



ALTERNATIVE REPORT
ON IMPLEMENTATION OF THE CONVENTION
ON THE ELIMINATION OF ALL FORMS
OF DISCRIMINATION AGAINST WOMEN

BASED ON THE RESULTS OF HUMAN RIGHTS MONITORING OF
TRANSGENDER WOMEN ENGAGED IN SEX WORK.
THROUGH COMMUNITY-BASED DATA COLLECTION AND ANALYSIS.

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OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

BASED ON THE RESULTS OF HUMAN RIGHTS MONITORING
OF TRANSGENDER (TRANS) WOMEN ENGAGED IN SEX WORK

THROUGH COMMUNITY-BASED DATA COLLECTION AND ANALYSIS
FOR THE SESSION OF THE COMMITTEE ON THE ELIMINATION
OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Human rights monitoring of transgender women engaged in sex work was carried out within the project "HIV and rights of transgender women engaged in sex work" implemented by self-organization of transgender people HPLGBT with financial support of *AFEW International* within the grant received from the Emergency Support Fund for Key Populations in Eastern Europe and Central Asia, with support of Elton John AIDS Foundation and Aidsfonds.



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1. SUMMARY

This report was prepared by HPLGBT NGO led by transgender (trans) people with support of *AFEW International*. Technical support was provided by the Eurasian Coalition on Health, Rights, Gender and Sexual Diversity.

This alternative (shadow) report describes the situation of transgender women engaged in sex work in Ukraine. The report is based on the human rights monitoring among transgender women engaged in sex work carried out in 2019. Within the community-led monitoring, 61 (sixty-one) cases of human rights violations were recorded and analyzed. The report includes information about the most typical human rights violations against transgender women engaged in sex work.

Any positions and views presented herein represent exclusively the positions and views of HPLGBT and may not coincide with the positions and views of HPLGBT's partners.

2. INTRODUCTION

There is extensive evidence showing that the human rights barriers hinder implementation of HIV prevention and treatment cascade and prevent access to services and retention of the key populations in relevant programs.

HIV epidemic is an unprecedented human catastrophe, causing damage and suffering to countries, communities and families in the countries of Eastern Europe and Central Asia, where it is still rapidly growing. At the same time, governmental institutions, international organizations and civil society do not make enough efforts to effectively coordinate their actions to curb the HIV epidemic.

The burden of the epidemic is deeply rooted in social, economic and gender aspects of human lives. Thus, HIV has grave consequences for the people who live in poverty, at the same time hindering the development of human potential in the countries with high rates of HIV prevalence.

Gender parity, which includes transgender people as well, contributes to the effective modernization of various institutions and community systems as well as increase in their efficiency for the benefit of people they are meant to serve.

3. BACKGROUND INFORMATION

Ukraine is one of the leaders among the countries of Eastern Europe and Central Asia in terms of HIV prevalence¹.

According to the official statistics, in May 2019 there were **341 084** HIV cases, including **114 487** AIDS cases and **49 751** AIDS-related deaths registered in Ukraine (not taking into account the data from the Crimean peninsula and territories of the armed conflict in the east of Ukraine since 2015)².

In 2017-2018, research was conducted to study the behavior and assess the needs of transgender people in HIV prevention services in Ukraine. It remains one of the largest studies in the region of Eastern Europe and Central Asia. According to the results of the study, which included transgender women and men as well as people with other gender identities, HIV prevalence among transgender people may reach 21%³. The study also showed high level of engagement in sex work among transgender people: 91% of them provided sex services at least once in their lives, among them 41% provide such services on a regular basis, 31% – sometimes.

1. UNAIDS DATA 2018.

www.HPLGBT.org/publish/TG-Monitoring_2019/library/01.pdf

2. Update on the officially registered cases of HIV, AIDS and AIDS-related deaths in May 2019.

www.HPLGBT.org/publish/TG-Monitoring_2019/library/02.pdf

3. Behavioral study and assessment of the needs of transgender people in HIV prevention services in Ukraine.

www.HPLGBT.org/publish/Research_TG_HIV-AIDS_UKR/RESEARCH_TG_HIV-AIDS_UKR_ru.pdf

4. LAWS AND REGULATIONS

In Ukraine, the issue of discrimination based on gender identity is not properly addressed. There are still discriminatory provisions remaining in the Family Code of Ukraine⁴ and in the relevant regulations.

