

12 May 2020

INTRODUCTION

This written submission is made on behalf of the Sex Worker Inclusive Feminist Alliance (SWIFA)¹ to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), in response to its call for comments on the draft general recommendation on trafficking in women & girls in the context of global migration. Set out below are requested changes to specific paragraphs of the draft general recommendation. In all places, the text in red denotes insertions and the text with strikethrough denotes deletions. Each requested change is followed by a reason seeking the change.

KEY CONCERNS & RECOMMENDATIONS

Section I, para 1:

- Despite the plethora of existing anti-trafficking legal and policy frameworks at the national, regional and international levels, **it is essential to understand the gender dimensions of trafficking overall and in particular**, trafficking in women and girls. **Trafficking** remains pervasive globally. ... an obstacle to their achievement of substantive equality. **Men, boys and transgender and non-binary persons are also victims of trafficking, but the patterns and practices of trafficking differ according to the gender of the trafficked person.** The call for strategic global action by States to combat trafficking, **especially** in women and girls, is echoed in the Global Compact for Safe, Orderly and Regular Migration and the 2030 Agenda for Sustainable Development.

Reasons:

- We appreciate the Committee's mandate to understand and provide guidance to States' parties on the patterns and impact of trafficking on women and girls. However, the Committee's sole focus on trafficking in women and girls risks obscuring factors that emerge through a nuanced analysis of the gender dimensions of trafficking and migration in the 21st century. In this regard, we believe that two principles (in addition to those already articulated by the Committee) should underline the Committee's analysis and recommendations.
- The full scope of understanding the gender dimensions of trafficking: The Committee has often taken up larger issues of gender, gender-based discrimination and gender-based violence, including violence against persons because of their real or perceived sexual orientation and/or gender identity. This General Recommendation appears to take a step back from that larger analysis, despite the fact that the gender dimensions of trafficking (and migration) are pertinent to this particular GR. While it is important to focus on the specific implications of trafficking in the context of migration on women and girls, it is also important to frame this within a gender analysis, including an approach that observes the connection between a strict binary construction of gender and the gender-specific manifestations of discrimination.
- Refrain from reinforcing gender stereotypes: A broader framework of the gender dimensions of trafficking and migration generates a clearer understanding of how gender stereotypes operate within the context of trafficking. For instance, an approach that relies on a stereotyped assumption of predatory masculinity fails to fully consider the intersections of gender, race, class, nationality, and geography as critical components of the gender-related

¹ The **Sex Worker Inclusive Feminist Alliance** was formed as part of a long-term strategy of building alliances across the sex workers' rights and women's rights movements to advance the acceptance of sex workers' rights within the women's movement. The core group of organisations in the alliance include: African Women's Development and Communication Network (FEMNET), Amnesty International - International Secretariat, CREA, Global Alliance Against Traffic in Women (GAATW), Global Network of Sex Work Projects (NSWP), International Women's Health Coalition (IWHC), International Women's Rights Action Watch Asia Pacific (IWRAP), Open Society Foundations (OSF) and Women's Global Network for Reproductive Rights (WGNRR).

patterns of trafficking. Similarly, an approach that relies on a stereotyped presumption about women's victimhood, fails to fully encompass the myriad ways in which women engage in trafficking and migration patterns.²

This highlights the importance of an analysis and set of recommendations that do not advance a narrative of women as helpless victims incapable of making decisions. The Committee should pay special attention not to invoke gender stereotypes that can lead to restrictions of women's rights 'for their own good', for instance, migration policies that limit women's freedom of movement under the guise of keeping women 'safe' at 'home'. Language to avoid includes women being 'lured' by traffickers [e.g. Section IV, a para 22] and instead consider using 'defrauded', 'coerced', or similar terms that acknowledge a competent adult has been subject to malfeasance.

Section III - insertion of new para 9

- The Committee notes that the term 'sexual exploitation' as utilized in this General Recommendation does not refer to all sex work [prostitution].³

Reason:

- Defining sex work as 'sexual exploitation' exacerbates the vulnerability of sex workers and results in human rights abuses. The conflation of sex work with 'sexual exploitation' and with trafficking is a major factor in perpetuating coercive and precarious working conditions in sex work, leads to harmful legislation that limits sex workers' access to justice and services. UNODC reflected on the concept of 'exploitation' in the Trafficking in Persons Protocol, acknowledging that sex work must not be conflated with human trafficking. It also clarified that 'sexual exploitation' does not refer to all sex work: **"When used in the context of the Protocol, this term could not be applied to prostitution generally as States made clear that was not their intention."**⁴ Further, UNODC explicates the misuse of trafficking law as a result of inadequate definitions, including of the term exploitation, noting that it is poorly defined and highly contested.⁵

Section III, para 10

- Noting the distinction between the smuggling of migrants and trafficking in persons, the Committee highlights the particular vulnerability of smuggled migrants to be trafficked. The Committee also notes the distinction between sex work and trafficking in persons. It is concerned by the systematic marginalization of sex workers that results in further discrimination against them through State responses to trafficking.

