



**GENDER-BASED VIOLENCE
AGAINST SEX WORKERS AND
BARRIERS TO ACCESSING
JUSTICE:**

**INTERNATIONAL STANDARDS AND
EXPERIENCE IN GEORGIA**

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Introduction

Gender-based violence and barriers to accessing justice constitute particularly prevalent and largely invisible concerns among women sex-workers. Women, particularly those belonging to marginalized groups, are subjected to deeply rooted structural inequality and intersectional discrimination. Various forms of discrimination and inequality influence the decision of a woman to engage or to remain in sex work. Women who experience discrimination based on their sexual orientation, gender identity, race, ethnicity, as well as migrant women, are particularly vulnerable to sex work.

As prostitution is an administrative offence according to the Georgian legislation and certain acts related to prostitution are criminal offences, applying to the police in cases of gender-based violence poses additional risks and barriers to sex workers—if their status (sex work) is revealed, sex workers or persons related to them might face administrative or criminal responsibility. As a result, sex workers are particularly vulnerable to various violent crimes (committed by law enforcement or private individuals).

The aim of the study is to analyze the nature of gender-based violence against sex workers, legal regulation for violence and barriers to accessing justice. While analyzing violence and intersectional discrimination against sex workers, the study relies on international human rights standards and examines the Georgian legislation and existing court practice. The study also incorporates the results of focus-group interviews with sex workers regarding violence and discrimination against sex-workers and their access to justice in five Georgian cities (Tbilisi, Batumi, Kutaisi, Zugdidi and Telavi) in 2016. The study offers recommendations on legislative, policy and practice levels for the protection of women sex workers against gender-based violence and to increase their access to justice.

The study does not analyze the model of legalizing sex work and its potential impact on ensuring human rights of sex workers.

Definitions

As there is no universally agreed upon terminology in international human rights law on sex work and related acts, this study relies on the terminology applied by Amnesty International.¹ However, this shall not be interpreted as the present study fully shares the policy of Amnesty International on sex work.

Sex work: “sex work” is used to mean the exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer.

The term “sex work” is used to describe situations where adults who are engaging in commercial sex have consented to do so. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse, which must be treated as a criminal offence.

Sex worker: an adult (aged 18 and older) of all genders who receives money or goods in exchange for the consensual provision of sexual services, either regularly or occasionally. This term is not used in regard to children.

Criminalization: consensual sex work between adults is a criminal offence.

Penalization: sex work is not a crime, however, it is regulated by the laws or policy that have an effect similar to criminalization.

Based on this definition, if sex work is an administrative offence, it is penalized.

¹ ob. Amnesty International Policy on State Obligation to Respect, Protect and Fulfil the Human Rights of Sex Workers (Amnesty International Policy), 26.05.2016: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

I.

**Violence and Discrimination against
Sex Workers and Models of Legal
Regulation – Analysis of International
Standards**

A. MODELS OF LEGAL REGULATION OF SEX WORK

Under international experience, there are models of criminalization, penalization and legalization/regulation of sex work.

Models of **criminalization** of sex work are as follows:²

1. Providing a sex service by an adult to another adult is a criminal offence. The seller of sex services (sex worker) is criminally liable;
2. Providing sex service by an adult to another adult is a criminal offence. The buyer of sex service (client) is criminally liable;
3. Organizing sex work among adults is a crime. Criminal acts include advertising prostitution, making available an area or dwelling for prostitution, etc. Accordingly, sex workers, as well as other persons who help them organize sex work, are criminally liable for these acts.

In contrast to criminalization, **penalization** of sex work includes legislation, administrative regulations or policy that have an effect that is similar to criminalization — controlling sex workers, punishing them and violating their autonomy due to sex work.³ These measures include fines, detentions with the purpose of “rehabilitation”, deportation, depriving of guardianship over a child, or depriving of social assistance.⁴

The study conducted by Amnesty International reveals that criminalization and penalization of sex work has a significant negative impact on the protection of human rights of sex workers.⁵ When sex work is punishable, the following rights are under threat: right to life, freedom, autonomy and safety of an individual; right to equality and non-discrimination; prohibition of torture and inhuman and degrading treatment; right to privacy; right to the highest attainable standard of health; right to information and education; freedom of expression; right to adequate housing; right to fair conditions of work; right to family life; right to a remedy.⁶

Criminalization of sex work can violate the right of sex workers to obtain health care services, particularly for sexually transmitted diseases, HIV prevention and treatment and sexual and reproductive health.⁷ Even though the right to health is subject to progressive realization, under the Committee on Economic, Social and Cultural Rights, the State has the immediate obligation “to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine individual’s or particular group’s access to sexual and reproductive health facilities, services, goods and information”.⁸ Under the Committee, the States shall pay particular attention to sex workers’ access to sexual and reproductive services.⁹

Amnesty International indicates that criminalization and penalization of sex work creates an environment that enables law enforcement to commit violence, harassment, extortion and other

² Amnesty International Policy, p. 4

³ See CEDAW, Concluding Observations: Russian Federation, UN Doc. CEDAW/C/RUS/CO/8, 2015, paras. 25-26

⁴ Amnesty International Policy, p. 4

⁵ Amnesty International Policy, p. 10

⁶ Explanatory Note on Amnesty International’s Policy on State Obligation to Respect, Protect and Fulfill the Human Rights of Sex Workers, Pp. 28-36: file:///C:/Users/Administrator/Downloads/POL3040632016ENGLISH.PDF

⁷ Amnesty International Policy, p. 10.

⁸ CESCR, General Comment 22, UN Doc. E/C.12/GC/22, 2016, para. 49(a).

⁹ CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 32.

acts against sex workers, for which they go unpunished. Therefore, this type of legal framework results in substantial deprivation of access to justice and the violation of the right to equality before the law.¹⁰ This also increases the risk of exploitation of sex workers.¹¹

Amnesty International additionally states that criminalization of sex work violates the right of privacy of women, as this deprives a woman of the right to make decisions about her body autonomously.¹² Measures to criminalize and penalize sex work have a particularly negative effect on the human rights situation of women, as the majority of people living in poverty are women and they have less access to education, employment and economic resources and they often face a disproportionate burden of domestic work.¹³

B. STIGMA, INTERSECTIONAL DISCRIMINATION AND STRUCTURAL INEQUALITY AGAINST WOMEN SEX WORKERS

Women, particularly those belonging to vulnerable groups, experience deeply rooted gender discrimination and structural inequality. In comparison to men, more women live in poverty and the overwhelming majority of sex workers worldwide are women.¹⁴ Gender inequality is demonstrated in the structure of the society and it influences the distribution of resources and power at all levels. Stigma and stereotypes against women involved in the sex industry make them particularly vulnerable to violence.¹⁵

Sex work belongs to a group of activities that have particularly high stigma, prejudices and discrimination in society and government agencies.¹⁶ Sex workers are often subjected to various sanctions and they are shunned by society because they do not conform to social, sexual and gender norms. Criminalization and penalization of sex work contributes to the stigmatization of sex workers during their entire life. Society perceives them as immoral and irresponsible offenders, who deserve punishment, judgment and even violence because of their conduct.¹⁷

Violence against sex workers and barriers to accessing justice are caused not only by the fact that prostitution is subject to penalties, but also due to structural inequality and intersectional discrimination, which sex workers experience because of their sex and involvement in sex work. Sexual orientation, gender identity, health condition (contagious disease) and other factors might also be added to this list.¹⁸ Stigma by society and criminalization of sex work often compels sex

10 Amnesty International Policy, p. 10.

11 NSWP, Sex Work and the Law: Understanding Legal Frameworks and the Struggle for Sex Work Law Reform, 2014.

12 ICCPR, Article 17(1)(2); ICRPD, Article 22(1); *K.L. v. Peru*; UN Doc. CCPR/C/85/D/1153/2003, paras. 6.4-6.5; CEDAW, General Recommendation 24.

