

The Declaration of the Rights of Sex Workers in Europe

This declaration was elaborated and endorsed by 200 sex workers and allies from 30 countries at the European Conference on Sex Work, Human Rights, Labour and Migration 15 - 17 October 2005, Brussels, Belgium

Why do we need a Declaration of the Rights of Sex Workers in Europe?

Different approaches have been adopted across Europe responding to the sex industry and female, male and transgender sex workers – including migrant sex workers – ranging from the acceptance of sex work as labour and the introduction of labour rights for sex workers through to the criminalisation of a wide range of practices associated with sex work, which at times results in the criminalisation of the status of sex worker, sex workers partners or their clients.

Over the last years, legislative measures that restrict the fundamental rights and freedoms of sex workers proliferate at local, national and international levels, claiming to be in the interests of combating organised crime and promoting public health. However, many of these measures are implemented against the policy and principles set out by advice of UNAIDS and the World Health Organisation which note that repressive legislation restricting the rights of sex workers in fact undermines public health policies by driving the sex industry underground, making practices central to safe sex evidence of crimes such as possession of condoms. In addition, such measures contradict the European Parliament's Resolution on Violence Against Women¹ that called for the decriminalisation of the exercise of the practice of prostitution, a guarantee that prostitutes enjoy the rights of other citizens, and the protection of prostitutes' independence, health and safety. Moreover, many measures are in violation of the obligation of States under international human rights law to respect, promote and protect the human rights of all persons within their territory, without discrimination, and including the right to privacy, to a family life, to legally leave and return to one's country, to be free from torture, inhuman or degrading treatment and from arbitrary detention, and in favour of the freedom of expression, information, association and movement.

Despite the fact that evidence shows that migrant workers in all sectors face increasing levels of abuse and exploitation with impunity European responses to increasing international migration have focussed on restrictive legislation with little attention paid to protecting migrant's rights and freedoms. To date Bosnia and Turkey are the only European countries to have ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which came into force 1 July 2003.

Sex work projects and sex worker's organisations in Europe have substantial recorded and anecdotal evidence that discriminatory legislation and behaviour, which cannot be justified on the grounds of protecting public health or combating organised crime, restrict the fundamental rights and freedoms of sex workers, at local, national and international levels. These practices occur across health and social care, housing, employment, education, administrative law and criminal justice systems. Not all countries are listed below, however there is not one country within Europe – including those with regulated sex industries – where sex workers have not reported discrimination and violations of their human rights.

¹ European Parliament Resolution on Violence Against Women, 1986, Doc. A2-44/86.

In Austria sex workers are subjected to mandatory sexual health controls, but other sexually active citizens are not thus promoting the image of sex workers as 'unclean', and violating the principle of non-discrimination.

In Finland, it is illegal for sex workers to work together for their own protection without the sex workers facing prosecution for 'pimping' one another, violating their rights to peaceful assembly and association and favourable conditions of work.

In France, a sex worker's child, upon reaching the age of majority, may be prosecuted with 'living off' the sex worker's earnings, violating the right of sex workers to respect for his/her private and family life and to be free from arbitrary interference with this right.

In Greece, where sex work is legal and sex workers registered, a sex worker cannot marry. If they do, they are not allowed to continue to work legally and will lose their license. Sex workers are therefore forced to choose between the enjoyment of their right to marry and found a family or their right to livelihood and to practice a profession. No one should be forced to make this choice.

In Italy, with impunity police confiscate and throw away or burn sex workers' possessions, thus violating sex workers' right to property and the state's obligation to provide an effective remedy in respect of protecting their right to property, to equal protection of the law and to protection against discrimination.

In the Netherlands, where sex work is accepted as legal work, migrant sex workers, as the *only* category of employees, are as a category excluded from getting legal work permits, thus violating the right to non-discrimination, as for all other types of work non-nationals can obtain a legal work permit when the conditions as laid out in the Law on Migrant Workers are fulfilled.

In Portugal (and many other countries) sex workers lose custody of their children through social services or family courts solely because of their occupation, and not based on any specific evidence of harm or incapacity to parent, violating their right to be free from arbitrary interference with their family life and non-discrimination.

In Romania, where sex work is illegal the government has forbidden its citizens to engage in sex work. As a result of pressure from the Romanian government the Austrian government has terminated the permits of Romanian sex workers and women who have worked *legally* in Austria may face retribution on their return, violating their right to seek gainful employment in a country other than their own.

