

Report of the UN Special Rapporteur on violence against women and girls

Abbreviations:

HTfSE:	Human trafficking for sexual exploitation
FedReport:	Federal Council Report (2015) ¹

2. Profile/women/girls/affected by/prostitution

The 26 Swiss Cantonal authorities regulate and control prostitution on their respective territory each adhering to their specific regulations. Many of these authorities compile data on the women's origin and profile, which is based on women officially registering as working in prostitution, as well as on data collected by the Cantonal police who control the red-light districts, brothels etc. However, they do not make this data publicly available.

Swiss Aids, an NGO, estimated that there were between 18,000-22,000 women in prostitution in 2013². This estimate has been repeatedly quoted in the absence of new reliable estimates.

Women in prostitution in Switzerland are predominantly³ migrant women from underprivileged backgrounds and low-income countries including Romania, Bulgaria, Hungary⁴, Brazil, Columbia, Thailand and more recently Ukrainians.⁵ Swiss-born nationals are almost absent according to a recent assessment by the Swiss police.⁶

4. Violence

FedReport confirms that violence is present in various forms and frequencies throughout the sex industry⁷. One study focused on the mental health of women in prostitution⁸. It found that women in prostitution displayed high rates of mental disorders which were related to violence and the 'burden' of being in prostitution. It concluded that the findings represent a major public health problem.

A 2011 Swiss doctoral dissertation⁹ explored brothel owners' views on violence in prostitution.

They gave these examples of violence against women committed by sex buyers:

- insults and humiliations (including physical humiliations during the sex act)
- slaps/punches in the face
- pinching the breasts
- physical assaults
- verbal attacks
- damage to property, including breaking down of doors, smashing of windows, cameras/furniture, and threats of doing so
- frequent attempts by sex buyers to take off the condom
- vaginal injuries to women resulting from forcible penetration resulting in psychological problems (insomnia, depression)

¹ Prostitution and human trafficking for sexual purposes. Federal Council Report (2015)

https://www.google.com/search?q=Prostitution+und+Menschenhandel+zum+Zweck+der+sexuellen+Ausbeutung&og=Prostitution+und+Menschenhandel+zum+Zweck+der+sexuellen+Ausbeutung&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIGCAEQRRg7MgYIAhBFGEDSAQc2MDIqMGo3qAIAAsAIA&sourceid=chrome&ie=UTF-8

² FedReport, p.47

³ 95% according to one source: Wüst (2020) p.29

⁴ according to police estimates about 50% originate from Eastern European countries, Wüst (2020) p.29

⁵ <https://www.tagblatt.ch/leben/kommentar-verheerende-idee-fluechtlinge-sollen-sich-prostituieren-koennen-ld.2310370>

⁶ Wüst (2020) p.29 Piff, Paff, Puff. Prostitution in der Schweiz. Basel: Echtzeit.

⁷ FedReport p.55

⁸ Rössler, W. et al. (2010). The mental health of female sex-workers. ACTA Psychiatrica Scandinavica, 122(2), 143-152. DOI: <https://doi.org/10.1111/j.1600-0447.2009.01533.x>

⁹ Büschi (2011) Sexarbeit und Gewalt: Geschäftsführende von Studios, Salons und Kontakt-Bars über Gewalt und Gewaltprävention im Sexgewerbe, Tectum Verlag Marburg

- sex buyers' constant demand for unprotected sex.

Brothel owners also reported their own/other brothel-owners violence against women, such as: physical violence the 'testing' of new women, i.e. demanding sex acts from women prior to 'employment', demanding sex acts instead of rent, withdrawal of ID papers, blackmail and exploitation of the woman's dependency¹⁰.

5. Responsibility/perpetration of violence

The perpetrators of the violence committed against women/girls in prostitution are almost exclusively: sex buyers, brothel owners and pimps/traffickers. This is based on research¹¹ as well as numerous testimonies from prostitution survivors¹².

6. Linkages/prostitution/human rights/violations

High demand for prostitution *causes* an increase in HTfSE: Swiss-born women willing to engage in prostitution cannot satisfy the demand. Traffickers seize the opportunity to ensure the supply of women, leading to an increased number of victims of HTfSE. Confidentially, members of the Swiss police have confirmed to EDS that they believe most foreign women in prostitution are controlled by pimps/traffickers.