Transphobia motives are not seen as aggravating circumstances in case of offenses. There is no visible progress in the implementation of LGBTI components of the Action Plan within the National Human Rights Strategy for the period up to 2020⁵.

Articles 24 and 37 of the Constitution of Ukraine⁶ create a certain legal basis to address hate crimes. Specific punishments for the hate crimes are stipulated in the Criminal Code of Ukraine⁷.

In practice, even if the motive of bias based on the existing grounds (racial, national, religious discord or gender) is proven, the court does not guarantee that the offender will be punished for committing a hate crime. Depending on the nature of the committed crime, the court has a right not to recognize any circumstance of the crime as an aggravating circumstance, explaining the grounds in its decision.

4. The Family Code of Ukraine.

www.HPLGBT.org/publish/TG-Monitoring_2019/library/04.htm

5. Action Plan to implement the National Human Rights Strategy for the period up to 2020.

www.HPLGBT.org/publish/TG-Monitoring_2019/library/05.pdf

6. Constitution of Ukraine.

www.HPLGBT.org/publish/TG-Monitoring_2019/library/06.pdf

7. The Criminal Code of Ukraine.

www.HPLGBT.org/publish/TG-Monitoring_2019/library/07.pdf

To reduce the statistics of the registered hate crime reports, law enforcers with no proper justification refuse to initiate pre-trial investigation with proper qualification of such crimes.

Sex work is criminalized in Ukraine. Buying sex services is not prohibited.

Code of Administrative Offenses⁸. Article 181-1. Prostitution. Engagement in prostitution leads to a warning or to a fine in the amount from five to ten tax-free minimum incomes. The same actions committed repeatedly within a year after the administrative sanctions are imposed, lead to a fine in the amount from eight to fifteen tax-free minimum incomes.

The Criminal Code of Ukraine⁷. Article 302. Creating or running brothels and trading in prostitution. Creating or running brothels, and also trading in prostitution, shall be punishable by a fine up to 50 tax-free minimum incomes, or restraint of liberty for a term up to two years. The same actions committed for gainful purposes, or by a person previously convicted of this offense, or by an organized group, shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term. Any such acts as provided for by paragraph 1 or 2 of this Article, if committed by engaging a minor, shall be punishable by imprisonment for a term of two to seven years. Any such acts as provided for by paragraph 1 or 2 of this Article, if committed by engaging a juvenile, shall be punishable by imprisonment for a term of five to ten years.

8. Code of Administrative Offences of Ukraine (articles 1 - 212²⁰).
www.HPLGBT.org/publish/TG-Monitoring_2019/library/08.pdf

The Criminal Code of Ukraine⁷. Article 303. Pimping or compelling to and engaging in prostitution. Compelling to or engaging in prostitution by using deceit, blackmailing or vulnerable state of the person, with imposition of violence or threat of violence, or pimping shall be punishable by imprisonment for a term of three to five years. Any such acts as provided for by paragraph 1 of this Article, if committed in regard to several people or repeatedly, or by a group of people in collusion, or by a public official through abuse of office, or by a person on whom the victim was financially or otherwise dependent, shall be punishable by imprisonment for a term of four to seven years. Any such acts as provided for by paragraph 1 or 2 of this Article, if committed against a minor or by an organized group, shall be punishable by imprisonment for a term of five to ten years, with or without confiscation of property. Any such acts as provided for by paragraphs 1, 2 or 3 of this Article, if committed against a juvenile or if they caused severe consequences, shall be punishable by imprisonment for a term of eight to fifteen years, with or without confiscation of property. In this Article, pimping means actions to ensure engagement of another person in prostitution. Responsibility for engaging a minor or a juvenile in prostitution or forcing them to engage in prostitution shall arise irrespective of the fact if such actions are committed by using deceit, blackmailing or vulnerable state of the person, with imposition of violence or threat of violence, through abuse of office, or by a person on whom the victim was financially or otherwise dependent.

The Criminal Code of Ukraine⁷. Article 149. Trafficking of human beings. This article is relatively rarely applied to sex workers, but there are individual cases of its application.

Legal uncertainties in the issues of voluntary sex work (prostitution) often lead to the arbitrary qualification of offenses by law enforcement agencies and create corruption risks.