In Russia, police threaten sex workers that they will be sold into slavery and force them to have sex without payment, thus violating the obligation of the state to provide an effective remedy in respect of protecting sex workers' right to security of person and equal protection of the law.

In Slovakia, health care workers with impunity refuse medical care to sex workers and make discriminatory comments to pregnant sex workers challenging their suitability to bear children, violating their right to protection by the state of the highest attainable standard of physical and mental health and to found a family.

In Spain, sex workers in brothels are required to undergo and pay excessive fees for sexual health checks by the owners. The results of their tests are not treated confidentially; the state is failing to provide an effective remedy in respect of protecting their right to privacy, health and the violation of medical codes of practice.

In Sweden, politicians and policy makers have threatened to withdraw from public debates if sex workers are also to participate and sex workers have been systematically excluded from public debate, violating their right to freedom of expression and opinion.

In the United Kingdom, where street-based sex workers are criminalised, Anti-Social Behaviour Orders are used to restrict freedom of movement and in some cities posters identifying sex workers with names and photographs have been printed and distributed in communities, violating the right to privacy and to participate in public life; exposing sex workers to discrimination and violence.

Under international law it is a fundamental human right that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. However, there must be real doubt as to whether sex workers in Europe have, in practice, equal access to the protection of the law. There are, for sex workers in Europe, compelling reasons to avoid using the judicial system to challenge discrimination, violence and other abuses through the courts.

History of the Declaration

The process leading to the Declaration was initiated by SIGN (Sexwork Initiative Group Netherlands), a network of Dutch sex workers and sex worker rights activists. The establishment of SIGN was the first step towards creating a broader base of individuals from across Europe interested in organising a conference and advocating for the rights of sex workers in Europe. In June 2003 SIGN solicited participation from sex workers and sex worker organisations across Europe to join them in planning a conference. In January 2004 an international Organisation Committee (OC) was established consisting of 15 individuals, the majority being current or former sex workers, including migrants, from several European countries. The OC does not have representation from all countries or groups in Europe, but is supported by a large number of sex workers, sex workers’ rights activists and organisations working with sex workers across Europe and beyond.

It was decided by the OC that a Declaration of the Rights of Sex Workers in Europe would provide a framework for organising the conference and meet the on-going need to raise awareness of sex workers’ human rights and provide a framework within which to examine and challenge the undermining and violation of sex workers rights.

The OC established a legal body, the International Committee on the Rights of Sex Workers in Europe (ICRSE) to both coordinate the conference and as a basis for future initiatives.

Although producing the Declaration was identified as the immediate task, the International Committee on the Rights of Sex Workers in Europe also committed itself to developing on-going strategies for gaining public and political recognition and acceptance of the principles in the Declaration.

What is the Declaration?

The Declaration is not intended to be a legal document and its existence does not establish a legal framework that protects the rights of sex workers in Europe. The Declaration merely identifies human, labour and migrants rights that sex workers should be entitled to under international law and points out the states obligation to ensure

- that it does not violate rights,
- that others do not violate rights
- that all structures of the state are organised to ensure that diverse persons can enjoy and exercise their rights

The Declaration is a synthesis of all the rights that have been agreed in international treaties and covenants, to uphold for all citizens, together with specific proposals to states for steps and policies that would ensure the protection of those rights for sex workers.

The first section of the Declaration outlines the rights of all human beings within Europe. This is in all cases a simple statement taken from international agreements that European governments have signed.

The second section of the Declaration sets out measures for each of the identified rights that the signatories to this Declaration believe are needed to ensure that the rights of sex workers in Europe are respected and protected.

The international treaties that have been referred to in drafting this Declaration are:

1. UN International Covenant on Civil and Political Rights, 1966
2. UN International Covenant on Economic, Social and Cultural Rights, 1966
3. UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979
4. UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
5. UN Convention Relating to the Status of Refugees 1951
6. ILO Convention concerning Forced or Compulsory Labour (no. 29), 1930 and the Abolition of Forced Labour Convention (no. 105), 1957
7. ILO Freedom of Association and Protection of the Right to Organise Convention (no. 87), 1948
8. ILO Migrant Workers (Supplementary Provisions) Convention (no. 143), 1975 ²
9. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

² **NB:** Art. 2 of the Migrant Workers Convention, 1990, defines a migrant worker as any person “who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.