Seeking to decrease HTfSE therefore requires *effective measures to reduce* the prostitution market. Consequently, international law¹³ and recently the EU¹⁴ repeatedly call on States to "discourage the demand"¹⁵.

Yet, Switzerland keeps a liberal prostitution policy in place that continues to lead to an expansion of the prostitution market. In 2020, one political party proposed criminalizing sex purchase: In June 2022, the Swiss National Council voted on this motion resulting in: 172 against, 11 in favor and 4 abstentions¹⁶. Thus, Switzerland overwhelmingly rejects any meaningful measure to reduce demand while favorable conditions for pimps, brothel-owners and traffickers to operate are maintained.

Exacerbating the problem, HTfSE victims *largely remain undetected*. EDS estimates that there is a 0,5% chance for a victim of HTfSE to be detected¹⁷. Even when victims are detected, traffickers' conviction rates remain extremely low.

This renders the combat against HTfSE illusory and fails to protect vulnerable women from sexual exploitation and the violence inherent in prostitution.

¹⁰ Büschi (2011) 108

¹¹ Büschi (2011)

¹² <https://nordicmodelnow.org/?s=Violence>

¹³ inter alia: Palermo Protocol (2000) Art. 9.5 and Council of Europe Convention on Action against Trafficking in Human Beings (2005) Art. 6.

¹⁴ https://www.europarl.europa.eu/doceo/document/TA-9-2023-0328_EN.html

¹⁵ OSCE Report, 2021, entitled "DISCOURAGING THE DEMAND that fosters trafficking for the purpose of sexual exploitation, states: "Under the international framework on demand States are required to take measures to "discourage the demand that fosters all forms of exploitation of persons... that leads to trafficking". In referring to the demand that "fosters exploitation" that "leads to trafficking", this agreed-upon language establishes a concept of demand that moves beyond only the "demand for trafficking" or the "demand for sexual exploitation," to address demand that *encourages* exploitation that in turn leads to trafficking. This creates an obligation to discourage demand that extends beyond the knowing use of trafficking victims to any act that encourages exploitation of the prostitution of others." p.11

¹⁶ <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20204216>

¹⁷ EDS GRETA.Shadow Report ((2023) p.13: Based on old (conservative) estimates, there are 20.000 women in prostitution in Switzerland and of these, an average of 40% (the middle of the assessment by the police), namely between 30% and 50%= 40%) are considered by the police in Bern to be in forced prostitution, we arrive at an estimate of 8.000 women who are likely to be victims of HTfSE. 45 cases of HTfSE out of an estimated 8.000 women who – according to police estimates – are in forced prostitution means that there is an approximate 0,5 % chance for a victim of HTfSE to be discovered.

In this rough estimate we assume that those women who are likely to be coerced into prostitution, can be deemed victims of trafficking. This may not always be the case *stricto sensu*. It has also been assumed that in each of the 31 cases of HTfSE registered by the police there was one victim and that police estimates from the Canton of Bern are representative for the rest of Switzerland. However, this inaccuracy may be mitigated by an updated number of women in prostitution which would most likely be higher than the old estimates of 20.000 women. The darkfield of HTfSE cases would thereby be proportionally larger and consequently also the rate of undetected cases of HTfSE. EDS Report in full Annex 1

Also, CEDAW Experts expressed their concern in October 2022¹⁸,

Point 45: The Committee is concerned about the high incidence of exploitation of women in prostitution in the State party. It notes with concern that approximately 85 - 95 percent of women in prostitution are migrant women, often in an irregular situation. It also notes with concern that an increasing number of women and girls who reside in the State party are lured into the prostitution industry through the so-called “loverboy” method. It further notes with concern:

- a. The link between trafficking and exploitation of prostitution, with an estimated majority of women in prostitution having been trafficked into the State party

7. Links/pornography/sexual exploitation/prostitution

Survivors personally known to EDS testify that the men who buy sexual access from them want to enact what they have seen in porn. Porn consumption thereby increases the demand for prostitution. Survivors frequently describe such sex acts as painful and humiliating.

8. Consent

The concept of “consent” and “vulnerability” is linked in the context of prostitution (and HTfSE) because the (legal) assessment of whether consent is present *depends* on an assessment of vulnerability in a given case.

