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**SUBMISSION TO THE CEDAW COMMITTEE ON THE DRAFT GENERAL RECOMMENDATION ON TRAFFICKING IN WOMEN AND GIRLS IN THE CONTEXT OF GLOBAL MIGRATION**

This response is being jointly submitted by CREA, India and All India Network of Sex Workers (AINSW), India; and 90 sex worker led community based organisations. Over the last four years, regular consultations, at district, state and national levels have been held with sex worker groups in India to discuss multiple issues concerning sex worker rights. This submission is a response to the Committee’s draft General Recommendation on Trafficking in Women and Girls in the context of Global Migration (GRTWGGM).

**About All India Network of Sex Workers (AINSW)**

AINSW is a federation of community based organisations of sex workers who are engaged in promoting and protecting rights of sex workers in addition to their engagement in HIV intervention. It believes that sex work is work and demand worker's right for sex workers. AINSW envisions a world wherein sex work is recognized as work, a world that is just and has no laws that criminalize sex work where adult women, men and transgender persons in sex work have the right to earn and live through the exchange of sexual services.

**About CREA**

CREA, is a Global South gender rights organisations based in South Asia, led by Southern feminists, working at the grassroots, national, regional and international levels. CREA works at the intersection of sexuality, gender, violence against women, and human rights and together with its partners from a diverse range of human rights movements and networks, CREA implements its programmes in India, South Asia, Central Asia, the Middle East, and East Africa, and advocates for positive social change through national and International forums. CREA has studied, taught and written extensively on sexuality and rights and in this work has frequently included sex work issues. All this work links theory and practice around sexuality.

**Introduction**

*Sex worker groups in India recognise that trafficking is a criminal offence and that no person should be forced into a profession they have not willingly chosen.* However, the conflation of sex work and trafficking severely undermines the human rights of sex workers while failing to secure rights of people who are trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing them appropriate support[[1]](#footnote-1). It exacerbates the lack of legal remedies to redress violence and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood.[[2]](#footnote-2) Sex worker groups at the consultations recognized that trafficking is illegal, and that no one should be forced into sex work. However, the rights and entitlements of consenting adults who enter into sex work on their own volition should be recognised and not confused with the rights and needs of people who are forced into sex work and/or are underage.

When sex work is conflated with trafficking, governments superimpose their idea of rehabilitation and the results are disastrous. The consultations revealed instances of sex workers being picked up against their will and put into rehabilitation homes for periods ranging from 3-6 months and outing of their choice of profession to their family members as a part of the “rehabilitation” process.

**Key concerns and recommendations**

In line with the submission made by the Sex Workers Inclusive Feminist Alliance (SWIFA) this submission reiterates the concerns with the draft GRTWGGM.

1. **The ambiguous use of the term ‘sexual exploitation’ and ‘prostitution’:**

* Section III Legal Framework

**Requested change (insertion of new para 9):**

(INS The Committee notes that the term ‘sexual exploitation’ as utilized in this General Recommendation does not refer to all sex work [prostitution][[3]](#footnote-3))

**Reason:**

The conflation of consensual adult sex work with sexual exploitation, prostitution and trafficking leads to the implementation of inappropriate responses that fail to assist either of these groups in realizing their rights, and can contribute to violence and oppression.[[4]](#footnote-4) Sexual exploitation, prostitution and trafficking people is not the same as consensual adult sex work. A distinction, drawing from the Palermo Protocol[[5]](#footnote-5) must clearly demarcate voluntary sex work from involuntary and coercive exploitation and trafficking. UN agencies, such as WHO, UNAIDS, OHCHR, UNDP, international organizations such as ILO, UN treaty monitoring bodies, and UN Special Rapporteurs carefully distinguish between sex work and trafficking and sexual exploitation and this GR should follow the same practice[[6]](#footnote-6). 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. 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.[[7]](#footnote-7)

* Section IV, e, “Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking”, **para 24:**

**Requested change (deletion):**

(DEL “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.

1. **The overarching framework regarding ‘Discouraging the demand that fosters exploitation leading to trafficking’**

**Requested change (deletion):**

* Section IV, e “Root causes of trafficking in women and girls (DEL and discouraging the demand that fosters their exploitation through trafficking)”

**Reason:**

‘Demand’ is a root cause of trafficking[[8]](#footnote-8) (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.

* (DEL Where applicable, instituting penal legislation to sanction the users of goods and services that result from trafficking in persons) (Section IV, e, “Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking”, **para 27 (b)**)
* (DEL Investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, including those on the demand side.)(Section IV, e, “Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking”, **para 27 (d)**)

**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. ANISW’s consultations reiterated the narrative, which cut across the regions, that due to criminalisation of sex work (through client criminalisation), sex worker’s rights are often violated, including their rights to health and safety. Due to the societal stigma attached to criminalization and penalisation their children and families often face stigma, discrimination and violence. They emphasized that criminalisation of sex work only leads to further stigmatization and becomes an unwieldy weapon in the hand of law enforcement officials to arbitrarily harass and abuse them and extort money from sex workers. This in turn exposes sex workers to greater physical, mental and sexual harm. Hence, a comprehensive structural response is needed in order to eliminate violence against sex workers, which must mandatorily include sensitisation and capacity building of all relevant stakeholders. In fact, the CEDAW Concluding Observations on Article 6 have included recognizing the adverse human rights impact of client criminalization on sex workers[[9]](#footnote-9) and recommending implementation of labour frameworks to *“prevent and combat other exploitative practices assimilated to trafficking”[[10]](#footnote-10).*

1. **The recognition of the adverse collateral effects of anti-trafficking efforts**