Recommendations:

1. Amend the Family Code of Ukraine (including all the relevant regulations) with involvement of the LGBTI community to make sure that it does not contain any discriminatory provisions.
2. Develop the professional skills and raise the awareness of people working in public services, National Police, Criminal Enforcement Departments, courts, healthcare facilities and civil society organizations about the peculiarities of working with transgender people, stigma and discrimination, human rights and freedoms with due consideration of the gender identity and using gender-sensitive approaches, in particular through Ukraine complying with the relevant guidelines, such as "Implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions" (TRANSIT).
3. Take additional measures to eliminate stigma, discrimination and violence against transgender people from the side of medical personnel and law enforcers within their professional training.
4. Abolish the administrative sanctions for prostitution, decriminalize sex work and not allow criminalization of the purchase of sex services.
5. With involvement of the sex workers community, create a task force to reform and adapt the laws relating to the interests of sex workers.

5. STIGMA AND DISCRIMINATION AGAINST TRANSGENDER PEOPLE AS BARRIERS IN ACCESS TO HIV SERVICES AND OTHER OBSTACLES IN FORMING A FAVORABLE ENVIRONMENT FOR THE TRANSGENDER WOMEN ENGAGED IN SEX WORK

High level of transphobia in the Ukrainian society leads to a situation when most transgender people in the country have to hide their gender identity and live lonely lives. It significantly complicates the provision of HIV services.

Human rights monitoring of transgender women engaged in sex work shows that to access health services, including HIV services, all the respondents should have a right to freely express their gender identity, irrespective of the fact if such identity meets the expectations of other people.

Recommendations:

1. One of the key tasks should be elimination of the legal barriers related to the recognition of transgender people, which can harm the health of such people. Elimination of such barriers as well as introduction of simple and accessible procedures for transgender people to access legal gender recognition in line with their own gender identity have a direct impact on their access to HIV/TB services.
2. The government should recognize the vulnerability of transgender people and explicitly include them into the list of key populations with a high risk of HIV. The key government mechanism to include transgender people into the list of key populations at high risk of HIV is amending the Order of the Ministry of Health of Ukraine dd. 8 February 2013 No. 104 "On approval of the list and criteria to determine the groups at high risk of HIV" registered with the Ministry of Justice of Ukraine on 26 February 2013 under No. 323/22855, which came into force on 15 March 2013⁹.
3. With participation of the LGBTI community members, scale up the activities to ensure equality and social comfort for lesbian, gay, bisexual, transgender and intersex people in Ukraine for the period up to 2030¹⁰.
4. Amend current records and reports on TB prevention, diagnostics and treatment, in particular include "transgender people" as one of the options in disaggregation by sex.

9. Order on approval of the list and criteria to determine the groups at high risk of HIV. www.HPLGBT.org/publish/TG-Monitoring_2019/library/09.pdf

10. Taking into account the strategic value and "depth" of the document, the Action Plan has not been published in any open sources.

5. Use more inclusive methods of data collection to better record information about the transgender people engaged in sex work.
6. To mitigate health risks among transgender people, develop evidence-based plans to reduce the harm related to the use of hormone replacement therapy.

To carry out human rights monitoring of transgender women engaged in sex work and assess the quality of HIV services provided by non-governmental organizations, three "secret clients" from the transgender community were sent to the organizations offering such services. Thus, we selected two organizations in Kyiv and two in Odesa. These organizations were reporting about the large population of transgender people in their region and at the national level. Unfortunately, we can make a conclusion that there are still certain problems in terms of working with transgender community members. There are specially biased attitudes to the cross-groups of transgender people (transgender people engaged in sex work; transgender people who use drugs (including those who are in remission, in particular in sustained remission); transgender people in stressful and depressed conditions, etc.).

It shows that there are strong trends of multiple discrimination against transgender people, which creates new barriers in access to HIV services and makes it more difficult to reach out to different members of transgender community.

Recommendations:

1. Free the third sector from the excessive presence of professional organizations, while the released funds, which are spent in enormous and unjustified amounts to cover the administrative costs (office costs and salaries of managers who do not belong to any key populations as well as other excessive costs) can be aimed at developing and strengthening the community systems.
2. Ensure systematic verification of the clients covered with prevention programs, avoiding any potential conflicts of interests.
3. Train the personnel directly interacting with the transgender community members, in particular to divide personal attitudes from professional activities, taking into account life circumstances, feelings and emotions of the prevention program clients.