FedReport: “Whether consent to engage in prostitution is freely given depends on the specific social and economic conditions, but also on the restrictive personal or financial dependencies under which a person decides to engage in prostitution. **If the decision is made due to serious economic hardship, poverty and poor social conditions in the home country, it is not voluntary, according to Federal Supreme Court case law.**”^{19 20}

See also UNODC making reference to the Swiss case law and highlighting: “The concept of consent must be interpreted restrictively, taking into account the multiple relations of dependence in which prostitutes can be, especially if foreign”²¹

An estimated 85-95% of women in prostitution are migrant women, half of these from low GDP Eastern European countries, often vulnerable, many from disadvantaged ethnic minorities^{22 23}. Many suffer drug addiction²⁴ and/or mental illness²⁵, and homelessness²⁶. The majority of these women clearly qualify as suffering “economic hardship” and/or “social difficulties.”

We argue that their ‘motivation’ to engage in prostitution stems from a state of *vulnerability* which is often, but not only, rooted in economic hardship and lack of education²⁷ – precisely the two main criteria based on which Swiss courts establish vulnerability that is exploited in the context of HTfSE.

Consequently, there is a fundamental disharmony between what Swiss courts have stated in relation to consent (in the context of prostitution/HTfSE) and Swiss government policy on prostitution *that is based on a presumption of consent.*

¹⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FCHE%2FCO%2F6&Lang=en

¹⁹ bolded by EDS

²⁰ ATF 128 IV 117, consideration 4b.: [128 IV 117 - Tribunal fédéral \(bger.ch\)](#), and ATF 129 IV 81, consideration 3.1.: [129 IV 81 - Tribunal fédéral \(bger.ch\)](#)

²¹ UNODC Issue Paper (2013): Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons p.63 and 155 BGE 128, IV.117, p. 126

²² Wüst, p.29

²³ FedReport “In recent years, both the perpetrators and the victims, who came from Hungary and Bulgaria, were almost exclusively ethnic Roma” point 5.4 p.71

²⁴ Rössler et al. (2010)

²⁵ Ibid

²⁶ FrauenOase Annual Report (2022), p. 10

https://www.frauenoase.ch/files/ugd/7547dc_10e6d4d5232c4fa9b9264cbc716cd4e4.pdf

²⁷ Police from Bern interview in the journal “AKZENTE” No.3 p.4., Annex 2

Language barriers create another layer of vulnerability. In Geneva, in 2021, it was found that the ability to communicate was so poor that in some cases the women could not even negotiate. This calls into question the notion of the women's 'agency'.²⁸

These language barriers and the fact that an estimated 85-95% of women in prostitution are migrant women, many from vulnerable groups within their home country, means these women are vulnerable to exploitation.

Bearing in mind the interpretation of vulnerability and consent by the Swiss courts in cases of HTfSE, it is hard to see how one can speak of women and girls consenting to prostitution.

9. Effectiveness/legislative frameworks/policies/preventing/violence?

It is acknowledged that women and girls in prostitution are exposed to considerable violence. However, police reports of violence made by victims remain low^{29 30}. Violence in prostitution is so normalized that it may no longer be perceived as 'violence'³¹.

It is questionable if any meaningful prevention attempts have been made at all. If so, these seem to have failed. Given the situation in Switzerland, CEDAW Experts recommended in 2022³²:

Point 46: a. Carry out education and awareness-raising programmes to sensitize women and men on the high exposure of women in prostitution, in particular migrant women, to gender-based violence, exploitation and racial discrimination, develop prevention strategies, and reduce the demand for prostitution in the State party;

10. Measures/collect/analyse/data/national level/impact of prostitution

To EDS's knowledge there are no such measures in place nor envisaged. To collect and analyse such data would undermine the idea prostitution is 'work', a view fundamental to Swiss prostitution policy. Consequently, Swiss authorities have no interest in collecting and analysing such data as the results are likely to call into question the very basis of their prostitution policy.

11. Measures/assist/women/leave prostitution?

Only extremely few, small and mostly underfunded grassroots organizations offer prostituted women programs to help them exit prostitution. Thus, CEDAW Experts recommend in 2022³³.

Point 46: a. Carry out (....)

b. Provide exit programmes, including alternative employment opportunities, to women who wish to leave prostitution and ensure that these programmes include their children;

²⁸ Aspasia Annual report (2021) p. 15. However, 55% of attempted mandatory brothel inspections in Geneva were unsuccessful because the inspectors were provided the incorrect address or the brothel was empty when the inspectors arrived.