Section VI, a, **para 92** ‘Adverse collateral effects of anti-trafficking efforts’:

**Requested changes (additions):**

- Clause b): “Ensure that raids conducted by law enforcement authorities with a view to dismantling trafficking networks do not justify or result in criminal prosecution or other coercive measures, including gender-based violence, abuse and harassment, against any group of women, (INS particularly sex workers, including migrants who are most often subject to such coercive measures;)”

- Clause c): “Ensure that no group of women, is targeted for investigation or prosecution, discrimination, stigmatisation, or (DEL: suffers from the lack of rights and protections) (INS is subjected to other human rights violations, as part of anti-trafficking initiatives) or under the guise of combatting trafficking, including violations of their rights to (INS liberty), movement, assembly, health and safety, to dignity and livelihood. (INS 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);”

- Clause d): “Discontinue anti-trafficking measures that involve the apprehension, detention and involuntary rehabilitation of women, which are often experienced as antagonistic and traumatic. (INS 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);”

- Clause e): “Ensure that anti-trafficking efforts are not used as a means to deport migrant women with an irregular immigration status. (INS 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.)”

**Reason:**

We acknowledge and appreciate the Committee’s responsiveness to previous comments about the misuse by authorities of anti-trafficking legislation 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. It has been emphasized that the conflation of sex work and trafficking severely undermines the human rights of sex workers while failing to secure rights of people who are trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing them appropriate support. It exacerbates the lack of legal remedies to redress violence and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood[[11]](#footnote-11). Sex worker groups recognise that sex trade and trafficking is illegal, and that no one should be forced into sex work. However, the rights and entitlements of consenting adults who enter into sex work on their own volition should be recognised and not confused with the rights and needs of people who are forced into sex work and/or are underage.

When sex work is conflated with trafficking, governments superimpose their idea of rehabilitation and the results are disastrous. The consultations revealed instances of sex workers being picked up against their will and put into rehabilitation homes for periods ranging from 3-6 months and outing of their choice of profession to their family members as a part of the “rehabilitation” process. In view of the often unsuccessful rehabilitation processes, attention must be paid to the comprehensive mechanisms that sex worker groups have themselves adopted to ensure that persons who are either underage and/or have been brought into the fold of sex work against their will, have a dignified way out. Most of the community based organisations who were a part of the consultation reported having either a Self-Regulatory Board (SRB)[[12]](#footnote-12) model or at least some form of counselling and legal assistance that they provide to non-consenting adults and minors.

1. UN Women. Note On Sex Work, Sexual Exploitation And Trafficking. 2013; UNAIDS Guidance Note On HIV and Sex Work, 2012; UNFPA Guidance Note On Hiv/Aids, Gender And Sex Work – complete reference; NSWP Consensus Statement reaffirms NSWP ’s global advocacy platform for sex work, human rights and the law. 2013. [↑](#footnote-ref-1)
2. See also: Understanding the De- Criminalisation Demand: Aarthi Pai and Meena Saraswathi Seshu; The feminist and the sex worker: Lessons from the Indian Experience by Srilatha Batliwala [↑](#footnote-ref-2)
3. United Nations Office on Drugs & Crime, Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, 2015 [↑](#footnote-ref-3)
4. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. New York (NY): United Nations; 2010 (A/HRC/14/20); see also Global Alliance Against Trafficking in Women (GAATW), “[The Cost of a Rumour](http://www.gaatw.org/publications/WhatstheCostofaRumour.11.15.2011.pdf)”; and Global Network of Sex Work Projects (NSWP) “[Sex Work is not Trafficking](http://www.nswp.org/resource/sex-work-nottrafficking)”. [↑](#footnote-ref-4)
5. The [Protocol](http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx) to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). GA resolution 55/25, adopted 15 November 2000. [↑](#footnote-ref-5)
6. Global Commission on HIV and the Law. (2012) HIV and the law: risks, rights and health. New York (NY): United Nations Development Programme; 2012; Technical guidance for Global Fund HIV proposals Round 11 (complete), The report of the UNAIDS Advisory Group on HIV and sex work. Geneva: Joint United Nations Programme on HIV/AIDS; 2011; WHO, UNFPA, UNAIDS, NSWP, World Bank & UNDP, 2013, “[Implementing Comprehensive HIV/STI Programmes with Sex Workers: Practical Approaches from Collaborative Interventions](http://www.who.int/hiv/pub/sti/sex_worker_implementation/en/)”. UNODC 2006 Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime. New York (NY): United Nations; 2000 (A/55/49 (Vol. I)) [↑](#footnote-ref-6)
7. United Nations Office on Drugs & Crime, [Issue Paper: The International Legal Definition of Trafficking in Persons](https://www.unodc.org/documents/human-trafficking/2018/Issue_Paper_International_Definition_TIP.pdf), 2018 [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. CEDAW/C/NOR/CO/9, para 28 [↑](#footnote-ref-9)
10. CEDAW/C/CHE/CO/4-5, para 29 [↑](#footnote-ref-10)
11. See also: Understanding the De- Criminalisation Demand: Aarthi Pai and Meena Saraswathi Seshu; The feminist

    and the sex worker: Lessons from the Indian Experience by Srilatha Batliwala [↑](#footnote-ref-11)
12. The [SRB model](http://durbar.org/html/anti_trafficking.html) is a multi-stakeholder model, comprising of members across Department of Health, Labour and

    Social Welfare, medical practioners, lawyers, social workers, sex workers and others. This mechanism helps to

    identify whether the person is there by choice or coercion. For minors and non-consenting adults, their wishes are

    taken into consideration to rehabilitate them accordingly [↑](#footnote-ref-12)