13 UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/66/265 (2011), para. 11.

14 J. Vandepitte, R. Lyerla, G. Dallabetta, F. Crabbé, M. Alary, A. Buvé, 'Estimates of the number of female sex workers in different regions of the world', *Journal of Sexually Transmitted Infections*, 82, 2006

15 The UN Convention on the Elimination of All Forms of Discrimination against Women, A Commentary, Ed. Marsha A. Freeman, Christine Chinkin and Beate Rudolf, Oxford University Press, 2012. p. 182

16 ob. Amnesty International, "*What I'm doing is not a crime*": *The human cost of criminalizing sex work in the City of Buenos Aires, Argentina* (AMR 13/4042/2016); *The human cost of 'crushing' the market: Criminalization of sex work in Norway*, (EUR/36/4034/2016); *Harmfully Isolated: Criminalizing sex work in Hong Kong* (ASA 17/4032/2016); *Outlawed and abused: Criminalizing sex work in Papua New Guinea* (ASA 34/4030/2016).

17 Amnesty International Policy, p. 9

18 Amnesty International Policy, p. 11

workers to work in hiding and in insecure environment, where they lack access to resources and legal remedies.¹⁹ The marginalization of sex workers increases the risks of violence against them, for which perpetrators often go unpunished.²⁰

Under dissenting opinions of Justices Sachs, J and O'Regan of the Constitutional Court of South Africa in the case of *Jordan and Others v. The State* (2002), legislation prohibiting prostitution, which envisages sex workers as the main offender, reinforces gender stereotypes and is not in compliance with gender equality. A sex worker is perceived as a shunned and "fallen" woman, who causes misfortune to herself and to other people and deserves disrespect. On the other hand, a male client is perceived as a man who was allured or who does what men generally do, therefore, his action is not morally inappropriate. Societal stigma varies in relation to women and men and sets different standards for female and male sexuality.²¹

In comparison to cisgender sex workers, lesbian, gay, bisexual or transgender sex workers, who do not conform to gender and sexuality norms, are in greater risk of intersectional discrimination²² and marginalization. Despite the fact that the majority of sex workers are cisgender²³ women, in proportion there are more sex workers among transgender persons than among cisgenders.²⁴ This demonstrates the marginalized status of transgender individuals in society and their lack of access to resources and legal remedies, which, together with other factors, results from stigma and various forms of discrimination.²⁵ Accordingly, women who experience inequality and discrimination based on various grounds are the most likely to become involved in sex work.²⁶

Despite the fact that the background of individual sex workers varies, the majority of sex workers are women (cisgender or transgender) from marginalized and disadvantages communities. This contributes to intersectional discrimination against them, intolerant attitudes from public, stereotyping and criminalization. Often the stigma affects even the children of sex workers.²⁷

C. THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN'S VIEWS ON PROSTITUTION"

Under Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states are obliged to take measures to eliminate trafficking and exploitation

19 Amnesty International Policy, p. 6

20 Amnesty International Policy, p. 6-7

21 *Jordan and Others v. the State*, 2 October 2002, Constitutional Court of South Africa CCT 31/01 (dissenting opinion, Sachs, J and O'Regan) paras 6 and 87.

22 Intersectional discrimination is in place when more than one protected grounds of discrimination overlap, which taken alone, would not provide the ground for discrimination.

23 A person whose sex and gender identity coincide.

24 See V. L. Hounsfield, et al., 'Transgender people attending Sydney sexual health services over a 16 year period', *Sex Health*, 4, 2007; J. Grant, L. Mottet, J. Tanis, J. Harrison, J. Herman and M. Keisling, *Injustice at every turn: A report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

25 Human Rights Council, 'Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights', 2015, UN Doc. A/HRC/29/23; Human Rights Watch, 'Sex workers at risk: Condoms as evidence of prostitution in four US cities, 2012.

26 Amnesty International Policy, p. 5

27 Amnesty International Policy, p. 9

of prostitution of women.²⁸ Accordingly, the Convention requires confronting the forms of prostitution that are used for the purposes of exploitation. In other cases, the Convention does not prohibit prostitution. Under the Trafficking Protocol, legal regulation of prostitution is the discretion of individual states.²⁹

The CEDAW Committee does not use the term “sex worker”. CEDAW applies the term “women in prostitution” and elaborates on prostitution in the context of violence against women.

According to CEDAW, discrimination against women is intertwined with the factors that affect women’s lives. These factors include race, religion, social, family, health status, involvement in prostitution, etc.³⁰ Certain groups of women, including women in prostitution, are disproportionately subjected to sanctions (criminalization)³¹ and criminalization of prostitution hinders their access to justice.³²

CEDAW Committee explains in its General Recommendation N19 that poverty and unemployment forces many women, including underage women, into prostitution. These women are particularly vulnerable to violence, as their acts contradict the law and marginalize them. Sex workers must be protected from rape and other forms of violence on the basis of equality before the law.³³ Wars, armed conflicts and occupation encourage the increase in prostitution and in these cases special measures need to be taken to protect women from trafficking and sexual violence.³⁴

General Recommendation N19 also provides that the states shall take criminal and other preventive and rehabilitation measures to protect women in prostitution and to present reports to CEDAW on the effectiveness of these measures.³⁵ The committee states that women in prostitution have special needs concerning health care and the state shall particularly address these needs.³⁶

Under General Recommendation N35 on gender-based violence against women, which compliments the General Recommendation N19, the state has to repeal all legislative acts, which hinder the protection of women in prostitution from violence, or that create the environment that enables violence.³⁷ In addition, legal provisions that hinder women from reporting violence shall be repealed.³⁸

The Committee does not hold a uniform view on the models of regulation of prostitution. On the one hand, the Committee notes that the criminalization of purchasing sex service will contribute

28 Convention on Elimination of All Forms of Discrimination against Women, Article N6.

29 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art 3; Interpretive notes on the Trafficking Protocol (2000) UN Doc A/55/383/ Add. Para 64.

30 CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (GR N35), para.12, (GR N19) available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf

31 Committee on the Elimination of Discrimination against Women, General recommendation on women’s access to justice, 23 July 2015, para. 49, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf

32 See above, para. 9.

33 GR N19, para. 15.

34 GR N19, para. 16.

35 GR N19, para. 24 (h).

36 General Recommendation No. 24, 20th session, 1999, para. 6. Available at: <http://www.refworld.org/docid/453882a73.html>

37 GR N35, para. 31a.

38 GR N35, para. N31c.

to hidden forms of prostitution and will increase the possibility of trafficking.³⁹ On the other hand, under Article 6 of the Convention, the Committee addresses prostitution together with exploitation and notes that decriminalization of prostitution can negatively affect migrant women.⁴⁰

The Committee requires to evaluate the impact of various models of prostitution legislation on the rights protection of sex worker, e.g. the Committee notes that rehabilitation programs for sex workers might cause their stigmatization. The Committee additionally notes that when prostitution envisages administrative detention, this creates the possibility of procedural rights violations of sex workers.⁴¹

The Committee underlines that the legislation prohibiting sex work shall not punish sex workers and shall be directed towards persons who benefit from the exploitation of women. The Committee is concerned that in certain countries sex workers are punished for prostitution and not the clients, organizers of prostitution or third parties, which benefit from prostitution,⁴² e.g. the Committee calls upon the Russian Federation to remove prostitution from the Administrative Offences Code and to create an oversight mechanism to monitor violence, including when committed by the police, against women in prostitution.⁴³

