



## **Human Rights Situation of Sex Workers in El Salvador**

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This report is presented by:

- RedTraSex – Red de Mujeres Trabajadoras Sexuales de Latinoamérica y el Caribe
- Synergia – Initiatives for human rights
- Akahatá – Equipo de trabajo en sexualidades y géneros

## Introduction

The Red de Trabajadoras Sexuales de Latinoamérica y el Caribe (RedTraSex, Latin American and Caribbean Network of Women Sex Workers); Synergia –Initiatives for human rights and Akahatá – Equipo de trabajo en sexualidades y géneros (Akahatá – Working group on sexualities and genders), present this report to the Committee with the aim of bringing to your knowledge the facts and circumstances faced on a daily basis by women of legal age who by our own will choose to do sex work across several regions of the República de El Salvador. It is our hope that based on this information, you would be able to ask the Salvadoran State about its position regarding these issues and to urge it to take measures towards the improvement of our quality of life and the full exercise of all our human rights, without any discrimination.

RedTraSex was founded in 1997, in Costa Rica, when women sex workers (from now on, WSW) from across all the region met for the first time. There, we met each other and learned that in spite of living in different countries, we shared similar realities, had the same needs, were subjected to the same injustices and pursued the same goals. More than 20 years after, the RedTraSex is formed by national organizations of women sex workers from 14 Latin American and Caribbean countries<sup>1</sup>. We are driven by the pursuit of recognition and respect for the human rights of women sex workers from the region. We put a special emphasis on the defense of our right to work, but that does not mean we overlook other fundamental rights: we seek equal treatment for both genders and we fight for the end of discrimination, for freedom, and for sexual and reproductive health.

With this report, our purpose is to inform the Committee about the current situation of sex workers' human rights, specially about institutional violence and discrimination, based on the information gathered by the Movimiento de Mujeres Orquídeas del Mar (from now on, OdM, Women's Movement Orchids from the Sea), an organization affiliated to the RedTraSex that represents women sex workers of El Salvador.

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<sup>1</sup> RedTraSex is formed by the following organizations: Asociación de Mujeres Meretrices de Argentina (AMMAR, Argentina), 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 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 (Panamá), Unidas en la Esperanza (UNES, Paraguay), Red Nacional de Trabajadoras Sexuales de Perú, Organización de trabajadoras sexuales (OTRASEX República Dominicana) y Asociación Mexicana de Trabajadoras Sexuales (AMETS – México).

## 1.- Background and legal situation of sex work in El Salvador

1. Autonomous sex work is a licit activity because it is not punished nor prohibited by the primary norms in the national legal frame (OM, 2013: 4-6). However, neither is a legally recognized activity in the country, because it is not regulated nor legalized as work.

2. Among the laws favoring women, there are two that are specially worth mentioning –the Law for Equality, Equity and the Eradication of Discrimination against Women (LIE, for its Spanish acronym) and the Special Integral Law for a Life free from Violence for Women (LEIVLVCVM, for its Spanish acronym). The Movimiento de Mujeres "Orquídeas del Mar" considers the enactment of this secondary norms as the main achievement regarding public policies and laws aimed at improving the life conditions of WSW in the past five years<sup>2</sup>.

3. Among the laws and rules directly related to pimping and human trafficking, we have identified the Art. 170-170-A and 171 of the Penal Code; Art. 31 of LIE and Art. 49 of LEIVLV; and Art. 5 of the Special Law against Human Trafficking.

4. In contrast with the primary norms in the national legal frame, are the Contraventions City Ordinances the ones prohibiting the offering of sexual services (supply and demand) in open public spaces under certain circumstances, as well as the unauthorized operation –or operation out of certain time frame– of closed spaces where alcoholic beverages are sold or provided.<sup>3</sup>

5. Each municipality has the autonomy to enact its own laws or Ordinances and By-Laws about local development and communal living<sup>4</sup>. This is the case for the "Contraventions Ordinances for Communal Living and Civic Security and Administrative Contraventions", which are applied by the City Council, the City Contraventions Delegate and/or the City Officers Corps (CAM, for its Spanish acronym), unless a municipality establishes something different.

