

**Briefing to the Committee on Economic, Social and Cultural Rights on the implementation by Denmark of article 6, 7, 8 and 12 of the International Covenant on Economic, Social and Cultural Rights in relation to sex workers including undocumented migrants.**

NGO report with additional information on the Fifth Periodic Report by Denmark

**Report prepared and submitted jointly by the Danish Sex Worker Organization and The Street Lawyers**

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Contact information:

**Sexarbejdernes Interesseorganisation / Danish Sex Worker Organization**

Susanne Møller, spokeswoman

[kontakt@s-i-o.dk](mailto:kontakt@s-i-o.dk)

**Gadejuristen / The Street Lawyers**

Nanna W. Gotfredsen, Executive Director [nwg@gadejuristen.dk](mailto:nwg@gadejuristen.dk)

Emil Kiørboe, Policy Coordinator [emk@gadejuristen.dk](mailto:emk@gadejuristen.dk)

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## Sex workers and the International Covenant on Economic, Social and Cultural Rights

The right to work in article 6 seeks to ensure the right of everyone the opportunity to gain his/her living by work which he/she freely chooses or accepts. Article 6 contains combined with article 2, paragraph 2, and article 3 a protection against discrimination in achieving realization of the right to work.

The right to work as laid down in article 6 and the interdependent rights in article 7 and 8 forms a comprehensive protection of individual rights and State Party obligations.

Article 6 encompasses all forms of work, whether independent or dependent wage-paid work.<sup>1</sup> The Committee has stressed that state parties must take the requisite measures to reduce to the fullest extent possible the number of workers outside the formal economy to ensure workers who have no protection.<sup>2</sup>

The Committee has during earlier considerations of state reports focused on the measures taken to ensure that people working within the informal sector have access to their rights<sup>3</sup>, hereby addressing the question of Covenant protection of people working within the informal economy. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has addressed the issue of protection of workers in the informal economy as well with regard to the right to health (art. 12) and occupational rights.<sup>4</sup>

Voluntary adult sex work is to be considered as work in the sense of article 6 regardless of the status as a part of the formal or informal economy in national law.<sup>5</sup> The International Labour Organization recognizes voluntary sex work as a form of labour<sup>6</sup> as does the Committee on the Elimination of all Forms of Discrimination Against Women<sup>7</sup>. Moreover, The European Court of Justice made it clear in the case of *Jany et al v Justitie*<sup>8</sup> that sex work is labour in the full juridical sense, as a consequence of which citizens of other member states of the European Union, who are able to support themselves as self-employed sex workers, must be given resident's permit.

The right to work in article 6 implies on the one side a right to freely choose a line of work and on the other side a protection against being forced to exercise or engage in employment.<sup>9</sup>

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<sup>1</sup> CESCR General Comments 18, para. 6.

<sup>2</sup> CESCR General Comments 18, para. 10.

<sup>3</sup> List of issues to be taken up in connection with the consideration of the fifth periodic country report of Germany concerning articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights, 2010, E/C.12/DEU/5, para. 9.

<sup>4</sup> Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2012, A/HRC/20/15.

<sup>5</sup> Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2012, A/HRC/14/20, para. 30.

<sup>6</sup> *Lim*, The Sex Sector: the economic and social basis of prostitution in SE Asia, ILO 1998).

<sup>7</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on second and third German periodic country report, 2000, para. 325.

<sup>8</sup> C-268/99 of 20 November 2001.

<sup>9</sup> CESCR General Comments 18, para. 6.

The Committee refers to the definition by the International Labour Organization who defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>10</sup>

The Committee has stressed that work as specified in article 6 must be *decent work*, i.e. work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.<sup>11</sup>

Although sex work is often stigmatized and morally condemned, and even though sex work may imply unsafe working conditions, this is often the result of the state’s failure to respect, protect and fulfill the rights of sex workers. Sex workers do not forfeit their rights in accordance with the Covenant due to political or moral condemnation of sex work.

Though there are serious issues of forced labour and human trafficking within the sex industry to be dealt with both on the national and international level, efforts to address these issues often undermine the rights of adult sex workers engaged in voluntary sex work.