The Committee negatively assesses the high rate of prostitution in certain countries and that even “educated” women are involved in prostitution.⁴⁴ The Committee calls upon the states to take measures to reduce demand for prostitution;⁴⁵ to carry out programs to prevent women’s entry into prostitution;⁴⁶ and to provide the Committee the information on causes and prevalence of prostitution.⁴⁷ The Committee also calls upon the states to provide support to women, who want to leave prostitution and to ensure relevant trainings for them to find alternative means of earning their living and to take measures for the rehabilitation of sex workers and for their reintegration into the society.⁴⁸

To decrease the demand for prostitution, the Committee notes that the states shall eradicate the root causes of prostitution and modify the societal perception of women as sex objects.⁴⁹ To change the societal perceptions, the states shall spread information on trafficking, violence, prostitution and stereotypes through mass media, as well as through conferences and seminars.⁵⁰

Accordingly, CEDAW considers sex work in the context of violence against women and calls upon the States to eradicate barriers, which hinder access to justice for sex workers and to take measures,

39 CO Sweden, A/56/38, 25th session (2001) paras 354-5; CO Norway, CEDAW/C/NOR/CO/7 (2007), para. 20.

40 CO Netherlands, A/56/38, 25th Session (2001), para 210. CO New Zealand, A/58/38, 29th session (2003), para. 414.

41 CO China, CEDAW/C/CHN/CO/6 (2006) para. 19; CO Vietnam, CEDAW/C/VNM/CO/6 (2007), para. 18.

42 CO Guyana, A/56/38, 25th Session (2001), para. 180; CO Mauritius, CEDAW/C/THA/CO/5 (2006) para. 20; CO China, CEDAW/C/CHN/CO/6 (2006) para. 19.

43 CEDAW, Concluding Observations: Russian Federation, UN Doc. CEDAW/C/RUS/CO/8, 2015, paras. 25-26

44 CO Egypt, CEDAW/C/EGY/CO/7 (2010), para. 25; CO Malawi, CEDAW/C/MWI/CO/5 (2006) para. 23.

45 CO Latvia, A/59/38, 31st Session (2004) para.60. CO Spain, A/59/38, 31st Session (2004) para 337; CO Syrian Arab Republic, CEDAW/C/SYR/CO/1 (2007) para. 2; CO Japan, CEDAW/C/JPN/CO/6 (2009), para. 40; CO Libya, CEDAW/C/LBY/CO/5 (2009) para. 28.

46 CO Australia, CEDAW/C/AUS/CO/5 (2006) para. 21; CO Denmark, CEDAW/C/DEN/CO/6 (2006) para 25; CO Luxemburg, CEDAW/C/LUX/CO/5 (2008) para. 30.

47 CO Venezuela, CEDAW/C/VEN/CO/6 (2006) para. 28; CO Luxemburg, CEDAW/C/LUX/CO/5 (2008) para 29.

48 CO The Netherlands, A/56/38, 25th Session (2001) para 210; CO Angola, A/59/38, 31st Session (2004) para 157; CO Egypt, CEDAW/C/EGY/CO/7 (2010), para 26.

49 ob. CO Finland, A/56/38, 24th Session (2001) para 304; CO Switzerland, A/58/38, 28th Session (2003) para 123.

50 CO Hungary, A/57/38, Exceptional Session (2002), para. 308.

including criminal measures, to protect sex workers from violence. Since the Committee states that when sex work is punishable it hinders protection from violence and access to justice, the states shall abolish sanctions against women in prostitution.

D. FACTORS DETERMINING ENTRY INTO SEX WORK AND CONSENT TO SEX WORK – ANALYSIS OF AMNESTY INTERNATIONAL

Sex workers are a heterogenic group—women get involved in sex work for various reasons and they have different experiences in this process.⁵¹ Some sex workers enter sex work based on their free will and in order to earn a higher income than with other types of employment. However, many sex workers enter prostitution as a result of extreme economic conditions and in order to earn for their basic needs.⁵²

Under Amnesty International, consent is an important component, which differentiates sex work from trafficking, sexual exploitation, sexual violence and gender-based violence. There is no uniform definition of consent under international human rights law. In regard to sex work, Amnesty International defines sex work as follows: “voluntary and ongoing agreement to engage in a particular sexual activity.” As consent to sexual activity is not the same as consent to violence, a sex worker, as well as any other person, has the right to rescind consent or modify the conditions of consent, which needs to be respected by all persons (e.g. clients, third persons, law enforcement, judges).⁵³

When a sexual act is conducted without voluntary and continuous consent, or when a person rescinded the consent or modified the conditions of consent, the act constitutes not a sex service, but rape. To analyze whether or not a person expressed consent, the priority must be given to the individual circumstances of sex workers and the context in which they operate.⁵⁴

Law enforcement and representatives of other state bodies, based on the prevailing attitudes and stereotypes regarding sex workers, mostly act with the presumption that a sex worker always consents to sex (as sex workers regularly provide sex services) and they disregard the possibility of sexual violence against sex workers. This kind of approach is a violation of sex workers’ human rights, access to justice and equality before the law.⁵⁵

Amnesty International recognizes that despite poverty and other forms of marginalization that can influence entry into sex work, these conditions cannot be a determining factor to establish whether the will/consent of the sex worker is valid. Amnesty International regards that being in harsh conditions does not deprive an individual of the opportunity to make decisions about her life, except when she is subjected to threats, violence or abuse of power.⁵⁶

51 R. Weitzer, ‘The Mythology of Prostitution: Advocacy Research and Public Policy’, *Sexuality Research and Social Policy*, 7, 2010, p.15-29; R. Weitzer, ‘Sociology of Sex Work’, *Annual Review of Sociology*, 35, 2009, p. 213-234.

52 Amnesty International Policy, p. 8

53 Amnesty International Policy, p. 15

54 See above

55 See above

56 See above

Amnesty International also recognizes that when an individual is subjected to poverty, internal displacement or armed conflict, the risk of her exploitation increases. The state has the obligation to protect every individual from exploitation and the risk of exploitation. In addition, the state has to recognize and respect the autonomy of the individual and the decision to enter into sex work based on her free will. The state has the obligation to address the threat of exploitation by increasing the opportunities of choice for sex workers and their control over their conditions.⁵⁷

E. FORMS OF VIOLENCE AGAINST SEX WORKERS AND CONTEXT OF VIOLENCE

Worldwide sex workers experience violence and various forms of human rights violations. Violence in many cases is determined by stigma and discrimination against sex workers, which is further aggravated by the criminalization/penalization of sex work. Violence against sex workers in many cases constitutes gender-based violence, which results from various forms of discrimination.⁵⁸

Law enforcement bodies and other state representative, as well as private individuals – clients, third parties involved in sex work, medical providers, etc. are among the abusers. When the state tries to eradicate violations through criminalization/penalization of sex work, this, according to Amnesty International, deprives sex workers of power, enhances stigma, discrimination, social inequality and encourages impunity for human rights violations.⁵⁹

Facts of violence against sex workers often remain unreported and are not brought to justice, because reporting violence can subject sex workers to additional threats. Law enforcement officials are mostly focused on enforcing law against sex workers, rather than protecting them from violence and other crimes. As a result, sex workers are left without security and criminals, including those from law enforcement, escape punishment.⁶⁰

When sex work is subject to a criminal or administrative penalty, this, according to Amnesty International, automatically means that a sex worker cannot apply to the police in case of violations against her. For many sex workers applying to the police means disclosing the offence committed by them, which poses additional risks to her safety and activities.⁶¹ When sex work is not criminalized/penalized, sex workers have better opportunities to cooperate with law enforcement and identify cases of violence, including trafficking.⁶²

When a buyer of sex work (client) is subjected to penalties, not the seller (sex worker), or when other acts related to sex work (such as providing a dwelling for sex work) are punishable, sex

57 Explanatory Note on Amnesty International's Policy, p. 26-28

58 Amnesty International Policy, p. 12

59 Amnesty International Policy, p. 9

60 C.M. Lowndes et al., 'Injection Drug Use, Commercial Sex Work, and the HIV/STI Epidemic in the Russian Federation', *Sexually Transmitted Diseases*, 2003; Barriers to safer sex practices among women street sex workers in Cape Town', *Culture, Health and Sexuality*, 2003, pp. 465-81.