6. When it comes to regional and international recommendations and progress on the issue, the International Labor Organization took actions and recommendations in 1998 based on a research conducted by a specialist in the field. It recommended sex industry should be included in the official accounting of governments, not only due to the huge contributions it makes to regional economies, but specially as the only way to improve the situation of those employed as sex workers.

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<sup>2</sup>In contrast, the main setback is that the Law of HIV has lost importance in the agenda of the last two administrations. There are currently three bills to be discussed on this topic: the one presented by the Health Ministry (MINSAL), the one presented by civil society and the one presented by the right-wing party Nationalist Republican Alliance (ARENA).

<sup>3</sup>These Ordinances are derived from a national law, the General Law for Communal Living and Administrative Contraventions.

<sup>4</sup>This is in accordance with Articles 203 and 204, paragraph 5, of the Constitution of the Republic of El Salvador. Only when establishing city taxes those have to be approved at the national level by the Legislative Assembly.

7. In 2009, ONUSIDA claimed: *“Laws, policies, discriminatory practices and stigmatizing social attitudes drive sex work underground, impeding efforts to reach sex workers and their clients with HIV prevention, treatment, care and support programs”*. And it goes on, affirming there are dangers implicit in the linking of sex work with illicit activities: *“The persistent confusion and conflation between trafficking in persons and sex work leads to laws and interventions that negatively impact on sex workers, and at the same time undermine efforts to stop trafficking.”*<sup>5</sup>

8. The Global Commission on HIV and the Law, which depends of the UN Development Program, published a report in 2012 where it is stated that *“Decriminalisation is the first step toward better working conditions —and with them, less HIV risk”*. The report goes adds that *“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”*.<sup>6</sup>

9. In August, 2015, Amnesty International issued a resolution in favor of sex work decriminalization, with a clear objective: to protect the human rights of people who do this job on a voluntary basis. This policy was adopted to *“prevent and repair human rights violations against sex workers”*. In order to achieve that, they consider that *“States need not only to examine and repeal laws that make sex workers more vulnerable to human rights violations, but they should also refrain from enacting such laws”*.<sup>7</sup>

10. El Salvador ought to pay special attention to the serious situations faced by women sex workers, because their lives are in danger, as well as to care for the life conditions and working conditions of women sex workers.

11. In this sense, it is crucial to have a law regulating sex work, with the objective of diminishing the stigma and discrimination suffered by sex workers on a daily basis. In addition to that, a law would guarantee a minimum recognition of rights similar to those nationally and internationally granted to the whole population. Such a law must be the result of a wide and direct engagement of sex workers’ organizations, in order to guarantee a proper input of real knowledge about their lives and the particularities of sex work in El Salvador.

## 2.- RIGHT TO LIFE (Article 6)

12. The right to life is the most basic right for every human being, and all countries ought to make the major efforts to protect and guarantee the enjoyment of this right for everybody. In a similar sense, and in order to effectively guarantee that enjoyment, the State must take every measure to prevent any situation

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<sup>5</sup>[http://www.unaids.org/sites/default/files/media\\_asset/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en\\_0.pdf](http://www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf) (UNAIDS Guidance Note on HIV and Sex Work, March 2009, updated April 2012, © Joint United Nations Programme on HIV/AIDS (UNAIDS) 2009-2012)

<sup>6</sup><http://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Commissions%20report%20final-EN.pdf> (Global Commission on HIV and the Law “Risks, Rights and Health”, 2009, updated 2012; Copyright © UNDP 2012)

<sup>7</sup><https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>

of torture or other cruel or degrading treatment or punishment, which must not be tolerated under any circumstance.

13. Women sex workers live under risk, without the chance to denounce violence, a situation that many times pushes them to pimps who offer their services and supposedly provide them with a certain protection against clients or the police, charging huge fees for that and imposing inhuman labor conditions, which pose a serious risk to the health and life of women sex workers.