Voluntary adult sex work cannot be considered forced labour as the result of the voluntary nature of the engagement and the Committee’s focus on the decency of work must be understood as a protection against on the one side forced labour and on the other side the right of every human being to freely decide to accept or choose work and not as a moral condemnation of people’s freely chosen line of work.

The Committee stresses a special focus on marginalized and vulnerable groups both in relation to the right to work and interdependent rights (art. 6, 7 and 8) and the right to health (art. 12) as state obligations towards these groups are considered core obligations within these rights.

Among the most vulnerable groups in the sex industry are undocumented migrants and victims of human trafficking. A repressive and punitive approach meant to combat human trafficking and punish offenders in order to protect the victims from violations is often applied, however, a right based approach towards the victims is needed to secure these vulnerable groups.<sup>12</sup>

## **Sex work in Denmark**

Until the year 2011 no serious estimates were made on the total of sex workers in Denmark. Earlier estimates were based on wrongful information from a drop-in-center on street-level sex workers and wrongful conclusions by authorities on sex work in clinics.

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<sup>10</sup> CESCR General Comments 18, para. 9.

<sup>11</sup> CESCR General Comments 18, para. 7.

<sup>12</sup> Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2012, A/HRC/14/20, para. 48.

In 2011 the first serious survey on sex work in Denmark was published by the Danish National Centre for Social Research.<sup>13</sup> In the survey the estimated total of sex workers by the year of 2010<sup>14</sup> was 3.200, hereof 1.633 working in clinics, 903 as escorts and approximately 600 working in the street.<sup>15</sup>

Both the Danish Sex Worker Organization (SIO) and The Street Lawyers were represented in the reference group following the researchers work and though SIO published critique regarding some of the methodologies used in the survey and some of the conclusions reached in the report the survey is a huge step forward regarding gathering trustworthy knowledge on sex work in Denmark.

The main conclusion in the survey is that sex work is shaped by multiple personal and structural factors such as educational background, economics, and social network, and that this diversity is significant and underlines the importance of not regarding all sex workers as being similar.<sup>16</sup>

### **Danish law and sex work**

Voluntary adult sex work was decriminalized in Denmark in 1999. Sex workers register their businesses, pay taxes and are in that regard a part of the formal sector of the economy.

However, sex work does not constitute a regular or official job; sex work is not a job title and cannot be registered as such. Because of the continued criminalization of pimping and procuring sex workers cannot be employed but only work in sole proprietorships. With regard to labour rights and social security, sex workers have limited access to rights upheld by workers in formal economies (sick pay, early retirement pension, unemployment benefits).

Due to the informal status of their work sex workers are discriminated against with regard to labour unions and insurances. Though no law prevents sex workers from insuring their business it is practically impossible for sex workers to find an insurance company that is willing to insure their interests.

Although sex workers are required to pay taxes, they still do not enjoy the full protection of labour and social security law. For example, sex workers in Denmark do not have the possibility of joining an unemployment insurance fund. Nor are they able to join an established trade union.

Criminal law severely penalizes activities relating to the “exploitation of prostitution” such as pimping, procuring and human trafficking.

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<sup>13</sup> An English summary of the survey is available at the website of the Danish National Centre for Social Research, [http://www.sfi.dk/search\\_results\\_-\\_view-7352.aspx?PID=18908&NewsID=3032](http://www.sfi.dk/search_results_-_view-7352.aspx?PID=18908&NewsID=3032)

<sup>14</sup> <http://www.seksualpolitik.dk/forskning-sfi2011.html#resultater>

<sup>15</sup> The researchers weren't able to make an objective estimation for some subgroups of sex workers (Danish street sex workers, male escort sex workers, bar sex workers and private/discreet sex workers). [http://www.sfi.dk/search\\_results\\_-\\_view-7352.aspx?PID=18908&NewsID=3032](http://www.sfi.dk/search_results_-_view-7352.aspx?PID=18908&NewsID=3032)

<sup>16</sup> [http://www.sfi.dk/search\\_results\\_-\\_view-7352.aspx?PID=18908&NewsID=3032](http://www.sfi.dk/search_results_-_view-7352.aspx?PID=18908&NewsID=3032)

Section 228 in the Danish Criminal Law penalizes procuring. Procuring includes the running of brothels. According to Danish law, a brothel is characterized by the owner renting out facilities, organizing shifts, services etc. and in return receives a share of the sex workers' income.