61 Amnesty International Policy, p.12

62 See, e.g., *Innovative approaches to combat trafficking of women in sex trade by Durbar Mahila Samanwaya Committee (Kolkata)*, Durbar Mahila Samanwaya Committee, available at www.sexworkeurope.org/sites/default/files/resource-pdfs/dmsc_innovative_approaches_trafficking.pdf; *10 reasons to decriminalize sex work: A reference brief*, Open Society Foundations, p. 6, available at: www.opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf; *UNAIDS guidance note on HIV and sex work*, 2012.

workers are still subjected to harmful conditions.⁶³ When purchasing sex service is punishable, the agreement between a sex worker and a client is a crime. Even though the purpose of criminalizing the buyer of sex service is to shift the responsibility from a sex worker to a client, this practice, according to Amnesty International, places sex workers under risk. In this case sex workers have to protect their clients from criminal responsibility and they resort to unsafe means to provide sex service, e.g. they offer services in places determined by their clients.⁶⁴

F. OBLIGATION OF THE STATE TO RESPECT, PROTECT AND FULFILL RIGHTS OF SEX WORKERS

Under international human rights law, states are obliged to respect, protect and fulfill rights of sex workers. The State has to take measures to ensure social guarantees for women⁶⁵ and eradicate intersectional discrimination and structural inequality, in order for prostitution to not be the only means of survival for women. Respectively, the state shall not choose prohibiting prostitution as the only measure to combat prostitution – the state shall ensure the conditions for women in which prostitution will not be the only means to confront severe economic conditions.⁶⁶

The obligation of the state to eradicate discrimination and ensure substantive equality includes changing cultural and societal attitudes, which are the root causes of discrimination. The states shall “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁶⁷

To eradicate stigma and discrimination against sex workers, the state shall take immediate measures – amend the legislation that poses barriers to sex workers’ access to justice; modify policy and practice against sex workers, which encourages violence against them; implement temporary special measures to achieve substantive equality; carry out educational and public awareness raising campaigns on human rights of sex workers and equality.⁶⁸

The aim of all measures of the state to protect sex workers from violence shall be their empowerment and shall not pose additional risks to their safety.⁶⁹ The state shall ensure the participation of sex workers in all decisions concerning their rights.⁷⁰

63 See *Canada (Attorney General) v Bedford*, 2013 SCC 72 [2013] 3 S.C.R. 1101.

64 I. U. Bjørndal, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Oslo, 2012.

65 International Covenant on Economic, Social and Cultural Rights, Art. N9.

66 Amnesty International Policy, p. 8

67 UN Convention on the Elimination of All Forms of Discrimination against Women, Art. 5.1.

68 See Amnesty International Policy, p. 7

69 See above

70 See Amnesty International Policy, p.2.

II.

Sex Work and the Georgian Context

A. SEX WORK AND CRIMES RELATED TO SEX WORK IN GEORGIAN LEGISLATION

Georgian legislation does not envisage the terms “sex work” or “sex worker”. The Administrative Offences Code of Georgia and the Criminal Code of Georgia use the term “prostitution”, which has the meaning of sex work. Human rights literature, apart from the Committee on the Elimination of Discrimination against Women (which uses the term “prostitution”), largely uses the term “sex worker.”

Under Georgian legislation, sex work/prostitution is not a criminal offence. Sex work is not recognized as a form of labor and the Labor Code of Georgia does not apply to this activity. Sex work is an administrative offence – it is subject to administrative sanction and belongs to the group of administrative offences that violates public order.⁷¹ At the same time, a number of acts related to prostitution are criminal offences (see below).

Under Article N172³ of the Administrative Offences Code of Georgia, prostitution shall carry a warning or a fine of up to one half of the minimum wage. The code does not provide the definition of prostitution or the explanation of what constitutes prostitution.

Under the Order of the President of Georgia of 4 June 1999, the amount of minimum wage is 20 GEL. For fines and other duties, the minimum wage is determined as 40 GEL.⁷² Therefore, as the article on prostitution envisages warning or fine up to one half of the minimum wage, the fine shall be defined as a maximum of 20 GEL.

Under the above article (Art. 172³), if prostitution is committed repeatedly – within one year after the imposition of an administrative penalty – it shall carry a fine from one half to one minimum wage. Victims of human trafficking and person declared to be a victim of the crime provided in Articles 143¹ and/or 143² of the Criminal Code of Georgia shall be released from administrative liability if they committed the act as a result of being trafficked before obtaining the status of a victim of human trafficking.⁷³

If a person engages in prostitution based on her free will, this act does not constitute a crime. Engagement in prostitution and making available an area or dwelling place for prostitution are crimes, for which a person who engaged another person in prostitution, or made the dwelling available, is criminally responsible (the sex worker is not criminally responsible).

Engagement in prostitution: under Article 253 of the Criminal Code, engagement in prostitution is committed with using violence, threat of violence or of destruction of property, blackmail or deception. The act shall be punished by a fine or imprisonment for up to two years. The act is aggravated if it is committed by an organized group or knowingly against minors, or acquiring benefit from the engagement of a minor into prostitution. The act is punished by a prison sentence of 5 to 7 years (Art. 253.2).

Engaging a minor in prostitution without violence, threat of violence or deceit is punishable. Under Article 171.3 of the Criminal Code, the act is punished by a prison sentence of 2 to 5 years.

⁷¹ Administrative Offences Code of Georgia, Chapter N13.

⁷² Decree of the President of Georgia N 351, on minimum wage, 4 June 1999, Article N1 and N3.

⁷³ Administrative Offences Code of Georgia, Art. N172³, note.

Making available an area or dwelling place for prostitution (Art. 254) is punishable by fine or a prison sentence of 2 to 4 years.

Any act committed in the form of a large-scale or systematic assaults on a civilian population or persons, manifested in, inter alia, coercion of prostitution, which substantially impair the physical and/or mental condition of a person, is a **crime against humanity** and shall be punished by imprisonment for a term of twelve to twenty years or with life imprisonment (Art. 408).

Crime of Human Trafficking, which is committed with the purpose of exploitation, defines exploitation, among other acts, as engaging a person in prostitution (Criminal Code, Art. 143¹, note N1(d)).

Engaging another person in prostitution (including the act committed against a minor) and making available a space or dwelling for prostitution, belongs to the crimes against public health and morals.⁷⁴ The primary object of the crime for engaging in prostitution is public morals and the additional object is inviolability of an individual, honor, dignity, health and property.⁷⁵

For the engagement in prostitution, under the Criminal Code, the object of protection is public morals. Therefore, the legislator ignores the damaging effect of coercion into prostitution on an individual, including on a minor, as engaging in prostitution is not classified as a crime against human rights and freedoms (Criminal Code, Chapter XXIII) or as a crime against sexual freedom and inviolability (Criminal Code, Chapter XXII).

Contrary to this, engaging a minor in prostitution without using violence, threat of violence or deceit, belongs to the crimes against the family and minors and these acts are not included in the crimes against public morals. Human trafficking, including human trafficking with the purpose of engaging an individual into prostitution (Criminal Code, Art. 143¹, note N1(d)) belongs to the group of crimes against human rights and freedoms.