14. This is possible due to corruption among security forces, who act in collusion with pimps, mafias and maras, sometimes in a passive way, just letting them act, and other times in an active way, harassing sex workers and building a frame of violence and impunity which has already taken the lives of many women sex workers.

15. Taking all this into account, and according to information and case stories gathered by national organizations, sex workers are being murdered just for such condition due to some of the following reasons:

- a) they have refused to work or to continue to work for a pimp.
- b) they have refused to pay “fees” to mafias, maras and security forces to be able to work.
- c) they have reported certain powerful people who want to profit from sex work.
- d) just for being sex workers, as a result of stigma and discrimination.
- e) for working in dangerous places, sometimes known as “free zones”.

16. These crimes often remain unpunished: very seldom perpetrators are found, because usually investigations are not conducted to the end. This is a consequence not only of stigma against sex workers but also because many times even the families of the victims are not interested in the prosecutions, be it because they do not want the job of the victim to become known, or because they do not have the economic or symbolic resources to carry the legal process on. Threats and intimidations against those families that wanted to carry prosecutions on are also known.

17. During the last three years, Orquídeas del Mar has recorded the murders of 27 women sex workers. The number of crimes and violent acts against women sex workers in El Salvador has raised concern in the international community<sup>8</sup>.

18. Within this context, the case of Angélica Quitilla is noteworthy, because it fully shows the complete lack of protection and brutal circumstances faced by women sex workers.

19. Angélica Quintanilla Hernández, also known as Karla, was a sex worker, founder and director of Asociación Liquidámbur. On May 6, 2016, Karla was walking down 20 Avenue, near Independencia Avenue, through the historic district of San Salvador. Before Karla could reach the avenue, two men riding a motorcycle came out of Castillo Street, a transversal alley, and turned on 20 Avenue. A woman witness says

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<sup>8</sup> As an example, this article can be read online: <http://www.corresponsalesclave.org/2013/09/muertes-impunes-de-trabajadoras-sexuales-en-el-salvador.html>

one of the men whistled to Karla, who turned back. In that same moment, the man riding on the back seat of the motorcycle, shoot Karla Quintanilla, who received a hail of nine bullets in the thorax before the motorcycle turned around and fled towards Alameda Juan Pablo II. The Rescue corps came to her aid after the motorcycle was gone. Due to the shoots, she died in the way to the Rosales National Hospital.

20. The investigation led by the National Civic Police says that the murderers came back along Juan Pablo II Avenue and watched from a near gas station as the Rescue Commands put Karla on the ambulance.

21. 21 months have already passed since the death of Karla Quintanilla and still nobody has been accused for the homicide.

### 3- EQUALITY AND NON-DISCRIMINATION (Articles 2 and 26)

22. El Salvador has a number of laws and regulations related to pimping and trafficking in persons which establish criminal offences that indirectly affect free sex work. Articles 170-170-A<sup>9</sup> of the Penal Code have the purpose of eradication of criminal acts, but they end up exceeding those limits and violating the rights of autonomous sex workers, a licit activity according to the same legislation.

23. For instance, there is a punishment for the person who pays for sex services, i.e. the client, which directly affects the free exercise of autonomous sex work. Such norms fail to achieve their objective of reducing criminal activities and only lead to a more clandestine and risky exercise of autonomous sex work. When women sex workers want to keep their clients, they lose negotiation power over which services they will provide and how they will be performed, due to the need to accelerate the negotiation to avoid being detected by security forces that may arrest the client.