Section 229 in the Danish Penal Code penalizes pimping. Pimping is, in Danish law, defined by working as a middleman/agent establishing the contact between the sex worker and the client, leasing rooms or in other ways contributing to prostitution.

Though the criminalization of procuring and pimping is meant to protect sex workers from exploitation the criminalization has a negative impact on sex workers' right to the enjoyment of just and favourable conditions of work especially regarding safe and healthy working conditions.

Sex workers do not have the possibility to have employees e.g. hire a receptionist, cleaning service or security guards and have difficulties in entering into a working relationship with colleagues due to the fact that such relationships often include an exchange of money and services.

Brothels continue to exist as they can provide a workplace and a minimum of security; however, under the current criminalization of procuring sex workers have no recourse to legal mechanisms through which they can demand safer working conditions.<sup>17</sup>

It is unlawful to rent rooms to sex workers on regular rental conditions, which makes them vulnerable to assaults as they are not allowed to work within protected business premises. This causes some sex workers to work in the street if they do not want to work in their own private homes, and they are hereby forced to conduct their business in deserted places or on the client's premises.

As it is not legal to rent facilities to sex workers on regular rental conditions, the landlord risk committing a criminal offence which makes it impossible for sex workers to post these expenses in the accounts to tax authorities. The landlords, who are willing to run such risks, are often criminals and sex workers are, therefore, indirectly forced to cooperate with criminals and engage in the criminal environment, which again make them more vulnerable to criminal actions.

The criminalization in general makes sex workers vulnerable to exploitation from criminals and reported cases of extortion of sex workers coerced to pay "protection payments" to criminal organizations have been reported by police and media.

The criminalization of procuring and pimping and the informal status of sex work constitute deficiencies in fulfilling the right of sex workers to just and favourable conditions of work, in particular to safe working conditions.

Despite the fact that sex work is decriminalized, the police often treat sex workers as criminals.

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<sup>17</sup> On the effect of criminalization and working conditions see Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2012, A/HRC/14/20, para. 43 – 45.

The Central Tax Administration pays sex workers regular visits of inspection and it is custom to bring the police along on such visits to secure the safety of employees of the Central Tax Administration and - according to SIO members - often in disproportionate numbers.

Members of SIO have experienced to be dragged out of the shower by police officers during inspection and though the official task of the police during these inspections is to secure the safety of employees of the Central Tax Administration they often search the premises without a warrant and photograph white boards, messages and agendas.

Sex workers also experience to be discriminated in other aspects. Members of SIO report that they are charged more in rent than other tenants in the building because they cannot take it to the rent tribunal as this will result in the termination of the tenancy on the grounds that the business is inconvenient to other tenants.

Sex workers are not involved or heard by the legislative powers when legislating on sex work. I.e. the government does not take advice from sex workers in deciding their conditions. This is so despite the fact that the EU passed a resolution<sup>18</sup> that recommends the member states to take advice from sex workers, when passing laws about them and their conditions. SIO has experienced to be refused admittance and even been escorted out by police officers, when members tried to attend a public debate on sex work and criminalization.

Additionally, last year when the sex workers in Denmark marked the International Sex Workers' Rights Day, some sex workers brought their children to the gathering hereby demonstrating that they too are regular families. As a consequence, social services opened a case of possible forced removal of a child of one of the attending sex workers; however the case was quickly dropped as groundless.

The political public debate on sex work is harsh and despite the conclusions of the Danish National Centre for Social Research<sup>19</sup> on the importance of not regarding all sex workers as being similar little distinction seems to be made between voluntary adult sex work and trafficking.

The Government considers criminalizing sex clients and have requested recommendations from a permanent expert advisory council on criminal law and established an inter-ministerial working group to work on the issue of criminalization.

