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

This submission is a response by the African Sex Workers Alliance and CREA to the Committee’s draft General Recommendation on Trafficking in Women and Girls in the context of Global Migration (GRTWGGM).

This note outlines three key areas of concern, namely: the ambiguous use of the term ‘sexual exploitation’ and ‘prostitution’; the recognition of the adverse collateral effects of anti-trafficking efforts; and the overarching framework regarding ‘Discouraging the demand that fosters exploitation leading to trafficking’. The continued conflation of adult, consensual sex work with trafficking and sexual exploitation has been a gap that has continued to place sex workers in conflict with the law and state as well as increased instances of violence against sex workers from both the state and community.  Sex workers seek the recognition of the complexities and nuances of sex work and how these must be prioritised in the fight for rights in relation to their sexuality, reproduction, employment, access to services and information, and freedom of movement and assembly. Their right to participation in legal, policy and programmatic processes in relation to sex work should be guaranteed at international and national levels.

**About ASWA**

African Sex Workers Alliance (ASWA) is a pan-African network of sex worker led organisations formed in 2009. ASWA amplifies the voices of sex workers as well as advocates for the health and human rights of the diverse community of sex workers working and living in Africa. It also advocates for changes in social norms, laws and policies at the regional and international level. By advocating for changes in laws and policies at the regional and international levels, ASWA is working to create a legal regime that recognises sex work as work; repeals repressive laws, and implements laws that protect and promote the rights of sex workers in Africa.

**About CREA**

CREA, is a Global South gender rights organisation 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.

**Key concerns and recommendations**

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][[1]](#footnote-1))

**Reason:**

The conflation of sexual exploitation and trafficking with voluntary adult sex work has led to violation that severely undermine the rights of sex workers. By conflating voluntary adult sex work with exploitation, resources are being misdirected into policing and punishing consensual sex work rather than identifying people who are trafficked into sex work and sexually exploited and providing them appropriate and necessary support[[2]](#footnote-2). Sexual exploitation, prostitution and trafficking people is not the same as consensual adult sex work. A distinction, drawing from the Palermo Protocol[[3]](#footnote-3) 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, trafficking and sexual exploitation. This GR should therefore follow the same practice[[4]](#footnote-4). 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.[[5]](#footnote-5)

ASWA has endorsed and supported the Global Network of Sex Workers Project (NSWP) Anti Trafficking Policy and further taken advantage of various spaces to ensure that awareness of and information about trafficking reaches as many of its members as possible, to ensure that sex workers collaborate and collectively oppose all forms of trafficking and sexual exploitation and strongly condemn the circumstances or persons that force women and minors into a profession they have not chosen.[[6]](#footnote-6)

* 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[[7]](#footnote-7) (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. The forces of criminalisation and stigma of sex work combine to create an environment in which violence against sex workers is viewed as being somehow less abhorrent than violence against women in the general population. Sex workers of all genders are entitled to the human rights to which all people of the world are entitled, as enshrined in international human rights instruments. Similarly, they are entitled to all the constitutional and legal rights of citizens in the countries in which they live. However, as a stigmatised, marginalised, oppressed, dehumanised and criminalised population, sex workers are not only more likely to experience violence, but are also less likely to receive help when they need it, from the police, health care workers and others tasked with assisting victims of violence. On the contrary, further abuse by service providers leads many sex workers to feel that reporting crimes against them is an exercise in futility, which further exacerbates marginalisation[[8]](#footnote-8). 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 recommends 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, (INS in whatever for that might be) 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 address 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. 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 rescue and rehabilitation and the results are disastrous. Despite the fact that sex worker empowerment and engagement may well be the missing link which can make anti-trafficking interventions more effective, the efforts of sex worker organisations have largely gone unrecognised or sex worker organisations are often villainised[[11]](#footnote-11) particularly around non-consenting adults and minors. The rights and entitlements of consenting adults who enter into sex work should be recognized and not confused with the rights and needs of people who are forced into sex work and/ or are underage.

The lack of differentiation and clarity around sex work, sexual exploitation, and trafficking has been of polarising concern to sex worker rights advocacy with the sex worker rights movement acknowledging the experiences and voices of sex workers, recognising consensual sex work as work, and advocating for decriminalisation of sex work. This conflation results in a grey-area that views sex work as inherently exploitative, harmful and as a form of violence against women. It therefore advocates for measures that will lead to the eradication of the sex industry.

1. United Nations Office on Drugs & Crime, Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, 2015 [↑](#footnote-ref-1)
2. 6 Global Alliance Against Traffic in Women (GAATW). Collateral damage, The impact of anti trafficking measures on human rights around the world. Bangkok, 2007. [↑](#footnote-ref-2)
3. 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-3)
4. 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-4)
5. 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-5)
6. [‘Aren’t we also women?](https://aswaalliance.org/wp-content/uploads/2019/03/AREN%E2%80%99T-WE-ALSO-WOMEN.pdf)’, Kenyan sex workers shadow report submission to CEDAW’s 68th Session, 2017 [↑](#footnote-ref-6)
7. 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-7)
8. African Sex Worker Alliance (2019). “*Every sex worker has got a story to tell about violence”:* Violence against sex workers in Africa. Nairobi. [↑](#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. Africa Sex worker Alliance. I expect to be abused and I have fear. Sex workers’ experiences of human rights violations and barriers to accessing healthcare in four African countries. April,2011. Also see, African Sex Worker Alliance (2019). “Every sex worker has got a story to tell about violence”: Violence against sex workers in Africa. Nairobi [↑](#footnote-ref-11)