24. To eradicate trafficking in persons, the LIE (Law for the Equality, Equity and the Eradication of Discrimination against Women)<sup>10</sup> and the Special Law against Trafficking in Persons have been enacted. Article 31 of LIE is harmful for sex workers. These are criminal laws of high hierarchy, with nationwide application, but the lack of a regulation making clear and accurate distinctions between trafficking and

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<sup>9</sup> PROMOTION OF PROSTITUTION Art. 170.- Anyone who drives a person, in a coercive way or abusing of a situation of need, to exert prostitution or to remain in prostitution will be punished with six to ten years in jail. If the victim is under eighteen years old, the jail sentence will be from eight to twelve years. When any of this modes were performed taking advantage of a superiority arising from any kind of relationship, the sentence will be heightened in until one third of the maximum limit.

SUPPLY AND DEMAND OF THIRD PARTY PROSTITUTION Art. 170-A.- The very offering of prostitution services performed by third parties will be punished with four to eight years in prison. The very demand or solicitation of prostitution services will be punished with the same sentence as in the previous subsection.

<sup>10</sup> Art. 31.- Protection and Social Inclusion of Women in Situation of Internal and Transnational Trafficking. The State, through its competent agencies, should develop an integral policy for the prevention, detection, care and protection of women victims of internal and transnational trafficking, as well as reviewing and updating of punitive legislation. It should also guarantee the restoration of rights to women victims of trafficking who are sexually exploited and abused, whether for commercial or social purposes or not; and it will facilitate the activation and co-ordination of community support mechanisms to eradicate stigmatization and discrimination against those women.

autonomous sex work usually provokes such confusion that the application of those laws ends up preventing sex workers from the full enjoyment and exercise of their rights.

25. For instance, the abovementioned confusion allows security forces to often use Contraventions City Ordinances –which mostly deal with supply and demand of sex services in public spaces that can be open under certain circumstances, such as having authorization or the operation outside a fixed time schedule of closed spaces where alcoholic beverages are sold or supplied– as an excuse to threaten sex workers or to force them to pay bribes<sup>11</sup> in exchange for not applying the ordinances, violating sex workers’ rights.

26. Orquídeas del Mar has consistently received reports about abuses of power, institutional violence and discrimination on the part of the PNC (Spanish acronym for National Civic Police) and the CAM (Spanish acronym for City Officers Corps). WSW who work in open spaces (streets, parks, etc.) are more exposed to the CAM when it comes to threats of eviction and requests of cards<sup>12</sup> and to the PNC when it comes to arrests. Cards for sex workers are not mandatory by law, so the CAM requests a card issued by clinics providing services to vulnerable populations. Health care provided by the specialized clinics to WSW is recorded in those cards. This practice is not regulated by any law, neither at the national nor the city level, therefore this requests constitute an abuse of power on the part of the CAM.

27. A research on institutional violence was conducted during 2016. The results show how security forces violate the rights of sex workers to integrity, to life, to liberty of movement, to privacy and respect, to work and to recreation in public spaces. Justice officers violate sex workers’ rights to equality, to non-discrimination, to due process and to timely and prompt justice. Here we share some testimonies gathered during that research<sup>13</sup>:

*“I was working there, in the park. Then a CAM officer comes and says to me, ‘You must leave because you have no permission to be selling’. ‘It’s not only me, there are several of us’. ‘Maybe, but I want particularly you to leave’... I talked to another CAM officer and he said, ‘We aren’t evicting vendors here’. He added, ‘How curious you have been told so’. ‘When you look at that person, simply go to another part and you’ll be able to continue selling’. I’ve done so and didn’t have trouble anymore. Some people have more consciousness than others” (WSW, public space).*

*“There were two officers in the corner. Then a fellow arrives to the corner and says to me, ‘Hurry up, hurry up or you’ll be left unregistered’. And I thought to myself, ‘Maybe they’re delivering beans, rice or corn’. I run to the corner and he said to me, ‘Take your place in the queue to be registered’. And I asked him, ‘What for?’. ‘Because as a sex worker you need to have a card here’. ‘I’m not a ketchup bottle to be labeled’. ‘But you need to have a card here’. Allegedly, he was told by the city major to get the names of all women in the streets because he wants to issue cards to them. And if a woman doesn’t have the card he issues, she will be evicted and convicted. ‘And why is that?’, I asked. It’s because they want to make the decisions themselves. They want to do it their way, as they say. They*

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<sup>11</sup> Bribes: in this report, it refers to illicit payments demanded by security forces to act or to cease to act.