There seems to be no or limited focus on the human rights related consequences of a further criminalization of sex work<sup>20</sup> in this process.

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<sup>18</sup> Resolution no. 1.579.

<sup>19</sup> An English summary of the survey is available at the website of the Danish National Centre for Social Research, [http://www.sfi.dk/search\\_results\\_-\\_view-7352.aspx?PID=18908&NewsID=3032](http://www.sfi.dk/search_results_-_view-7352.aspx?PID=18908&NewsID=3032)

<sup>20</sup> Regarding human rights related consequences and the criminalization of sex work and related practices see Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2012, A/HRC/14/20, section III.

## **Migrant sex workers**

The Danish National Centre for Social Research estimates that approximately 600 foreign sex workers were engaged in street-based sex work in 2010.<sup>21</sup>

Though the diversity in this group is significant and generalizations should be avoided they, however, constitutes the most vulnerable group of sex workers both to the fact of the conditions of working at a street level and due to uncertainty of residence and work permits.

The Committee has expressed concern that Denmark continues to face problems of trafficking in women.<sup>22</sup> The Working Group of the Universal Periodic Review<sup>23</sup> have made several recommendations on the issue of human trafficking in Denmark regarding strengthening the identification of victims<sup>24</sup>, avoid detention and expand reflection period<sup>25</sup> and offering work and residency permit to victims of human trafficking<sup>26</sup>.

During the summer 2012 The Street Lawyers and SIO have been engaged in outreach harm reduction and legal aid work among undocumented migrants selling sexual services in the streets of Vesterbro in Copenhagen and done a small scale survey to get a better understanding of their conditions. The outreach street lawyers and sex workers have been in contact with approximately 50 undocumented migrants, mainly female migrant sex workers and a few transgender sex workers.

It seems clear that the undocumented migrants working in the streets of Copenhagen face varies health, housing and legal problems and that they are in many ways vulnerable to exploitation from clients, hate related crimes and police crackdowns.

Migrant sex workers with citizenship within the European Union uphold the right to residence and work with some limitations and restrictions while non EU-citizens often either have no residence and work permit, tourist visa or legal short term residence as a result of resident permits from other EU countries but are not entitled to work in Denmark.

Street level sex work mainly takes place in the area of Vesterbro in Copenhagen and sex workers are subject to varies law enforcement activities and have regular contact with the police.

Law enforcement efforts mainly focus on public order, deporting illegal migrants, stopping migrants from working without a working permit, criminal investigations against human trafficking offenders, pimping and procuring.

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<sup>21</sup> [http://www.sfi.dk/search\\_results\\_-\\_view-7352.aspx?PID=18908&NewsID=3032](http://www.sfi.dk/search_results_-_view-7352.aspx?PID=18908&NewsID=3032)

<sup>22</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, Denmark, 2004, E/C.12/1/Add.102 para. 19.

<sup>23</sup> Report of the Working Group on the Universal Periodic Review, Denmark, 2011, A/HRC/18/4.

<sup>24</sup> Report of the Working Group on the Universal Periodic Review, Denmark, 2011, A/HRC/18/4 para. 106.87 (Austria) and 106.88 (Slovakia).

<sup>25</sup> Report of the Working Group on the Universal Periodic Review, Denmark, 2011, A/HRC/18/4 para. 106.89 (Slovakia).

<sup>26</sup> Report of the Working Group on the Universal Periodic Review, Denmark, 2011, A/HRC/18/4 para. 106.124 (United States of America).

Though Copenhagen Police have taken the positive step of stopping the enforcement of so-called “exclusive zones” where migrant sex workers were systematically fined for public order offences on the basis of their sole presence as assumed sex workers in the streets of Vesterbro, the law enforcement efforts are still directed at the possible offences of migrant sex workers rather than protecting them against violent crimes and exploitation.