Therefore, engagement of an individual in prostitution (including of a minor) needs to be recognized at the legislative level as a crime of relevant gravity and this crime shall not be envisaged in the framework of public morals. The crime shall be moved to the relevant chapter of the Criminal Code and shall be classified as a crime against human rights or sexual freedom/inviolability. If the crime is committed against a minor (Criminal Code, Art. 253.2), the object for protection shall be the minors themselves, rather than public health or morals.

B. LEGAL REMEDIES FOR VIOLENCE AGAINST SEX WORKERS UNDER THE ISTANBUL CONVENTION AND THE GEORGIAN LEGISLATION

1. Mechanisms for Protection from Violence against Women - Istanbul Convention

In 2017 the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) entered into force in Georgia. Under the Convention, “violence against women is a manifestation of historically unequal power relations between

⁷⁴ Criminal Code of Georgia, Chapter XXXII, Crime against Public Health and Morals

⁷⁵ Commentary of the Criminal Code of Georgia, Specific Part, co-authored, p. 653.

women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women. Recognizing the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”⁷⁶

International human rights norms (including the practice of the European Court of Human Rights and the Inter-American Court) recognize violence against women as a form of discrimination.⁷⁷ General Recommendation N19 of the Committee on the Elimination of Discrimination against Women defines that “gender-based violence is a form of discrimination, which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁷⁸

The Istanbul Convention recognizes that women are often subjected to the following crimes: domestic violence, stalking, rape, forced marriage, so called honor killings, female genital mutilation.⁷⁹ The Convention recognizes all these crimes as forms of violence, serious violations of human rights and the main obstacle for achieving equality between women and men. The Convention also recognizes that victims of domestic violence can be women, as well as men, but this form of violence disproportionately affects women.⁸⁰

The UN Convention on the Elimination of All Forms of Discrimination against Women does not include the definitions of crimes against women. On the other hand, the Istanbul Convention requires that the state shall impose criminal responsibility for crimes against women’s life and health, including **violence against women**⁸¹, **domestic violence**⁸², **psychological violence**,⁸³ **stalking**,⁸⁴ and **physical violence**.⁸⁵

The Istanbul Convention defines *gender-based violence against women* as violence that is directed against a woman because she is a woman or that affects women disproportionately (Istanbul Convention, Art. 3.c.).

2. Mechanisms for Protection against Violence in Georgian Legislation

As a result of the ratification of the Istanbul Convention in May 2017, amendments were made in the Georgian legislation (entered into force on 1 June 2017), which expanded the mechanisms and services against violence. Under the amendments, these mechanisms are available not only for domestic violence victims, but also to all victims of gender-based violence, which means that they can be applicable to sex workers who experience violence from a family member, a client, former client or any other person. Even though gender-based violence disproportionately affects various

76 Istanbul Convention, Preamble

77 Committee on the Elimination of Discrimination against Women, General Recommendation N19, 1992 ¶. Para. N1; See also Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention), Istanbul, 11.05.2011, Art. 3(¶); Opuz v. Turkey, app. N33401/02, European Court of Human Rights, 09.06.2009, para. N200

78 General Recommendation N19 of the Committee on the Elimination of Discrimination against Women, see: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

79 Istanbul Convention, Preamble

80 Istanbul Convention, Preamble

81 Istanbul Convention, Art. N3.a.

82 Istanbul Convention, Art. N3.b.

83 Istanbul Convention, Art. N33

84 Istanbul Convention, Art. N34.

85 Istanbul Convention, Art. N35.

vulnerable groups, including sex workers, the legislation of Georgia does not envisage any special mechanisms for them, other than the applicable general mechanisms.

Violence against women and domestic violence are criminal offences.⁸⁶ The legislation also envisages administrative mechanisms (restraining and protection orders). Shelters and crisis centers operate for women.⁸⁷

In 2015-2017, in accordance to the Istanbul Convention, the following acts became punishable: forced marriage, stalking, female genital mutilation and forced sterilization. Criminal provisions on rape and sexual violence were amended. Crimes committed against family members and crimes committed on the basis of sex discrimination are aggravating factors of crimes.⁸⁸ Minimum age of marriage became 18 without any exceptions.⁸⁹ The Constitution of Georgia was amended to ensure substantive equality for women in contrast to the formal equality approach.⁹⁰

Despite the above, criminal provisions on sexual violence are still not in compliance with the Istanbul Convention. In addition, sexual harassment is still not punishable by law. The Georgian Criminal Code does not separately criminalize psychological violence outside the family and does not separately envisage femicide — the killing of a woman or a girl due to her gender.

Other than the above provisions, the Georgian Criminal Code does not envisage any gender specificity for crimes of violence against women, even though some crimes are committed against a woman because she is a woman, or the crime disproportionately affects women. Under Georgian legislation, violence against women and domestic violence, contrary to international norms, are not envisaged as discrimination against women.

C. ANALYSIS OF ADMINISTRATIVE OFFENCES ON PROSTITUTION

1. Statistics on Prostitution

According to information provided by the Georgian Ministry of Interior Affairs, instances of prostitution among women sex workers defined by year:⁹¹

- ✓ 2005-2007 – 0 incidents;
- ✓ 2008 – 11 incidents (one fine and one warning in Tbilisi and nine fines in the region of Imereti, Racha-Lechkhumi and Kvemo Svaneti);
- ✓ 2009 – 0 incidents;
- ✓ 2010 – 3 incidents (all three individuals received warnings in Samtskhe-Javakheti);
- ✓ 2011 – 0 incidents;
- ✓ 2012 – 3 incidents (all three individuals received fined in Samtskhe-Javakheti);

86 Criminal Code of Georgia, Art. 126¹ and 126.

87 Law on Prevention of Violence against Women and/or Domestic Violence, Protection and Support of Victims of Violence, 2006.

88 Criminal Code of Georgia, Art. 150¹, 151¹, 133², 133¹, 137, 53^{1.1} and 53^{1.2}.

89 Civil Code of Georgia, Art. 1108

90 Constitution of Georgia, Art. N11.3. The Article will come into force after the election of the next president.

91 Letter of the Ministry of Interior of Georgia, N2976011, 29.11.2016.

- ✓ 2013 – 21 incidents (19 fines in Imereti, Racha-Lechkhumi and Kvemo Svaneti and one warning and one fine in Samtskhe-Javakheti);
- ✓ 2014 – 7 incidents (three fines and four warnings in Imereti, Racha-Lechkhumi and Kvemo Svaneti);
- ✓ 2015 – 54 incidents (41 warnings in Tbilisi and 13 fines in Samegrelo and Zemo Svaneti);
- ✓ January-September 2016 - 0 incidents.

According to these statistics, the highest recorded level of prostitution was 41 incidents in Tbilisi in 2015. This is followed by Imereti, Racha-Lechkhumi and Kvemo Svaneti, in 2013 when 19 incidents were recorded.

In the framework of the study, decisions based on Art. 172³ of the Administrative Offences Code during the years of 2007-2017 were obtained from courts in Tbilisi, Batumi, Gori, Zugdidi, Telavi and Kutaisi City/Regional. Based on the information provided, only Tbilisi City Court had ruled on administrative offences cases on prostitution. The rest of the courts had not heard any cases under this article:

- ✓ In 2015 **Tbilisi City Court** heard 38 cases under Art. 172² (prostitution), where the administrative offender was a woman. In 2016 the court heard three similar cases. There were no cases filed under this article in the years of 2010-2014 or in the first five months of 2017.⁹²
- ✓ From 2010 to 2017 **Zugdidi Regional Court** did not hear any cases based on Art. 172² (prostitution). The court does not have any record of cases on this matter heard in 2007-2010 (records are stored in LEPL Common Courts Department).⁹³
- ✓ From 2012 to June 2017 **Gori Regional Court** did not hear any cases based on Art. 172² (prostitution). The court does not have any record of cases on this matter heard in 2010 (records are stored in LEPL Common Courts Department).⁹⁴
- ✓ From 2007 to June 2017 **Telavi Regional Court** did not hear any cases based on Art. 172² (prostitution).⁹⁵
- ✓ From 2013 to June 2017 **Batumi Regional Court** did not hear any cases based on Art. 172² (prostitution). The court does not have any record of cases on this matter before 2013 (records are stored in LEPL Common Courts Department).⁹⁶

2. Deficiencies in the Law on Imposing Administrative Responsibility for Prostitution

Imposing administrative responsibility on sex workers proves to be arbitrary due to the fact that there is no definition of prostitution in the Administrative Offences Code of Georgia and there is no designated body authorized to issue the administrative offences protocol for prostitution.