<sup>12</sup> Request of cards: it refers to the mandatory order that sex workers should carry sanitary cards with them.

<sup>13</sup> All testimonies cited in this report are part of a research conducted nationwide by RedTraSex and Orquídeas del Mar during 2016. It can be seen at: [http://www.redtralsex.org/IMG/pdf/informe\\_nacional\\_el\\_salvador.pdf](http://www.redtralsex.org/IMG/pdf/informe_nacional_el_salvador.pdf)

*don't act as their boss says... We agree because we are sex workers, because we're not educated. Although those of us who knew better said we didn't want to wear the little label" (WSW, public space).*

*"A police officer was walking down the block and said to every sex worker: 'Write down the names and ID numbers of all your comrades. And make them sign it'. Then the fellow came and said, 'The police officer has said you must register'. That's awful, how can I say to you 'Write down your name in this piece of paper', without giving you any explanation. Just because he wore a uniform. Not at all. It happened some four times... As I was already a member of the organization, one of those who worked in the office told me one day, 'Tell him that whenever he wants to have a meeting, he may come upstairs to the Community Center for Integral Prevention, that you meet here every Wednesday, that we have an Open House. Tell him to arrange with us and we can have a meeting. It never happened... Thanks to the work of Orquídeas, we had a meeting with a woman officer. I met her another day, told her about the situation and asked her 'What do you know about that?', 'Are they giving a party for the comrades?', 'Will they have a Christmas celebration?'. She talked to the chiefs and told them about how some officers wanted sex workers to be registered. Last thing I knew he was severely scolded and the situation didn't take place anymore" (WSW, public space).*

*"You cannot go and seat there with your children anymore, because they want to evict you. I went for a walk with my children once and two CAM officers came to us. One of them told me, 'Please leave the park'. 'Why?', I asked. 'Because you're a whore from down there, you're not a whore of the park. Go down there'. And I said, 'I'm not working today, I'm strolling with my children'. 'Anyway', he said. They see us daily, but as soon as they see us with our children, we receive ill treatment" (WSW, public space).*

28. Through researches conducted during recent years, we detected women sex workers in El Salvador have serious difficulties to access health services and legal assistance.

29. A 2014 study<sup>14</sup> reports four out of ten women sex workers surveyed in San Salvador (43,3%) refused to go to hospital or a health care service to avoid giving explanations about their job, and the same percentage sought care far from their working area to prevent health providers to know about their job. 60% of sex workers got health care far from where they live to keep people in their neighborhood or their home from learning they are sex workers.

30. One out of three (33,3%) perceived hostility on the part of the health services administrative officers because they were sex workers and one out of five respondents (18,3%) was denied the health care she asked for or she needed because of being a sex worker. 28,3% of respondents were forced to undergo an HIV test just for being sex workers.

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<sup>14</sup> For more information on research methods and results, please see: [http://www.redtrasex.org/IMG/pdf/salvador\\_-\\_estudio\\_de\\_ss.pdf](http://www.redtrasex.org/IMG/pdf/salvador_-_estudio_de_ss.pdf)



31. As for discrimination in health services on the grounds of being a sex worker, half the respondents (50%) said they have sometimes suffered discrimination while 4,1% affirmed they are always subjected to discrimination (43,2% said they never suffered discrimination in said context).

32. The justice system frequently dismisses reports presented by WSW as unjustified, not serious or with no possibility to give the WSW the answer she wants. Their right to due process is violated.

