

**General Recommendation on Trafficking in Women and Girls in the Context of Global Migration:**

**Submission to the United Nations Committee on the**

**Elimination of all Forms of Discrimination Against Women**

May 2020

Submitted by the **Canadian Alliance for Sex Work Law Reform**

[contact@sexworklawreform.com](mailto:contact@sexworklawreform.com)

[www.sexworklawreform.com](http://www.sexworklawreform.com)

The Canadian Alliance for Sex Work Law Reform is an alliance of sex worker-led and allied organizations across Canada. Members work together to fight for sex work law reform, sex workers’ rights, and community well-being. Member groups include: Action Santé Travesties et Transexuel(le)s du Québec (ASTTeQ) (Montréal); BC Coalition of Experiential Communities (Vancouver); Butterfly Asian and Migrant Sex Workers Network (Toronto); Canadian HIV/AIDS Legal Network (Toronto); Downtown Eastside Sex Workers United Against Violence (SWUAV) (Vancouver); Émissaire (Longueuil); FIRST (Vancouver); Maggie’s Toronto Sex Workers Action Project (Toronto); Maggie’s Indigenous Sex Workers Drum Group (Toronto); Migrant Sex Workers Project (Toronto); PEERS (Victoria); Projet Lune (Québec); Prostitutes Involved Empowered Cogent Edmonton (PIECE) (Edmonton); Providing Alternatives, Counselling and Education (PACE) Society (Vancouver); Rézo, projet travailleurs du sexe (Montréal); Safe Space (London); Safe Harbour Outreach Project (S.H.O.P.) (St John’s); Sex Professionals of Canada (SPOC); Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury); Stella, l’amie de Maimie; (Montreal); Supporting Women’s Alternatives Network (SWAN Vancouver); HIV Community Link Shift Program (Calgary); Sex Workers of Winnipeg Action Coalition (Winnipeg); SWAP Hamilton (Hamilton); SWAN Waterloo Region (Waterloo).

**KEY CONCERNS & RECOMMENDATIONS**

Throughout the General Recommendation (GR), the language of “end demand” is reflected, which is associated with the Nordic model, whereby human trafficking and sexual exploitation are conflated with sex work. This contributes to great harm towards sex workers. We urge the Committee to ensure that **sex work is explicitly distinguished from human trafficking and sexual exploitation in the GR, and to also recommend that (1) criminal sanctions against sex work, including those against clients or third parties and (2) immigration rules prohibiting migrant sex work be repealed**. This would be in line with recommendations made by UN agencies that have considered the human rights implications of criminalizing sex work.[[1]](#endnote-1) NB: a strike out indicates that we recommend the applicable text be deleted and green text is a recommended addition.

Section III Legal Framework

**Requested change (addition of new para. 9):**

* “The Committee notes that the term ‘sexual exploitation’ as employed in this General Recommendation does not refer to all sex work or to all sex work with third party involvement."[[2]](#endnote-2)

**Rationale:**

As the Committee knows, there is a prominent ideology that characterizes all sex work as sexual exploitation; given this common conflation, it is important that the GR clearly distinguish between sex work (including sex work with third party involvement) and sexual exploitation. Defining sex work as ‘sexual exploitation’ trivializes actual violence and labour exploitation experienced by sex workers, undermines their ability to prevent and address such abuse, violates their right to autonomy, and invalidates the vital concept of consent when sex occurs in a transactional context. The conflation of sex work with sexual exploitation and trafficking leads to aggressive policing of the sex trade and harsh consequences for sex workers and their personal and work associates under criminal and immigration laws.

Section IV (title)

**Requested change (deletion) and replacement**

* ~~“Root causes and discouraging the demand that fosters exploitation through trafficking~~.” “Scope, root causes and impacts of trafficking in women and girls.”

**Rationale:**

The draft title addresses only one of seven subsection topics. Further, “demand” is one of numerous root causes; given that “end demand” has become a synonym for anti-sex work positionings and the Nordic model, flagging it for special attention is problematic. This is especially true when the GR fails to clearly distinguish sex work from sexual exploitation, and when the Committee has not acknowledged the harmful impact of the “end demand” model on sex workers and their human rights.

Section IV, e (title)

**Requested change (deletion):**

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

**Rationale:**

“Demand” is one of numerous root causes; given that “end demand” has become a synonym for anti-sex work positionings and the Nordic model, flagging it for special attention is problematic.

Section IV, a, **para 12:**

**Requested change (addition):**

* “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 non-sexual labour or domestic servitude.”[[3]](#endnote-3)

**Rationale:**

The GR is based solely on narrow UNODC data and would benefit greatly from a broader, more nuanced, framework that reflects the modern reality of the phenomenon of human trafficking. UNODC also acknowledge the serious gaps and weaknesses in trafficking data, noting that the fact that sexual exploitation is the most commonly identified form of human trafficking may be the result of statistical bias.

