS

On the basis of what has been discussed in the contribution and the situations described, we request the Human Rights Committee to ask the following questions to Paraguay during its review:

a) Given the situation of discrimination and violence faced by those engaged in autonomous sex work that is not illegal in Paraguay, what steps is the State considering to put an end to this situation? For instance, to pass a law that regulates sex work without criminalizing it and that guarantees optimal conditions for it to be conducted in a framework of respect towards the human rights of those engaged in it while also guaranteeing a minimum baseline of rights to them.

b) Which effective public policies to prevent, fight and punish discrimination and all forms of violence against women sex workers exist or can be formulated by Paraguay?

c) What follow-up and monitoring mechanisms for incidents of discrimination and/or violence against WSWs currently exist in Paraguay? How could they be strengthened?

d) What effective protection mechanisms for WSWs in relation to the security forces and public institutions that discriminate and perpetrate violence against them currently exist or could be created by the Paraguayan state?

e) How could the Paraguayan state sensitize the different State bodies, particularly those in the areas of health, security forces and the justice system, so they can recognize, respect and guarantee the human rights of WSWs and allow them to conduct their trade under regulated, dignified and safe conditions?