*“They do nothing. Despite our reports, they do nothing. When we tell them we are sex workers, they close the investigation” (WSW, closed space).<sup>15</sup>*

*“When I went to the General Attorney’s Office to sue the father of my son for maintenance alimony, the officer in charge asked me how could I have any need, since I was a sex worker. And why was I suing him when the little man was unemployed. I was frightened, scared. So much that I didn’t come back. And that was it. I lose the case because I’m a sex worker. My son is 11 years old. The same time I was abandoned by him without any maintenance alimony” (WSW, public space).<sup>16</sup>*

*“A client was violent to me. He broke a TV set on my head and he cut one of my fingers off. He was arrested in fraganti. Seven days after, the judge said to me, ‘Withdraw the sue, you’re not winning anything by having him in jail. You’re not getting your finger back’.” (WSW, public space).<sup>17</sup>*

33. In addition to that, our condition as sex workers is an aggravating circumstance used against us when we demand maintenance alimony or custody of our children. We are considered bad mothers until we prove contrary, we face stigma and discrimination and we are blamed for the abuses we suffer because of moral prejudices thrown on us.

*“I have two daughters from different men. When the father of my second daughter realized I was a sex worker, que went to the General Attorney’s Office and sued me. He rode roughshod over me as he wanted. He said I was a whore, that I wore a tattoo, that I was on drugs, that I arrived home very late at night, that my daughters were alone, and this and that. Consequently, I lost my younger daughter. The prosecutor gave him full custody and personal care of the girl. I was left with only parental visitation rights. After that, he left the country and left the girl with his sister. As she didn’t like me, his sister didn’t allow me to see my daughter. I had to run from one place to another to be able to see her. I went time and again to the same place where they’ve taken her from me, and I told them the father was not here. They answered I had already lost custody because of what I was” (WSW, closed space).*

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<sup>15</sup> [http://www.redtralsex.org/IMG/pdf/informe\\_nacional\\_el\\_salvador.pdf](http://www.redtralsex.org/IMG/pdf/informe_nacional_el_salvador.pdf)

<sup>16</sup> idem

<sup>17</sup> idem

#### 4- PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (Articles 6 and 7)

34. Women sex workers who routinely come to our organization's office, consistently report institutional violence during arrest. This happens in spite of the PNC not having authority to arrest WSW on the sole ground of their work. Reports also mention cases of sexual violations of sex workers while they're in the police cars, sometimes when they are arrested under charges of an alleged crime and sometimes when they're trickery made to go with the police officers.

*"They, taking advantage of their position, want to abuse you, to rape you... When they say to you, 'You're going to have sex with us and I'm not paying you'. For free! They don't want to pay money. They think they're entitled because they use a uniform... just because you're a sex worker" (WTS, closed space).*

35. They suffer multiple and diverse abuses of authority while they're confined in the temporary detention cells of the Delegation. A quick example –police officers read WSW their rights at fast speed and ask them to sign without making sure they have fully understood them.

*"When we are read our rights, they read them fast: ta, ta, ta, ta, tá. And we don't understand. But they demand us to sign them" (WSW, public space).*

*"I was arrested for no reason. I was even handcuffed. From 6:30 in the morning until 2:30 in the night, with no water and no food. And handcuffed to a pole under the full sunlight" (WSW, public space).*

*"When I was under arrest, there was this woman officer who liked to do this. At 2 o'clock in the early morning, she turned a big flashlight on, which beamed a lot. She pointed the light of the flashlight to your face, awakening you and leaving you stunned. Then, a kick." (WSW, public space).*

*"Policemen are irresponsible. They set fixed times to urinate. When I couldn't hold it anymore, I asked permission to go to pee. They told me, 'You will have permission at any other time'. I answered in a bad temper. 'You want me to wait for 2 or 3 hours? you want me to pee here?' And they answered, 'Time, here, is decided by us. You're not telling me when you're going to pee'." (WSW, public space).*

*"All arrested people are subjected to discrimination, but it's worst for us. Even if your people brings you food, they won't give it to you, one doesn't receive the food. I was able to survive because a woman received food, plenty of food, and she shared it. We all ate from her food. Because the food that was for us, we never received it" (WSW, public space).*

36. As we have already mentioned, many times laws are enacted that have more to do with moral norms than with security and communal living, and they cause confusions that lead to rights violations.