Section IV, e, **para 20:**

**Requested change (deletions):**

* “Trafficking in women is rooted in gender-based discrimination, gender-based structural inequality and the feminisation of poverty compounded by growing global inequalities and the demand for cheap and/or forced labour~~, including the demand for sexual exploitation~~. Women and girls continue to be the prime targets of traffickers~~, especially for the purpose of sexual exploitation,~~ due to pervasive and persistent gender inequality resulting in an economic, social, and legal status that is lower in comparison than that which is enjoyed by men and boys.”

**Rationale:**

The common conflation of sex work with sexual exploitation renders the draft phrasing problematic as it reproduces the harmful and unsupported claims of Nordic model proponents. Further, findings that women and girls are prime trafficking targets “especially” for the purposes of sexual exploitation are likely based on statistical bias.[[4]](#endnote-4)

Section IV, e, **para 22:**

**Requested change (deletion):**

* “Women at risk of being trafficked are more likely to be impoverished, uneducated, unemployed and/ or disempowered by political, economic, societal and family structures*,* including being subjected to unequal treatment, carrying the burden of household and childcare responsibilities and are often subject to domestic violence… Additional push factors include persisting norms and stereotypes regarding male domination, the need to assert male control or power and enforce gender roles, male sexual ~~entitlement,~~ coercion and control which drive the demand for the gender-stereotyped exploitation of trafficking victims, as well as the lure of massive financial gains with few risks due to the impunity enjoyed by perpetrators.”

**Rationale:**

The language of “male sexual entitlement” is commonly used to promote the criminalization of people who purchase sexual services by proponents of the harmful Nordic model. The phrase “male sexual coercion and control” captures the relevant push factor without reinforcing policies that harm sex working women.

Section IV, e, **para 27 (b):**

**Requested change (deletion):**

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

**Rationale:**

This clause is a thinly veiled attempt to focus solely on buyers of sex work services and promote the Nordic model that has immense, adverse human rights impacts on sex workers. As ICAT describes, most users of goods and services that result from labour trafficking in persons are unaware that trafficking has occurred.[[5]](#endnote-5) The conflation of sex work with sexual exploitation has led to the false assumption that when a purchased service is sexual in nature, the purchaser knows or ought to have known that trafficking might have occurred. The draft position is also incongruous with the Committee’s existing body of work on Article 6 that does not name client criminalization as an effective method to ‘discourage demand’.

Section IV, e, **para 27 (d):**

**Requested change (deletion):**

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

**Rationale:**

The phrase ‘including those on the demand side’ promotes the harmful Nordic model given that this model is commonly described as “end demand.” If the Committee wishes the GR to address demand by employers for cheap labour that rises to the level of trafficking, this should be explicitly stated and accompanied by a statement clarifying that this is not an endorsement of the Nordic model or its driving ideology.

Section IV, e, **para 29 (d):**

**Requested change (deletion):**

* “Explicitly addresses contemporary methods of trafficking~~, including those that make use of information and communication technologies~~.”

**Rationale:**

Women who sell or trade sex are disproportionately targeted for invasive trafficking investigations triggered by their online advertising or social medial presence. Anti-trafficking legislation targeting online advertising platforms has had a dramatically negative impact on sex working women’s physical and economic security. Until sex work is effectively distinguished from sexual exploitation and trafficking, States parties must not include information and communication technologies in their anti-trafficking legislation or practices.

Section IV, g, **para 57:**

**Requested change (addition):**

* “Promote a gender responsive safe migration framework to protect outgoing, returning and incoming women migrants, including irregular migrants and migrants who sell or trade sex, from all forms of violations of their human rights including by:”

**Rationale:**

Immigration laws and policies that prohibit migrant women from working in the sex trade facilitate violations of migrant sex-working women’s human rights and security.

Section IV, g, **para 58:**

**Requested change (restructuring and additions):**

* 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 women 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, and to minimize the opportunities for exploitation by providing very clear protections,including minimum wage, overtime pay, health and safety, and decent working conditions, particularly in unregulated or unmonitored economic sectors that rely on migrant women’s labour.”
* Clause f): “Facilitate the self-organisation and unionisation of women workers, including women migrant workers, in unregulated or unmonitored labour sectors.”
* Insertion of a new Clause g): “Review the impact of criminal and immigration legislation on sex working women’s rights and protection under employment legislation.”