There is not enough visibility and meaningful participation of HIV-positive transgender women in vital activities. Human rights monitoring of transgender women engaged in sex work also demonstrates that young transgender people have the highest risks of suicide. Generally, transgender adolescents make more frequent suicidal attempts than other representatives of the LGBTI community¹¹. Ukraine remains among the leading countries in the world in terms of suicides per 100,000 population¹².

11. Estimating the Risk of Attempted Suicide Among Sexual Minority Youths: A Systematic Review and Meta-analysis.

<https://www.ncbi.nlm.nih.gov/pubmed/30304350>

12. Global Health Observatory (GHO) data: suicide rates (per 100 000 population). https://www.who.int/gho/mental_health/suicide_rates/en/

Recommendations:

1. Create and support safe spaces (self-help groups) for transgender women who live with HIV.
2. Create and support crisis centers for transgender women engaged in sex work.

6. VIOLATION OF THE RIGHTS OF TRANSGENDER WOMEN ENGAGED IN SEX WORK

According to the official statistics of the Human Trafficking Department of Ukraine, in the period from 1 January 2014 to 15 July 2018 on the territory of Ukraine law enforcement agencies recorded 10,642 administrative violations, which are punishable according to Article 181-1 of the Code of Administrative Offenses.

Administrative sanctions and criminal prosecution for sex work have a strong impact on forming and crystalizing social stigma against transgender women engaged in sex work.

Criminal prosecution is the biggest obstacle in exercising the right of transgender women engaged in sex work to labor and to protection of their rights at the workplace. Transgender women engaged in sex work do not have an opportunity to use protection mechanisms or their labor rights.

There is an appearance of a police reform, however internally the police still uses the repressive methods. Among 61 transgender women engaged in sex work covered within the study no one wants to go to police. It clearly demonstrates that this group is very closed and weak in protecting its rights.

Being self-engaged in sex work, transgender women often become victims of law enforcement agencies in terms of violations of their right to labor. When law enforcers find wigs, sex toys, female clothes or money (especially foreign currency), such property is seized and becomes "evidence" in the investigation. Presence of such items or similar things leads to bias and judgmental attitude from the side of police and is considered to "prove" low social responsibility of the owner.

People who organize sex work (prostitution) and control the activities of transgender sex workers, ensuring their protection and receiving money for it (pimps), often go against the individual sex workers. Such self-engaged persons are accused of disorderly conduct. In Ukraine, disorderly conduct is an offense leading to both criminal and administrative responsibility. Street sex workers most often face violence. Besides, they are not aware of the fact that it is not possible to violate public order in a vehicle because of the absurd interpretation of the provisions on public order violations. It is one more method used to prosecute transgender sex workers identified during the monitoring. Sex workers say that when such methods is used, pimps often act in close coordination with the interested police officers.

The respondents say that they had drugs planted on them or received relevant threats, which makes transgender women engaged in sex work even more vulnerable in terms of protection of their rights. Besides, such situations contribute to corruption¹³ and extortion practices. At the same time, after transgender women are engaged in sex work for a long time, they tend to start using drugs (mostly stimulants). Sex under the influence of narcotic and other mind-altering substances (drugs), apart from alcohol, is called chemical sex or *chemsex*.

13. The 2018 Corruption Perceptions Index, published by Transparency International, measures the perceived levels of public sector corruption in 180 countries and territories.
<https://www.transparency.org/cpi2018>

The problems leading to the violation of rights of the transgender women engaged in sex work are neither on the agenda nor taken into account by global, regional or national bodies and organizations. Participation of the transgender women engaged in sex work in the activities of such bodies and organizations is rather nominal and not meaningful, as they do not have access to training or resources.

Recommendations:

1. Promote a more humane attitude to transgender women engaged in sex work and decriminalize sex work.
2. Facilitate changes in the drug policy, which would stop repressions and criminalization of drug use.
3. Develop and implement fund-raising strategies to mobilize financial resources for training and raising the awareness on protecting the rights of transgender women engaged in sex work.
4. Increase the visibility and participation of transgender women engaged in sex work in the processes related to their interests at the global, regional and national levels.