37. In El Salvador, city Councils can legislate over the presence of sex workers in the public spaces, they can label it as “disorder” and as “harmful for the citizenship’s moral and good habits”. It must be noted that WSW do not exercise their work in the public spaces, where they only agree on conditions of the services, which are provided in closed or private spaces.

*“CAM officers wanted to evict us from the park because they say we give it a bad look. I said, ‘You’ve never seen me ungroomed and you’ve never seen me performing improper acts there in the park. In which way does my presence there harm you?’ (WSW, public space).*

*“CAM officers say they have to be decently dressed to do sex work because they don’t want women in miniskirts. But it’s not only us sex workers who wear miniskirts” (WSW, public space).*

38. In some places, as is the case of the city of San Salvador, offences to the Contraventions Ordinances are not punished with prison but only with a fine that can be canceled with a money payment or with community service. When someone reoffends, the penalty increases. Sex workers are mostly charged with **“disturbing the peace”**.

39. In the rest of the municipalities that have similar ordinances, in contrast, CAM justifies the arrest of WSW who work in open spaces. In some cases, the situation is more serious. For instance, in the municipality of Santa Ana, having condoms in your bag can be used as proof that women are sex workers and then is considered as an aggravating circumstance. In this way, the principle of equality with the rest of society and non-discrimination is violated, because only women known by the officers to be WSW are arrested under charges of “carrying condoms”; also, this is against health guidance that encourages protection measures during sexual relationships<sup>18</sup>, exposing the population of sex workers to serious risks of getting all kinds of sexually transmitted infections (STI) if they choose to stop carrying condoms to avoid arrest.

#### 5.- Arbitrary detentions (Article 9)

40. Unfortunately, arbitrary detention is a very usual procedure in Latin American countries. To a certain degree, depending on the country and local context, security forces officers are allowed to arrest citizens for the sole suspicion of them being responsible of a minor or a criminal offence, or simply for criminal record check.

41. These detentions are very serious, because the right to defense of the arrested person is cancelled or suspended, and are usually associated to crimes of other kind, such as torture, cruel treatment, abuse of authority, illegal deprivation of liberty or of legal security, bribery, etc.

42. If sex work is done in closed spaces, such as clubs or pubs, sex workers are usually victims of irregular procedures which are advertised as “rescue of victims of trafficking”, but which in fact result in the

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<sup>18</sup> Law for the prevention and control of the infection caused by the human immunodeficiency virus (Law of HIV).

prosecution of sex workers, who are subjected to violence and stigmatization, and constantly encouraged to change job, even getting to the point of closing down their personal homes.

43. Sex workers getting their clients in the street are affected by several local administrative laws –usually conflicting with national constitutions– which are aimed to limiting the free exercise of sex work due to moral reasons only.

44. Because of the violence and insecurity present in El Salvador, the presence of a group of WSW in a corner during frisks can become the crime of “illicit association” and not carrying the ID can be seen as an indication of being responsible of criminal offences. In addition to that, there have been cases of physical and sexual violence during unjustified preventive frisks. This affects both WSW working in open spaces and those working in closed ones.

45. Moreover, there is no control nor record of what happens to WSW while they are under arrest in the cells of the Police Delegation, be it because cells are located apart from central offices or because the chiefs are not present.

46. In some cases, WSW end up being charged with crimes they have not committed or that are more serious than the original charges. For instance, they can be incriminated in the crime of “illicit association” with gangs, a frequent and easy accusation given the situation of violence and insecurity of the country. This situation is suffered also by WSW who work in closed spaces.