**Rationale:**

We acknowledge the Committee’s responsiveness to addressing the structural links between labour exploitation and trafficking. The Committee’s recommendations in this respect are progressive and should be applicable to women workers at large and sex working women in particular.

Section V, a, **para 66:**

**Requested change (deletion and addition):**

* ”A challenge in identifying female victims of trafficking is the lack of gender-sensitivity of relevant professionals, including front-line professionals, that is needed to adequately understand, identify and respond to incidences of trafficking in women and girls , particularly as victims are often hidden in non-public areas such as private residences, isolated factories and farms~~, and brothels and private apartments used for commercial sexual exploitation~~. The victims, themselves, may lack awareness that they are subject to a criminal act, may not know where to report the crime or may be reluctant to engage with law enforcement and other state agents due to uncertainty about legal processes, for fear of being investigated or prosecuted under anti-prostitution laws, or for fear of being placed in detention and deported, particularly in the case of people with an irregular immigration status… Their experience of trauma may also impede their ability to seek help. Victims may choose not to disclose their traffickers.”

**Rationale:**

As opposed to contexts where trafficking victims are isolated from public contact, those in commercial sexual services engage with members of the public (clients) outside the trafficker’s inner circle. The failure to recognize sex work clients as members of the public engaged in anti-trafficking efforts is a reflection of the Nordic model’s false characterization of sex work clients as always predatory. The criminalization of sex work clients impedes their capacity to take action where they suspect trafficking or other abuse. The full/partial criminalization of sex work, including of clients and third parties, and immigration restrictions that prohibit migrant sex work, are significant barriers to sex working women’s engagement with law enforcement and other State actors.

Section V, a, **para 66 (b):**

**Requested change (insertion of new subsection iv)**

* “Differentiation of sex work, sexual exploitation and trafficking in persons.”

**Rationale:**

Anti-trafficking initiatives, including awareness training, commonly conflate sex work, sexual exploitation and trafficking. Sex working women are subject to intrusive questioning and actions by law enforcement as well as health and social service providers, leading many women to isolate themselves from vital services. Trafficking detection tools used by law enforcement, service providers, and others often conflate signs of trafficking with signs of stigmatization, precarious and illegal immigration status and fear of arrest, detention and deportation as sex work takes place in a criminalized context, and workers may be deported for sex work involvement even in the absence of criminal charges. This leads sex workers to isolate themselves from important services to avoid invasive and potentially harmful questions and disclosures.

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, particularly sex workers who are the group most often subject to such coercive measures;”
* Clause c): “Ensure that no group of women, is targeted for investigation or prosecution, discrimination, stigmatisation, or suffers from the lack of rights and protections, under the guise of combatting trafficking, including violations of their rights to movement, assembly, health and safety, to dignity and livelihood. This must include sex workers who are most often targeted. States should cease such targeting and ensure these groups of women are afforded their full rights and protections;”
* Clause 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;”
* Clause 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 wider anti-migrant and anti-sex work initiatives. States must put clear measures in place to prevent this.”

**Rationale:**

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 GR.

1. For example, the UN Special Rapporteur on the right to health has described the negative ramifications of criminalizing third parties such as brothel owners and explicitly called for the decriminalization of sex work (Human Rights Council, *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, UN Doc. A/HRC/14/20, 2010, paras. 46-50; Human Rights Council, *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, UN Doc. A/HRC/23/41, para. 76(j)). On the issue of human trafficking, the UN Special Rapporteur on violence against women has noted the need to ensure that “measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers” (Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, UN Doc. A/HRC/26/38/Add.1, 2014, para. 78 (e)). The Special Rapporteur on the right to health has also spoken out against the conflation of sex work and human trafficking which can lead to “at best, the implementation of inappropriate responses that fail to assist either of these groups in realizing their rights, and, at worst, to violence and oppression” (Human Rights Council, *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, UN Doc. A/HRC/14/20, 2010, for example at para.33). Similarly, in 2012, the Global Commission on HIV and the Law recommended the decriminalization of sex work (including clients and third parties) and called for laws and policies to ensure safe working conditions for sex workers (Global Commission on HIV and the Law, *Risks, Rights & Health*, 2012, p. 43). [↑](#endnote-ref-1)
2. United Nations Office on Drugs & Crime, [*Issue Paper The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol*](https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf)*,* (2015). [↑](#endnote-ref-2)
3. UNODC, [*Global Report on Trafficking in Persons*](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)*,* (2018). [↑](#endnote-ref-3)
4. Ibid. [↑](#endnote-ref-4)
5. Inter-Agency Coordination Group against Trafficking of Persons (ICAT), *Preventing Trafficking in Persons by Addressing Demand,* (2014). [↑](#endnote-ref-5)