The Administrative Offences Code does not envisage the **definition of prostitution** – Art. N172³ of the code only defines the responsibility for prostitution and does not identify what kind of an act constitutes prostitution, which is the administrative offence. This absence gives law enforcement and the courts room to arbitrarily interpret the act that constitutes an administrative offence. The substance of the article:

92 Letter of Tbilisi City Court, dated 22 June 2017 N3-0486/1977239.

93 Letter of Zugdidi Regional Court, dated 26 June 2017 N449.

94 Letter of Gori Regional Court, dated 30 June 2017, Nგ/გ - 7887.

95 Letter of Telavi Regional Court, dated 26 June 2017, N407.

96 Letter of Batumi City Court, dated 30 June 2017, N407 გ/გ.

Article 172³ – Prostitution

Prostitution- shall carry a warning or a fine of up to one half of the minimum wage.

The same act committed within one year after the imposition of an administrative penalty – shall carry a fine from one half to one minimum wage.

Note: victims of human trafficking and person declared to be a victim of the crime provided in Articles 143¹ and/or 143² of the Criminal Code of Georgia shall be released from administrative liability if they committed the act as a result of being trafficked before obtaining the status of a victim of human trafficking.

The Administrative Offences Code does not identify a person/body that is authorized to issue the administrative offences protocol for prostitution. The Ministry of Internal Affairs, according to the code, does not have the authority to issue the protocol on prostitution. In particular, Chapter N3 of the code identifies the authorized bodies for hearing administrative offences. None of these bodies envisages hearing prostitution under Art. 172³.

Despite this, the code identifies the state bodies (authorities), which have the authority to exercise administrative detention (Art. 246 of the code). Under this article, the bodies of the Ministry of Interior are authorized to detain the offender in case of prostitution. Administrative detention is possible in cases envisaged by the law to prevent an administrative offence when all the other measures are exhausted; to identify an individual; to issue an administrative offences protocol if it is not possible to issue the protocol on the spot, etc. (Art. 244 of the Code).

Under the above-mentioned article, a police officer is authorized to detain a sex worker to prevent an administrative offence (when other measures are exhausted), or to issue an administrative offences protocol, if it is not possible to issue the protocol on the spot. Respectively, if it is possible to issue the protocol on the spot and **if it is not necessary to detain a sex worker to prevent an administrative offence, there is no legal provision to authorize a law enforcement officer to issue an administrative offences protocol.** At the same time, even in the case of detention, even though the person authorized for detention is identified, the code does not specify the person authorized to issue the protocol.

Moreover, the code lacks any reference to city/regional courts, as authorized bodies to hear the cases of prostitution, to exercise judicial control over the administrative offences protocol. Prostitution does not fall on the list of offences that are heard by the court (Art. 208 of the Code),⁹⁷ which is a deficiency in the text of the code.

97 Article N208: Regional (City) Court hears cases of administrative offences, which are envisaged under Art. 42¹ and 42², 43.2, 43¹⁻⁴⁴³, 44⁵, 44⁷⁻⁴⁶⁴, 48, 49, 50¹, 51-55⁴, 56, 57-59, 59², 60, 60³⁻⁶¹¹, 63-65, 66-69, 71, 71¹, 72¹⁻⁷⁸, 79¹⁻⁸¹, 82¹, 82², 84-86, 87¹⁻⁸⁹³, 91², 91³, 94, 95, 99, 100¹, 100², 103¹, 104 and 105¹, 127^{1.5}, 128¹⁻¹²⁸⁵, 143, 144, 144¹⁰, 145, 146¹, 148, 150-151, 152, 152², 152³, 153, 153¹ and 153³⁻¹⁵³⁵, 153^{6.2}, 154-154², 155¹⁻¹⁵⁶, 157¹⁻¹⁵⁸¹, 159, 159¹, 159⁴⁻¹⁵⁹¹⁰, 163, 164, 164⁴, 165¹⁻¹⁶⁵³, 166 and 167, 171.3, 171¹, 172, 172⁴⁻¹⁷²⁶, 173, 173⁴⁻¹⁷³⁷, 173⁹, 173¹² and 174¹, 174^{15.4}, 175¹, 175², 177⁸, 177⁹, 177¹¹⁻¹⁷⁸, 179¹⁻¹⁷⁹³, 180 and 181, 181^{1.2}, 182, 183, 187, 187¹, 189, 192, 195, 196³, 196⁶, 197¹, 197² and 199¹.

3. Analysis of Court Decisions on Prostitution

a. Trends in the Court Decisions on Prostitution

Even though the Administrative Code does not specify that the court hears cases under Art. 172³ of the code (prostitution), the Tbilisi City Court heard 38 cases in 2015 and three cases in 2016 under the given article. The Court can hear any cases envisaged in the Code. Out of these cases, five decisions were provided by the court as public information for the purposes of this study, which reveal the following:

Body responsible to issue an administrative offences protocol: in all the cases the body issuing the protocol is the Tbilisi District Inspectors Unit in the Tbilisi Main Police Department of the Ministry of Interior, which submitted the materials of the administrative offence to the court.

Dates of the administrative offences: April of 2015 (four decisions), May of 2015 (one decision). Information on the administrative offence: the decisions describe that the individual was engaged in prostitution voluntarily at a bar-restaurant located in Tbilisi. The text of the decision does not include how the fact of prostitution was confirmed.

Evidence confirming the commission of the administrative offence: protocols of administrative offence and testimonies of the persons who issued the protocols and who supported the protocol issued by them. Two of the decisions also include the protocols of witness interrogation.⁹⁸ In one of the cases, the person who issued the administrative offences protocol did not appear at the court session.⁹⁹ Despite this, the sex worker was charged with administrative responsibility. In all the cases, the sex workers confirmed the protocol of administrative offence. In one case, the sex worker “sincerely repented” the commission of the administrative offence.¹⁰⁰

Aggravating and mitigating circumstances: in all the cases except one, the mitigating circumstance was the confession of the offence by the person. In one case, the decision does not include mitigating and aggravating circumstances.¹⁰¹

b. Deficiencies in the Court Decisions on Prostitution

In the court decisions on prostitution (Art. 172³ of the Code) the following deficiencies are identified: the court decides the case based on the submission of administrative offence documents by an unauthorized body (Ministry of Interior) and the court decisions are not sufficiently substantiated. As mentioned above, under the Code, the bodies of the Ministry of Interior are not authorized to hear the administrative offence of prostitution, if the detention of a person for issuing the protocol is not required, and to submit to the court the materials of administrative offence.

Court decisions imposing administrative responsibility must be substantiated and they must be based on the combination of evidence, which undoubtedly establishes the person’s responsibility

98 Decision of Administrative Chamber of Tbilisi City Court of 28 April 2015. Judge: Nino Buachidze. Decision of Administrative Chamber of Tbilisi City Court of 23 April 2015. Judge: Khatia Ardazishvili.