*“[When I was arrested] a lawyer for the defense from a private university was assigned to me. I told him, ‘They bring me here for resisting arrest. I even got witnesses who can say the problem was not with me, but with my fellow’. He said, ‘I’m getting you out, this is not a major crime’. When he comes back, he says to me, ‘You can’t go out because it’s a major crime. It’s not only resistance to arrest, but you tried to grab the gun of a police officer’... After the audience, I was sent back to the Delegation and was given a sheet of paper were it read that I had to appear before the Judicial Center, in the capital city. When I appeared there, I was surprisingly told, ‘You are not completely absolved. You are under probation. You’ll be subjected to two more audiences because the prosecutor wants to jail you’... I got help from Orquídeas and from CEMUJER. I was told to tell the judge the same things I had explained in the organization. Finally, the case was settled in my favor” (WSW, closed space).*

## Recommendations

47. Taking all this into account, we ask the Human Rights Committee to issue the following recommendations to the State of El Salvador during its review:

- a) **To recognize autonomous sexual work as work**, adopting the recommendations issued by the International Labor Organization (ILO) and the United Nations. Within a frame respectful of equality, sex work must be granted the same labor conditions as other autonomous jobs. Sex

workers provide a service in exchange for money, and this activity implies rights and duties which need to be regulated to be fulfilled. The lack of regulation prevents sex workers to do their work in conditions equal to those of the rest of workers. Sex work needs to be formally recognized and regulated in order to reduce the inequities suffered by sex workers, who are subjected to stigma and discrimination as a result of the lack of regulation.

- b) **To clearly differentiate sex work from trafficking in persons, as well as from sexual exploitation**, both in the field of legislation and of public policies. The confusion among trafficking in persons, labor exploitation and sex work (or denying the existence of women who choose and decide to do sex work), is an obstacle to focusing the efforts on the problem; it makes alliances between sectors that cooperate in dismantling the mafias that support, back and practice human trafficking more difficult; and it gives place to a generally misguided conception of those three issues. In this way, focus is diverted from what is important and in the process the specificity of human trafficking for the purpose of sexual exploitation is missed, efforts are dispersed and solutions and reparations become inexistent. If “everything is trafficking in women for the purpose of sexual exploitation”, the very specific characteristics of this issue are lost, the concept loses importance and accuracy and therefore it becomes more difficult to establish proper public policies to fight against it.
- c) Do not let policies for **fighting against trafficking be used as an excuse to perform arbitrary detentions or proceedings such as raids** leading to closing spaces where autonomous sex workers live and work. “Anti-trafficking” laws –promoted and produced without taking into account our specific needs– call sex workers’ decisions about their work and bodies into question, many times “rescuing” them against their will and subjecting them to medical, psychological and legal procedures which they should not be exposed to. Unlike the women who are trafficked for sexual purposes, sex workers do their work for their own will, and by removing them from their workplaces or forcing them to explain their personal elections a violation to their rights is committed.
- d) To elaborate efficient public policies **to prevent, fight against and punish discrimination and all forms of violence against sex workers**. The lack of a law regulating the activity generates a state of affairs where security forces, covered by unconstitutional administrative rules, harass and arrest sex workers, raiding and even closing down their private homes, deploying an unacceptable violence against us and our families. There is a myth that says clients are the most violent against us. The worst violence endured by women sex workers comes from police and security authorities, who mark them, stigmatize them, beat them, steal their property and arbitrarily arrest them.
- e) To establish effective mechanisms **for protection from security forces and public institutions that exert discrimination and violence against sex workers**. “Anti-trafficking” laws many times pose risks to the rights of sex workers, because they have provided security forces with a wide action range. In the first place, there is a contradiction in granting such a great power to security forces –police and gendarmerie– when so many times they are who organize the networks for trafficking, or who demand bribes and favors from sex workers to allow them to work. Second, security forces do not have proper training to support and help women survivors of the mafia

traffickers, making the women uncomfortable or even mistreating them and preventing them from getting psychological support from the very first moment of police/military intervention. Finally, when they burst into places where we are willingly working, security forces confiscate goods – specially money and valuable objects– which are kept by them, as well as our personal IDs. Security forces justify these procedures alleging that everything found during this raids should be considered as “evidence” of trafficking and exploitation and therefore ought to be kept to be used during the legal proceeding.