Moreover, it is based on a number of fundamental Declarations:

10. UN Universal Declaration of Human Rights, 1948
11. UN Declaration on the Right and Responsibility of Individuals, 1999
12. UN Declaration on the Elimination of Violence against Women, 1993
13. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.
14. ILO Declaration on Fundamental Principles and Rights at work, 1998
15. ILO Recommendation Migrant Workers (no. 151), 1975
16. European Social Charter, 1961 & 1996
17. EU Charter of Fundamental Rights, 2000

The International Committee on the Rights of Sex Workers in Europe selected from these treaties the rights threatened by discriminatory legislation and practice in Europe. They are:

- ❖ The right to life
- ❖ The right to liberty and security of person
- ❖ The right to be free from slavery, forced labour and servitude
- ❖ The right to freedom from torture, inhumane or degrading treatment
- ❖ The right to be protected against violence, physical injury, threats and intimidation
- ❖ The right to privacy and protection of family life, including the right to be free from arbitrary or unlawful interference with privacy, family, home or correspondence and from attacks on honour and reputation
- ❖ The right to marry and found a family
- ❖ The right to liberty of movement and residence
- ❖ The right to leave any country, including one's own, and to return to own country
- ❖ The right to seek asylum and to non-refoulement
- ❖ The right to equal protection of the law and protection against discrimination and any incitement to discrimination
- ❖ The right to a fair trial
- ❖ The right to freedom of opinion and expression
- ❖ The right to work, to free choice of employment and to just and favourable conditions of work and protection against unemployment
- ❖ The right to the highest attainable standard of physical and mental health
- ❖ The right to peaceful assembly and association with others
- ❖ The right to organise, to freedom of association and to form and join a union
- ❖ The right to information for documented and undocumented migrants
- ❖ The right to an effective remedy
- ❖ Principle of non- discrimination
- ❖ The right to participation in the cultural and public life of the society
- ❖ Obligation of States to combat prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotypes roles for men and women

Within the Declaration itself we focus on those rights that are most threatened within Europe. The Declaration is not a demand for special rights to be given to sex workers, but is based on the principle that selling sexual services is not ground for sex workers to be denied the fundamental rights to which all human beings are entitled under international law.

Solidarity

The extensive consultation process across Europe leading to the presentation and endorsement of the Declaration has been crucial in developing this collective commitment to the human rights of female, male and transgender sex workers, including migrants. Bringing together individuals and groups with widely differing experiences and perspectives has allowed “the broader view” to be taken of the importance of promoting respect for the rights of sex workers in Europe. Drawing up the Declaration has served to emphasise the common factors between sex workers and other marginalised groups whose rights are not always respected.

Finally, the Declaration allows us in Europe to make connections with the rest of the world. The Declaration, although specific to Europe, provides us with a language – the language of rights – that all countries in the world may understand and share.

Use of the Declaration

Information is a powerful force. By stating existing rights, the Declaration is intended, firstly, to act as a tool for empowering sex workers to stand up for their rights with authority and justice on their side.

Secondly, the Declaration aims to act as a benchmark by which we can judge what has been achieved, what progress we are making and where to direct our future efforts. It provides a basis for organisations and groups to lobby for universally accepted rights to be upheld and to act as advocates with sex workers in particular cases where their rights might be in dispute.

Thirdly, it offers guidance to organisations and institutions seeking to achieve equitable, non-discriminatory policy and practice.

Finally, it stands as a foundation from which to view the future. By providing guidelines it allows us to judge whether proposed legislation respects or diminishes the rights of sex workers. It also gives us a long-term aim – that of winning public recognition that respect for the human rights of *all* is integral to a healthy society.

If you wish to be included as a supporter or if you are able to provide evidence of successes or failures in promoting human rights for sex workers, please contact the International Committee on the Rights of Sex Workers in Europe at declaration@sexworkeurope.org

The Declaration of the Rights of Sex Workers in Europe

Preface

This Declaration is made by sex workers and by organisations dedicated to promoting their human rights and welfare. The Declaration lists rights that all individuals within Europe, including sex workers, enjoy under international human rights law; the Declaration then prescribes measures and recommends practices that the signatories of the Declaration believe are the minimum necessary to ensure that these rights are respected and protected. These rights must be respected and protected in the development and implementation of policies and programmes designed to address trafficking, irregular migration or terrorism.