99 Decision of Administrative Chamber of Tbilisi City Court of 6 May 2015, Judge: Nana Daraselia.

100 Decision of Administrative Chamber of Tbilisi City Court of 28 April 2015. Judge: Inga Kvachantiradze..

101 Decision of Administrative Chamber of Tbilisi City Court of 6 May 2015, Judge: Nana Daraselia.

for the administrative offence.¹⁰² The decisions studied as part of this paper are not substantiated, as they do not include the description of the committed act and do not provide the necessary evidence.

Description of the fact of prostitution: none of the decisions describe either the nature of the act committed, which constitutes an administrative offence, or the way in which the fact was established/identified. All the decisions only note that the person was engaged in prostitution in a bar-restaurant located in Tbilisi. The decisions do not describe how the individual engaged in prostitution or how the law enforcement identified the act.

Evidence confirming prostitution: the court decisions lack sufficient evidence to confirm the administrative offence, as mostly the court relies on the administrative offences protocol issued by the law enforcement and the officer's explanatory statements supporting the protocol. In two cases the court refers to witness statements, however, the decisions do not include any information about who the witnesses were or facts they were witnessing.

Conclusion:

The court decisions studied for this paper revealed violations against sex workers during the sentencing: Ministry of Interior issues the administrative offences protocol and submits it to the court, which, according to the criminal code, is not authorized to issue the protocol unless the person is detained; court decisions assigning responsibility for prostitution are not substantiated—they do not provide the description of the administrative offence and they are not grounded in sufficient evidence to prove the commission of the offence.

c. Non-compliance with a lawful order or demand of a law-enforcement officer (Art. 173 of the code)

i. Statistics on the Recorded Offence

Sex workers report¹⁰³ that they are often charged with non-compliance with a lawful order or demand of a law-enforcement officer (Art. 173 of the code) rather than for prostitution. The reason for this might be that there is not definition for prostitution in the Administrative Offences Code and as determining guilt for prostitution requires a set definition for the act.

Non-compliance with a lawful order or demand of a law-enforcement officer, verbal abuse of and/or any other abusive act against such a person while in the line of duty, shall carry a fine from GEL 250 to 2000 or an administrative penalty of up to 15 days.¹⁰⁴ Therefore, the responsibility

102 Tbilisi City Court with the decision dated 5 November 2015 (case N #4/6426-15), based on Article 40 of the Constitution, explained as follows: "all doubts that cannot be confirmed in accordance with the law, shall be decided in favor of the defendant.[...] This standard also applies to the person charged with administrative offence and in case of recognizing a person as an administrative offender and imposing administrative responsibility, there shall be the combination of evidence, which will confirm the fact of the commission of the administrative offence without doubt. All the doubts shall be interpreted in favor of the defendant."

103 Focus group interview with sex workers conducted by GYLA in Tbilisi, in March 2016.

104 Art. 173 of the Administrative Offences Code provides as follows: Non-compliance with the lawful order or demand of a law-enforcement officer, military servant, officer of a Special State Protection Service or enforcement police officer or verbal abuse of and/or any other abusive act against such person while such person is in the line of duty (except as provided by the Criminal Code of Georgia), shall carry a fine from GEL 250 to 2 000 or an administrative penalty of up to 15 days.

under Art. 173 is more serious (envisages a higher fine and administrative detention) than for prostitution (Art. N172³).

To examine the above facts and analyze the adequacy of the proceedings, first instance court decisions under Art. 173 of the Code, where the offender was a woman, were analyzed:

- ✓ In 2013-2017 Batumi City Court heard 57 cases;¹⁰⁵
- ✓ In 2010-2017 (May) the Tbilisi City Court heard 421 cases;¹⁰⁶
- ✓ In 2013-2017 (June) the Zugdidi Regional Court heard 15 cases;¹⁰⁷
- ✓ In 2016-2017 (June) the Gori Regional Court heard eight cases;¹⁰⁸
- ✓ In 2016-2017 (June) the Telavi Regional Court heard three cases.¹⁰⁹

ii. Analysis of Court Decisions

In the framework of the study, 32 decisions based on Art. 173 of the code (non-compliance with a lawful order or demand of a law-enforcement officer)¹¹⁰ handed down by the above mentioned courts were analyzed. In all the cases the administrative offender was a woman.

None of the decisions state that the administrative offender was a sex worker. Based on the factual circumstances described in the decisions it is not possible to confirm that administrative responsibility was imposed in the context of sex work, e.g. in many cases, in the description of the administrative offence, it is only suggested that an individual committed a verbal assault and disrespected a police officer in a specific territory, or did not comply with the lawful order of a police officer to maintain public order.¹¹¹

The factual circumstances in some of the cases, however, indicate that the administrative offence was committed in a situation that resembled prostitution, e.g. in a number of cases Gori Regional Court ruled based on Art. 166 (minor hooliganism) and Art. 173 for repeated acts. Under 19 July 2016 decision of Gori Regional Court, administrative responsibility was imposed on a person who had been charged under the mentioned article 15 times. The woman had been found guilty 46 times in total in 2007-2016. The administrative offence committed by her is described as follows: a drunk individual insulted the police officer in the street. She was “cursing in a loud voice and was using profane language, with which she was disturbing the public order. She did not comply with the demand of the police officer to preserve order, resisted to him and verbally insulted him.”¹¹² She was sentenced to administrative detention from 5 to 14 days for the repeated act.

105 Letter N4073/3 of Batumi City Court dated 30 June 2017.

106 Letter N3-086/1977239 of Tbilisi City Court dated 22 June 2017.

107 Letter N449 of Zugdidi Regional Court dated 26 June 2017, with which copies of 15 court decisions were provided.

108 Letter of Gori Regional Court N□/□ 7887 dated 30 June 2017.

109 Letter N407 of Telavi Regional Court dated 26 June 2017.

110 Zugdidi Regional Court – 15 decisions; Gori Regional Court – 10 decisions; Telavi Regional Court – 3 decisions; Tbilisi City Court – 5 decisions.

111 E.g. Tbilisi City Court decision dated 02.03.2017; Tbilisi City Court decision dated 23.04.2015; Zugdidi Regional Court decision dated 26.09.2015; Zugdidi Regional Court decision dated 26.09.2015.

112 Gori Regional Court decision dated 19 July 2016. See also Gori Regional Court decision dated 2 March 2016; Gori Regional Court decision dated 12 April 2016; Gori Regional Court decision dated 25 March 2016; Gori Regional Court decision dated 9 March 2016.

III.

**Violence against Sex Workers and
Their Access to Justice – Analysis of
Focus Group Interviews**

Focus group interviews¹¹³ conducted in Tbilisi, Batumi, Zugdidi, Telavi and Kutaisi throughout 2016 revealed that women sex workers are subjected to various forms of violence and discrimination by the police, clients and members of society. For these abuses they have no access to legal remedies. Sex workers are not informed and have not applied the existing mechanisms for protection against violence against women and domestic violence and services. However, it should be noted that the amendments put in place as a result of the Istanbul Convention, which cover all forms of gender-based violence outside the family, were not in force at the time of focus groups.

Violence committed by the police

Sex workers living in Tbilisi, Batumi, Zugdidi and Kutaisi stated that they or the other sex workers that they know are regularly subjected to physical, psychological, sexual violence or coercion by the police.

Imposing administrative responsibility on sex workers for prostitution, and imposing the responsibility for the lack of compliance with the order of the police officer when the facts of prostitution could not be confirmed, proved to be a concerning issue. The sex workers stated that more often they were imposed fines for disobeying the orders of the police rather than for prostitution. The amount of fine for this offence is several hundred GEL (much more than for prostitution), which most often the sex workers were not able to pay.

Coercing sex workers into providing sex services without remuneration by the police proved to be particularly concerning. As police officers resort to imposing administrative responsibility or coercion if sex workers disagree, sex workers are forced to provide sex services to them. Coercing sex workers into sex service is most of the times committed when police officers have consumed alcohol. Sex workers that “cooperate” with the police with planting drugs in the clients for getting them charged with false crimes, enjoy safety and protection by the police.