Reason:

- Defining sex work as 'trafficking' exacerbates the vulnerability of sex workers and results in human rights abuses. The conflation of sex work with trafficking is a major factor in perpetuating coercive and precarious working conditions in sex work, leads to harmful legislation that limits sex workers' access to justice and services.

Section IV, a, para 12:

- The Committee notes the limitations of existing data sets on trafficking. Sexual exploitation is the most commonly identified form of trafficking because it is more widely reported in comparison to other forms of exploitation such as forced labour or domestic servitude.⁶ Further, according the 2017 Global Estimates of Modern Slavery, of the 16 million people in forced labour exploitation, 57.6% were female.⁷

² United Nations Office on Drugs & Crime, [Global report on Trafficking in Persons](#), 2009.

³ United Nations Office on Drugs & Crime, [Issue Paper: The Concept of 'Exploitation' in the Trafficking in Persons Protocol](#), 2015

⁴ NSWP, [Briefing Note: Sex Work is not Sexual Exploitation](#), 2019.

⁵ United Nations Office on Drugs & Crime, [Issue Paper: The International Legal Definition of Trafficking in Persons](#), 2018

⁶ United Nations Office on Drugs & Crime, [Global Report on Trafficking in Persons](#), 2018

⁷ International Labour Organization & Walk Free Foundation, [Global estimates of modern slavery: Forced labour and forced marriage](#), Geneva, 2017

Reason:

- The GR is based solely on UNODC data and would benefit from a more nuanced data that reflects the reality of modern slavery and human trafficking. UNODC note the serious gaps in their data, including the fact that sexual exploitation is the most commonly identified form of human trafficking, may be the result of statistical bias, “By and large the exploitation of women tends to be visible, in city centres, or along highways. Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported: forced or bonded labour; domestic servitude and forced marriage; organ removal; and the exploitation of children in begging, the sex trade, and warfare.”⁸ ILO data found 38.2% of all victims of modern slavery are in the category of forced marriage. 11.9% fell into the category of “forced sexual exploitation / CSE of children”, while 49.9% of people in modern slavery were enslaved in other forms of forced labour.

Section IV, e, Title:

- ~~“Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking”~~

Reason:

- “Demand” is a root cause of trafficking⁹ (see, for example, Recommended Principles and Guidelines, Guideline 7, p. 9, “Strategies aimed at preventing trafficking should take into account demand as a root cause.”) and should be subsumed within root causes, not placed alongside them.

Section IV, e, para 24:

- “In its general recommendation no. 34 (2016) on rural women, the Committee highlighted that the economic hardships of rural life including the negative effects of climate change, high levels of poverty, restricted access to State benefits, protection and services, resulting in, *inter alia*, low levels of education, and low awareness on how traffickers operate, render rural women especially vulnerable to exploitation, in particular ~~in prostitution and as domestic workers~~ and in conflict-affected regions.”

Reason:

- The references given to the Committee’s own documents [General recommendation No. 34 (2016) (CEDAW/C/GC/34), para. 26; CEDAW Contributions to the 2030 Agenda for Sustainable Development (2017 HLPF)] do not mention “prostitution” or domestic workers. Indeed, only the former document contains a single reference to “prostitution”, and only in quoting the precise text of Article 6.

- **Section IV, e, para 25 (f) (ii):**

Include in the design those affected by anti-trafficking policies, including trafficking victims and women and girls vulnerable to trafficking, **as well as those at risk of adverse consequences, such as sex workers and migrant women.**

Reason:

- In line with CEDAW Article 7, States must ensure that women, including those significantly affected by anti-trafficking responses are able to meaningfully participate in policy formulation and implementation.

Section IV, e, para 27 (b):

- ~~Where applicable, instituting penal legislation to sanction the users of goods and services that result from trafficking in persons~~

⁸ United Nations Office on Drugs & Crime, [Global report on Trafficking in Persons](#), 2009.