The Declaration

All individuals within Europe, including sex workers, are entitled to the following rights under international human rights law. All European Governments are obliged to respect, protect and fulfil:

- I. The right to life, liberty and security of person**
- II. The right to be free from arbitrary interference with one's private and family life, home or correspondence and from attacks on honour and reputation**
- III. The right to the highest attainable standard of physical and mental health**
- IV. The right to freedom of movement and residence**
- V. The right to be free from slavery, forced labour and servitude**
- VI. The right to equal protection of the law and protection against discrimination and any incitement to discrimination under any of the varied and intersecting status of gender, race, citizenship, sexual orientation etc**
- VII. The right to marry and found a family**
- VIII. The right to work, to free choice of employment and to just and favourable conditions of work**
- IX. The right to peaceful assembly and association**
- X. The right to leave any country, including one's own, and to return to one's own country**
- XI. The right to seek asylum and to non-refoulement**
- XII. The right to participate in the cultural and public life of society**

These human rights are established in international treaties that European Governments have agreed to uphold.

Moreover, most treaties contain a non-discrimination clause, stipulating that these rights should be applied without discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth *or other status*. In addition the UN Human Rights Committee has stated in General comment 15 – “each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”.

Although these rights apply to all human beings, the experience of sex workers all over Europe is that States do not respect, protect, fulfil and promote their rights on the basis of equality with other nationals.

We hereby declare the rights of sex workers in Europe and urge European Governments to ensure compliance with them.

I. Life, Liberty & Security

Sex workers have the right to life, liberty and security of person, including in the determination of their sexuality, and in respect of this right:

- 1 No person should be forced, by other persons, to provide sexual services against their will, or under conditions they do not consent to.
- 2 Condoms are vital for the protection of their life and security; as such the confiscation of condoms from sex workers should be prohibited.
- 3 Governments should end the impunity for the disproportionate level of violence and murder committed against sex workers in all countries, including investigating and punishing abuses committed by law enforcement officials.

II. Privacy & family life

Sex workers have the right to be free from arbitrary interference with their private and family life, home or correspondence and from attacks on their honour and reputation, and in respect of this right:

- 4 No person should be denied the right to establish and develop relationships¹; the labelling of sex workers partner's and adult children as 'pimps' is discriminatory and implies that it is not appropriate for sex workers to have a private and family life and for other persons to establish or develop relationships with sex workers which can lead to the denial of services.

¹ In accordance with a judgement of the European Court of Human Rights, the right to privacy includes the right “to establish and develop relationships with other human beings, especially in the emotional sphere, for the development and fulfilment of one’s own personality.” *Dudgeon v United Kingdom*, Judgement of the European Court of Human Rights (1981) 4 EHRR 149.

- 5 Sex workers have the right to determine the number and spacing of their children. Current or former engagement in sex work should not be considered grounds for challenging a person's fitness to be a parent or have custody of his or her children.

III. Health

Sex workers, regardless of immigration status, have the right to the highest attainable standard of physical and mental health, including sexual and reproductive health and in respect of this right:

- 6 No person should be subject mandatory sexual health and HIV screening. All health tests should be conducted with the primary goal to promote the health and rights of the person affected.
- 7 Information about sexual health and HIV status should be kept confidential.

IV. Freedom of Movement

Sex workers have the right to freedom of movement and residence, and in respect of this right:

- 8 No restrictions should be placed on the free movement of individuals between states on the grounds of their engagement in sex work .
- 9 No restrictions should be placed on the freedom of movement of individuals within states and their communities. All regulation, at any level, that seeks to control sex workers must not infringe rights to freedom of movement, including the freedom to leave and return to one's residence, visit family or access services.

V Freedom from Slavery & Forced Labour

Sex workers have the right to be free from slavery, forced labour and servitude, and in respect of this right:

- 10 Measures should be taken to ensure that sex workers enjoy full labour rights, are informed of them and have access to the full range of measures and standards to end exploitative working conditions.
- 11 Measures should be taken to provide appropriate assistance and protection to victims of trafficking, forced labour & slavery like practices with full respect for the protection of their human rights. Provision of residency permits should be provided to ensure effective access to justice and legal remedies, including compensation, irrespective of their willingness to collaborate with law enforcement. Trafficked persons must not be returned to situations in countries that will lead to their re-trafficking or result in other harms.