7. CHEMSEX

There is scarce information on transgender women who use substances. However, our monitoring confirmed that substance use leads to unprotected sex and to people losing their self-control, thus significantly increasing the risks of contracting HIV, hepatitis or STIs.

Human rights monitoring of transgender women engaged in sex work shows that among most respondents there is a trend of using recreational drugs to amplify sexual feelings. Such situation leads to risky sexual behaviors, fulfilling sexual fantasies not caring about the consequences, reducing the adherence to ART, not using condoms, lengthy (and often traumatic) sexual practices, frequent change of sexual partners and many other negative consequences not related to the sexual health. Thus, chemsex does much more damage than we thought before.

Sometimes chemsex involves rough sex during an extended period of time. It often leads to dehydration and injuries. Under the influence of drugs, transgender women engaged in sex work may not realize that they are hurting themselves and/or their partners, damaging different parts of their bodies.

We do not know for sure if after the regular use of non-injecting drugs, psychotropic substances and/or certain medications people switch to injecting drugs. However, we know that transgender women engaged in sex work often use chemical substances. It increases the rate of depressions and the risks of sexual violence, contributing to the suicidal thoughts among the transgender women engaged in sex work.

The transgender women engaged in sex work feel ashamed and are afraid that they can be judged when talking about chemsex. That is why they do not want to seek help in drug treatment clinics or openly talk about their risky behaviors.

It is critical to realize that the spread of chemsex practices can be explained not only with long-term engagement in sex work, but also with objective and interrelated causes, such as stigma, fear, shame, loneliness, transphobia and discrimination in its various forms (in particular in LGBTI communities).

Recommendations:

1. Develop the programs aimed at transgender people, taking into account the specifics of cross- and subgroups, such as transgender people engaged in sex work and transgender people who use drugs.
2. Raise the awareness of chemsex risks among transgender people and service providers as the organizations providing sexual health services play a vital role in overcoming such risks and harms, so people working in such organizations should improve their knowledge in relevant matters.
3. Carry out studies aimed at a deeper analysis of the chemsex situation among transgender people.
4. Promote empathy and understanding of the challenges related to chemsex among the members of LGBTI communities.
5. With participation of the transgender community (including those who have an experience of drug use), develop more inclusive guidelines on chemsex harm reduction.

8. NON-CONTROLLED TERRITORIES OF UKRAINE AND TERRITORIES WITH THE DRASTIC CHANGES IN THE POLITICAL STATUS

Generally, the situation on such territories can be described as follows: prosecuting activists and human rights organizations working with LGBTI people; identifying the bank accounts of organizations working with LGBTI people and blocking such accounts as well as the activists' bank cards; promoting HIV-dissident moods and ideas to prohibit allocation of the government funding to procure antiretroviral therapy at the legislative level and to oblige members of the key populations to pay for their own treatment in full, with no privileges or subsidies; reinforcing the Criminal Code provisions on LGBTI and creating a repressive environment; carrying out various activities against LGBTI, in particular by extremist groups; blocking websites covering the topic of LGBTI, in some cases with no court rulings; arresting LGBTI activists with no lawful grounds.

Recommendations:

1. With support of the international community, facilitate de-occupation and reconstruction of the uncontrolled territories.

9. SCANDINAVIAN (SWEDISH) MODEL

Ukraine is one of the founding members of the Equal Rights Coalition launched at the Global LGBTI Human Rights Conference in Montevideo in 2016. The Coalition was created to share knowledge about the best practices in improving the situation and protection of LGBTI people, coordinate implementation of the relevant measures at the international level and provide the required technical support to the member states to implement the reforms aimed at the protection of LGBTI rights. However, transgender women engaged in sex work do not have access to the relevant tools to get technical support.

The Ukrainian Parliament Committee on Human Rights discussed the Swedish legislation, which was seen by the participants as rather effective, in particular in terms of the police trying to identify people who buy sex services.

Recommendations:

1. Develop a joint position of the sex workers' community on the Scandinavian (Swedish) model.
2. Ensure wide participation of the sex workers' community in all the activities directly relating to their interests and affecting the voluntary provision of sex services by sex workers in Ukraine.

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