²⁹ FederalRep.p.55

³⁰ Aspasia Annual Report 2019, https://www.aspasie.ch/app/uploads/2020/09/Rapport_Annuel_ASPASIE-2019.pdf p. 12 : « Les travailleur.se.s du sexe sont exposé.e.s à de multiples formes de violences : agressions sexuelles, abus, exploitations, pressions psychologiques et menaces etc., dans le cadre de leur activité professionnelle ou dans le cadre privé. En 2019 ce sont 6 personnes qui ont été soutenues dans leur démarches à la suite d'agressions mais nombreuses sont celles et ceux (environ 50% des consultant.e.s) qui lors des entretiens abordent les expériences de violence vécues sans pour autant souhaiter entreprendre des démarches. Ces accompagnements sont conséquents, et nécessitent coordination avec différents intervenants du réseau ». And p.13: « En 2019, nous avons accompagné 4 femmes victimes de viol. Parmi elles, une seule a déposé plainte »

³¹ Büschi, p. 109

³² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FCHE%2FCO%2F6&Lang=en

³³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FCHE%2FCO%2F6&Lang=en

- c. Ensure that women who leave prostitution have access to shelters and adequate support services.

Advisory services which regularly receive public funding do not make it a priority to invest in programs helping women out of prostitution. However, some of their resources are invested in public relation work promoting the idea that prostitution is 'work'.

12. Obstacles faced by/ organizations and frontline service providers in their mission to support victims and survivors of prostitution?

The biggest obstacle is the fact the state pursues a policy that expands the prostitution market and thereby increases the number of victims of prostitution/HTfSE.

In addition, the state has no interest in officially acknowledging the existence of victims and survivors of prostitution because it frames prostitution as 'work'.

Also, organizations that acknowledge that there are 'victims and survivors of prostitution' and use this terminology, face a moral dilemma: is it right to accept funding from an entity which is indirectly, to an extent, responsible for the situation of their beneficiaries?

13. Lessons learned/stemming negative human rights consequences

Decade-long, state-funded promotion of the view that prostitution constitutes legitimate work for women has significantly influenced public opinion and led to a 'normalisation' of prostitution in society. It has also led to an expansion of the prostitution market. The profiteering of the prostitution of others remains legal and sex buyers are confirmed in their belief that there is nothing wrong in buying sexual access to a woman's body.

Switzerland's nation-wide system of advisory services³⁴ available to 'assist' women in prostitution focus on *harm reduction*, including improved sanitization, distribution of free condoms, more panic buttons, and advice on how to deal with violent sex buyers etc. They also promote the view that prostitution is 'work', thereby banalising this activity and down-playing the substantial harm suffered by women in prostitution.

By treating prostitution as a normal business and granting pimps and brothel-owners the status of businessmen of a legitimate industry, Switzerland is *encouraging* the demand for prostitution.

The most important lesson learned: A prostitution policy that focusses on 'harm reduction' and refuses to address root causes of HTfSE, i.e. the demand for prostitution, fails to protect women from sexual exploitation and becoming victims of HTfSE.

14. Frontline organizations/survivors' organisations/inclusion in policymaking

In answering this question, it is important to keep in mind that:

- the Swiss Government pursues a prostitution policy that has created favorable conditions for the sex industry i.e. facilitates prostitution
- most frontline organizations³⁵ view prostitution as work and thereby promote the normalisation of prostitution in society
Funding is inter alia provided by the Federal Office of Public Health and the Federal Office of Police
- the political unison of the aforementioned major stake holders has resulted the virtually silence of prostitution survivors in Swiss society

³⁴ <https://procore-info.ch/en/our-members/>

³⁵ *ibid* and <https://procore-info.ch/en/who-we-are/>

Cantonal Round Tables were established to enable stakeholders to meet to develop strategies against HTfSE. To the best of EDS's knowledge, no prostitution-critical organization has been included, despite their official attempts to be involved.

No prostitution-critical organization has been included in the drafting of the FedReport which to date is the most comprehensive Government document on prostitution and HTfSE.

15. Recommendations

Switzerland needs a paradigm shift in its prostitution policy:

- Efforts to end demand for prostitution must be prioritized in harmony with Switzerland's legal obligations
- The *inherent violence in prostitution* must be recognized
- Political will to efficiently implement the Equality Model's 4 pillars is needed:
 - awareness-raising of the harms of prostitution and its link to human trafficking
 - creation of exit programs
 - criminalization of sex purchase
 - de-criminalization of women in prostitution