VI. Equal Protection of the Law & Protection from Discrimination

Sex workers have the right to equal protection of the law including access to effective remedies as well as protection against discrimination and *any* incitement to discrimination and in respect of this right:

- 12** Where a sex worker has not committed an offence and the selling of sexual services is not illegal law enforcement officers must be prohibited from abusing their authority by interfering or harassing sex workers. When engaged in criminal investigation or arrest, law enforcement must respect the rights of all accused and defendants regardless of their status as sex workers.
- 13** States are responsible for investigating, prosecuting and adjudicating crimes committed against persons regardless of their involvement in sex work or immigration status and measures should be taken to ensure that the criminal justice system is capable and able to respond to crimes reported by sex workers, including providing training and oversight for law enforcement officers, prosecutors and judiciary. The evidence of a sex worker in criminal proceedings should not be dismissed on the basis of their status as a sex worker.
- 14** No person should have their legal belongings arbitrarily confiscated or destroyed by law enforcement agencies.

In respect to the right to protection from discrimination:

- 15** No person should be discredited in civil and family courts because of his or her current or former engagement in sex work.
- 16** Measures should be taken to protect sex workers and their dependents from discrimination in the areas of employment, housing, legal services, childcare and the provision of medical, social and welfare services, and from arbitrary and unjustified discrimination by private insurance companies;
- 17** There should be public and professional education whose specific objective is the elimination of discrimination against sex workers.

VII To Marry & Found a Family

Sex workers have the right to marry and found a family, and in respect of this right:

- 18** Current or former engagement in sex work should not restrict or prohibit sex workers from marrying the partner of their choice, to found a family and raise children.
- 19** Government should ensure that current or former engagement in sex work should not prevent sex workers and their families from accessing health care and governments should further ensure that public authorities and health services do not discriminate against sex workers and their families and respect their right to privacy and family life.

VIII. Work & Just and Favourable Conditions of Work

Sex workers have the right to work, to free choice of employment and to just and favourable conditions of work and protection from unemployment and in respect of this right:

- 20** The lack of acknowledgement of sex work as labour or a profession has adverse consequences on the working conditions of sex workers and denies them access to protection provided by national and European labour legislation.
- 21** Sex workers should be able to determine, without interference or pressure from others, the nature and conditions of the sexual services provided by them.
- 22** Sex workers are entitled to safe and healthy workplaces; accurate and up to date information about health and safety should be available to sex workers whether they are employees or self employed. In addition, no sex worker should be required to consume alcohol or other drugs as a condition of employment.
- 23** All persons are entitled to be treated with respect within their workplace and to be free from sexual harassment; sex industry workplaces, like all other workplaces, should promote respect and freedom from abuse and harassment of sex workers.
- 24** Sex workers should be entitled to equitable employment and social security benefits, including sick leave and pay, pregnancy and parental leave and pay, holidays and the right to unemployment benefits if their employment is terminated or they decide to leave sex work.
- 25** Sex workers should not be discriminated against through the payment of inflated rates for rental or essential items, such as food or services, within the workplace on the grounds of it being a sex work venue.
- 26** No person should be barred from employment or dismissed from employment on the grounds of their having engaged in sex work.

IX. Peaceful Assembly & Association

Sex workers have the right to peaceful assembly and association, and in respect of this right:

- 27** Engagement in sex work should not be considered grounds for limiting sex workers' ability to cooperate, unite and create associations to express their opinions, engage in collective bargaining and advocate for their rights.

X. Leave and Return to One's Country

Sex workers have the right to leave any country, including one's own, and to return to one's own country, and in respect of this right:

- 28** Engagement in sex work should not be considered grounds for limiting any person's right to leave or return to their own country, and any return must be conducted with full regard for their safety and security on return.

XI. Asylum and right to non-refoulement

Sex workers have the right to seek asylum and cannot be returned to situations of inhuman and degrading treatment or torture and in respect of this right:

- 29** Governments should take measures to ensure that participation in sex work does not create barriers to the right to seek asylum or non-refoulement.

XII Public Participation

Sex workers have the right to participate in the cultural and public life of society and in respect of this right:

- 30** Sex workers as with all other persons should have right to participate in the formulation of the laws and policies affecting their working and living environments.

For more information go to www.sexworkeurope.org or email declaration@sexworkeurope.org