Violence committed by clients and police response

Sex workers stated that they are often subjected to physical, psychological, sexual, economic violence, coercion, blackmail and stalking by clients. Mechanisms of protection from these forms of violence are inaccessible or ineffective, and clients act with the belief that they will not be held responsible for these acts. Applications of sex workers to the police on violence (which is particularly rare) are left without response, or the abusers are imposed largely inadequate sanctions. Therefore, there is the impression that law enforcement officers act with discrimination and do not regard the crimes committed against sex workers as crimes of sufficient gravity.

Clients commit physical and sexual violence against sex workers, when a sex worker does not agree with a specific form of a sexual service (the client violates the prior agreement), or when the client does not have enough money for the service, or when a sex service is provided in an unprotected or uninhabited area.

Sex workers living in Batumi, who provide service to ethnic Georgians as well as to ethnic Turkish men, note that violence and humiliating treatment is more often committed by ethnic Georgians.

The rate of applications of sex workers to the police is extremely low, as sex workers do not have the trust to law enforcement and they also fear that their status will be revealed as a result of the application of these mechanisms. The reason for this is on the one hand that the police officers

¹¹³ The focus group interviews conducted throughout 2016 covered only cisgender sex workers (26 women). The study did not cover transgender sex workers.

in most cases appear to be the abusers against sex workers, rather than the protectors of their rights. On the other hand this mistrust is based on the prior negative experience of other sex workers in relation to failures in the investigation of crimes (including the crimes that have no connection to prostitution). Sex workers also refrain from applying to the police when there is the possibility of uncovering crimes related to prostitution, which could be detrimental to them (e.g. charging a person from whom a sex worker rents property).

Sex workers noted that in cases of violence committed by clients or potential clients they largely refrained from applying to the police, except for the cases when they enjoyed protection from the police in return for e.g. cooperating with police officers in illegal acts or when providing sex services for free. Sex workers stated that they would apply to the police only when the clients resorted to physical violence against them, rather than psychological violence and harassment. Even though physical violence is a criminal offence, the only measure taken by the police is isolating the abuser from the sex worker and offenders are not brought to justice in these cases. Sex workers also stated that even when a crime committed against them has no connection with sex work, the police actions are still discriminatory. The police negligently respond to these cases because of the status of the victim. Sex workers could not in fact recall any cases of bringing a perpetrator to justice for violence committed against them, apart from the most extreme form of violence, such as murder.

Cases of blackmailing sex workers with disclosing their personal data, including through the internet, or the threat of such disclosure, is also frequent.

Some of the sex workers living in Batumi also reported that up until 2012 the police provided better response to crimes against them compared to today. Therefore, sex workers try to find the solution for violence by themselves and they often move around with tear gas, syringes or batons.

Domestic violence and attitude of the society

Some of the sex workers noted that they entered sex work after they had experienced domestic violence committed by their husbands. The participants stated that sex workers often experience physical and psychological violence in the family after the family members find out about their status. Because of sex work, family members sometimes force sex workers out of the home. Sex workers also noted about physical and sexual violence and destruction of their belongings by partners with whom they cohabit.

Sex workers noted that they are completely vulnerable against stigma, discriminatory treatment and aggression from the society. According to one of the sex workers, the society shuns them and perceives them like objects. As sex workers are ashamed of their activities and the society shuns them, they cannot go to public gatherings and significant events of their family and relatives, such as weddings, birthdays and funerals. They also refrain from contacting the friends of their children and from appearing in public together with them, as they are afraid that they will be subjected to humiliating treatment from people who know about their status.

Reasons for entering into and staying in sex work

The vast majority of sex workers interviewed in all the cities stated that they got engaged in prostitution because of extreme economic hardship and for the survival of themselves and their children. However, they still were not able to get away from poverty through prostitution. One of their major concerns is the lack of protection guarantees in sex work. Some sex workers got engaged in prostitution after they were subjected to domestic violence or trafficking, including in Turkey.

Conclusions and Recommendations

The study on violence against women sex workers and on their access to justice revealed that all laws and practices related to prostitution must be analyzed in the context of gender-based violence and intersectional discrimination. Structural inequality, which sex workers experience because of their gender, marginalization and social status, affects the decision of sex workers to enter and remain in prostitution, and the repressive legislation hinders their access to legal remedies to protect themselves from violence.

Focus group interviews conducted in the framework of the study revealed that other than gender-based and other forms of discrimination, sex workers experience stigma and marginalization because of sex work. Stigma and administrative responsibility for sex work often forces sex workers to work underground and in unsafe conditions, where they in practice lack access to resources and legal mechanisms.

Sex workers experience various forms of abuse committed by law enforcement, which is one of the main reasons of why they are reluctant to apply to the police when they are subjected to violence by clients. Arbitrary and unlawful actions committed by police is pre-conditioned by repressive and discriminatory legislation against women, as well as impunity for crimes committed against sex workers. The focus group interviews also revealed that the police officers actions are discriminatory, as they do not regard the crimes committed against sex workers as crimes of the same gravity as similar crimes committed against women who are not sex workers.

The reviewed court decisions on imposing administrative responsibility for prostitution revealed a range of procedural violations of the Administrative Offences Code of Georgia and the lack of substantiation of the court decisions, which create the risk of unlawful, arbitrary and discriminatory application of the existing legislation. This is largely determined by prostitution being an administrative offence, the absence of the definition of prostitution in the legislation and the absence of the body authorized to issue the administrative offences protocol for prostitution.

To protect sex workers from gender-based violence and ensure their access to justice, systemic changes are needed in legislation, policy and practice to eradicate human rights abuses resulting from prostitution, to target the root causes of these abuses and ensure substantive equality for women.

Recommendations:

To the Parliament of Georgia

- ✓ To remove Article 1723 (prostitution) from the Georgian Administrative Procedure Code to decrease the risk of gender-based violence against sex workers and increase their access to justice;
- ✓ To move engagement in prostitution (including of a minor) to the relevant chapter of the criminal code, which will classify the crime as a crime against human rights or sexual freedom. If the crime is committed against a minor (Art. 253.2 of the criminal code), the object of protection shall be the minor, not public health or morals.

To the Ministry of Interior, Chief Prosecutor's Office and the Common Courts

- ✓ To effectively investigate and punish the abuse of power, gender-based violence and other crimes committed by law enforcement officials against sex workers;
- ✓ To stop the practice of imposing administrative responsibility on sex workers for non-compliance with police orders, when this is used to suppress prostitution;
- ✓ To ensure monitoring of the application of legal remedies by sex workers (criminal and administrative remedies) and create relevant statistics, including statistics on the prosecutions for crimes against sex workers;
- ✓ To ensure the protection of sex workers against violence and increase their access to justice through training law enforcement officials and judges. The trainings shall include the analysis of intersectional discrimination against sex workers and barriers to justice.

To the Government of Georgia

- ✓ Protection of human rights of sex workers (including social and economic rights) shall become a part of the government's Human Rights Action Plan. Among other issues, the plan shall envisage the measures to be undertaken by the state to ensure that women do not engage in prostitution due to severe economic conditions;
- ✓ In accordance with the CEDAW Committee, the state shall ensure support services for women who want to leave prostitution and provide them with relevant trainings and other support to find alternative means of earning a living;
- ✓ To ensure raising awareness about legal mechanisms among the community of sex workers;
- ✓ The state shall take measures to combat women's sexual objectification, as one of the important root causes of the demand on prostitution;
- ✓ All decisions undertaken concerning sex workers shall be based on evidence and close cooperation with the community of sex workers. Protection of the human rights of sex workers shall be the focal point for all decisions and policies.