All health, counselling and harm reduction services in Copenhagen such as distribution of condoms were located within the exclusive zones in Vesterbro which emphasizes the importance of sensitive policing close to these important health initiatives. However, migrant sex workers have reported to our outreach workers that police pays significant interest in the number of condoms possessed. Though we have not seen cases where condoms have been used as evidence in proving sex work without work permit the police’s interest in possession of condoms raises concerns that law enforcement efforts counter health and harm reduction initiatives.<sup>27</sup>

Migrant sex workers reported experiences of violent assaults, but that they did not dare to contact the police because of the fear for deportation and criminal charges of illegal work. The outreach work showed that especially street level transgender sex workers experience harassment from by-passers mainly young males.

When undocumented migrants report crimes to the police, they can expect to be met with a claim against themselves for the illegal stay in Denmark. This makes them particularly vulnerable to assaults, and this causes them to be de facto without any legal rights and without legal protection.

Though there has been some focus on dropping charges due to the principle of proportionality against undocumented migrants for minor offences such as forgery when, among other things, using fake passports as they apply for asylum etc., media have reported cases where identified victims of human trafficking are convicted and given prison sentences for their illegal stay and work in Denmark.<sup>28</sup>

Further, media have reported several cases of police crackdowns, mass arrests and deportations of migrant street level sex workers in Vesterbro within the last year.<sup>29</sup>

The Danish Anti-Trafficking policy is aimed both at supporting the victims of trafficking and the prosecuting of criminals involved in trafficking.<sup>30</sup> However, the overall approach towards undocumented migrant sex workers focus primary on law enforcement efforts targeting illegal migrants rather than a sensitive response to a vulnerable group experiencing various health problems and assaults or as possible victims of human trafficking.

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<sup>27</sup> On the health impact of such practices see *Criminalizing Condoms*, 2012, Open Society Foundation. Available at <http://www.soros.org/reports/criminalizing-condoms>

<sup>28</sup> <http://www.dr.dk/Nyheder/Indland/2012/08/05/211539.htm> Only available in Danish

<sup>29</sup> <http://www.bt.dk/krimi/32-prostituerede-taget-i-masse-anholdelse-i-nat> Only available in Danish

<sup>30</sup> Fifth periodic report on the implementation of the International Covenant on Economic, Social and Cultural rights, Denmark, 2010, E/C.12/DNK/5 p. 32.

The Danish Institute for Human Rights (Denmark's national human rights institution (NHRI)) has addressed the need of a human rights based approach towards possible victims of human trafficking in the Institute's 2012 Status Report on the human rights situation in Denmark.<sup>31</sup>

The Institute further recommends the government to express which of the 27 proposals from the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA)<sup>32</sup> are to be implemented and explain the reasoning behind a refusal to implement any of the proposals.<sup>33</sup>

## **Conclusion**

This report portrays deficiencies in the protection of articles 6, 7, 8 and 12 of sex workers in Denmark, including undocumented migrant sex workers.

The current legislation causes many difficulties for sex workers, as they do not enjoy the same rights as other workers. Legislative measures taken to combat exploitation of sex workers seem to have the opposite effect making sex workers more vulnerable to exploitation from criminal elements.

In dealing with the most vulnerable groups of sex workers, undocumented migrants and possible victims of human trafficking, authorities mainly pursue a law enforcement strategy of combatting illegal migrants, work without a work permit and minor public order offences. The risk of deportation and criminal charges make migrant sex workers vulnerable to violent assaults and exploitation as these crimes stays unreported. The lack of trust in police and authorities among migrant sex workers seems to be another barrier and reason for the impunity of serious crimes and exploitation of migrant sex workers including victims of human trafficking.

Further, the law enforcement strategies directed against migrant sex workers seem to contribute to risk taking behaviour and counter health and harm reduction initiatives.

On the basis of the above, the Danish Sex Worker Organization and The Street Lawyers kindly ask the Working Group of the Committee to address the conditions of sex workers in Denmark.

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<sup>31</sup> The Danish Institute for Human Rights, *Human Rights in Denmark – Status 2012, Human Trafficking*, only available in Danish

<sup>32</sup> GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark, First evaluation round, 2011, GRETA(2011)21, Appendix 1: List of GRETA's proposals

<sup>33</sup> The Danish Institute for Human Rights, *Human Rights in Denmark – Status 2012, Human Trafficking*, only available in Danish