⁹ Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 7, p. 9, E/2002/68/Add.1, 2002.

Reason:

- This clause is overbroad and could have problematic outcomes for sex workers. It is a focus solely on buyers of sex work and push for the introduction of the Nordic Model that has immense adverse human rights impacts on sex workers. This position is also incongruous with the CEDAW Committee's existing body of work on Article 6 that so far, rightly, does not indicate an equivocal espousal of client criminalization strategies as an effective method to 'discourage demand'. The CEDAW Concluding Observations on Article 6 have included recognizing the adverse human rights impact of client criminalization on sex workers¹⁰ and recommending implementation of labour frameworks to "prevent and combat other exploitative practices assimilated to trafficking"¹¹.

Section IV, e, para 27 (d):

- Investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, ~~including those on the demand side.~~

Reason:

- The phrase 'including those on the demand side' is liable to be misinterpreted and/ or misapplied to target sex workers.

Section IV, g, para 58:

- Move para 58 'Employment and labour framework' in its entirety to make it new para 27, so that it is applicable to the overarching State obligation to address the root causes of trafficking
- Clause a): Introduce, strengthen, and enforce employment legislation designed to protect all migrant workers, **including women migrant workers**, irrespective of level of skill or the sector in which they work, **or whether they are in the formal or informal economy**, the duration of their employment...
- Clause f): Facilitate the self-organisation and unionisation of ~~migrant workers~~, **including in particular women migrant workers** in unregulated or unmonitored labour sectors.

Reason:

- We appreciate the Committee's responsiveness to addressing the structural links between labour exploitation and trafficking. The Committee's recommendations in this respect are progressive and far reaching and should be made applicable to women workers in general, not just women migrant workers in order for their gender transformative impact to be realized.

Section V, para 68 (j):

- Empower communities through support and consultation to build strong allies for anti-trafficking efforts, ~~including faith-based actors~~ **including sex worker-led organizations**, who could provide critical information about trafficked women. These community-led systems should be established at locations and among groups where there may be trafficked women; including sites where forcibly displaced women and migrants are accommodated, registered or detained.

Reason

- In line with CEDAW Article 7, States must ensure that women, including those significantly affected by anti-trafficking responses are able to meaningfully participate in policy formulation and implementation.

Section VI, a, para 92

- b): "Ensure that ... against any group of women, **particularly sex workers, including migrants who are most often subject to such coercive measures;**"
- c): "Ensure that no group of women, is targeted for investigation or prosecution, discrimination, stigmatisation, or ~~suffers from the lack of rights and protections~~ **is subjected**

¹⁰ CEDAW/C/NOR/CO/9, para 28

¹¹ CEDAW/C/CHE/CO/4-5, para 29

to other human rights violations, as part of anti-trafficking initiatives or under the guise of combatting trafficking, including violations of their rights to liberty, movement, assembly, health and safety, to dignity and livelihood. This must include sex workers, who are at particular risk of being negatively affected by such measures. States should cease such targeting and ensure that anti-trafficking measures are not used to, or otherwise result in, harm to these groups of women, and ensure that effective measures are put in place to monitor and evaluate any negative human rights impacts of anti-trafficking measures;”

- d): “Discontinue anti-trafficking measures that involve the apprehension, detention and involuntary rehabilitation of women, which are often experienced as antagonistic and traumatic. Sex workers are particularly targeted for such measures and this is an abuse of their human rights as well as an abuse of State powers;”
- e): “Ensure that anti-trafficking efforts are not used as a means to deport migrant women with an irregular immigration status. Anti-trafficking efforts are often inappropriately used by States as part of a wider anti-migrant, and specifically anti-sex work, narrative. States much put clear measures in place to prevent this.”
- g): “Ensure that a diverse group of affected women, including sex workers, are involved in the monitoring and evaluation of anti-trafficking measures to identify adverse collateral effects.”

Reason:

- We acknowledge and appreciate the Committee’s responsiveness to previous comments about the misuse by authorities of anti-trafficking legislation by authorities, and their recognition of sex workers as targets for this misuse, however we ask for more specificity to ensure clarity, and to measure States’ compliance and implementation of the General Recommendation.
- Para 92 of this draft GR recognizes that anti-trafficking measures may be particularly misused by the authorities against “women from disadvantaged groups and women in prostitution”. As such, sex workers should also be included at all stages of the design, implementation and monitoring and evaluation of anti-trafficking measures.

AI Index: IOR 40/2431/2020
