**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:

Desiree Alliance, Black Sex Workers Collective, Outlaw Project, New Jersey Red Umbrella Alliance, and Best Practices Policy Project

[*www.desireealliance.org*](http://www.desireealliance.org)

Desiree Alliance, Black Sex Workers Collective, Outlaw Project, New Jersey Red Umbrella Alliance, and Best Practices Policy Project represent a United States national coalition of sex workers working together with supporting U.N. networks for an improved understanding of sexual policies and its human, social, and political impacts of criminalization’s surrounding sex work.  Our priorities are building local, regional, and national leadership to constructively advocate sex workers human, health, labor, and civil rights.  We commit ourselves to the tenets of human rights and advocate for the full anti-criminalization of all consensual sex work.

**Problems and Concerns:**

The coalition of United States sex workers would like to raise our concerns over acute and problematic language in the CEDAW General Recommendations (GR).

Due to the broad stroke of legalese enacted within the U.S. federal government and state laws, sex trafficking has been piecemealed apart from all forms of human trafficking and interpreted to harm, criminalize, and incarcerate consensual sex workers. We feel the Committee is consistent utilizing the same rhetorical language model in the draft recommendations. Very little in the recommendations sufficiently protects consensual migrant and immigrant sex workers or those who are/have experienced sex trafficking. Targeted language produces a myriad of exclusions that define the fluidity of labor. Offering no distinctions between consensual sex work and sex trafficking exacerbates the divisions of clarity. Defining prostitution as inherently “bad” and omitting variations of how labor acts and moves across borders due to ever-changing dynamics of capital (for whatever reason), diminishes the complexities and intricacies that create clandestine markets.

Throughout the context of the draft, end-demand, also known as the Swedish/Nordic Model is continuously employed and recommended as best practices to alleviate/eradicate human trafficking. In the U.S., end-demand is used to criminalize the buyers of sexual commerce that initiate pathways to target those who labor in consensual sex work. It is not made clear in the GR the distinctions between consensual buyers of sexual commerce versus traffickers. The Committee must make these distinctions transparent in their recommendations.

We urge the Committee to formulate their language in viable fundamental ways to encompass the entirety of human trafficking dialogues. The recommendations by the United States coalition is as follows:

**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."[[1]](#endnote-1)**

**U.S. Recommendation:**

The term “sexual exploitation” as defined in the draft recommendations can be alluded as all forms of sexual commerce is considered sex trafficking. The conflation of consensual sex work with exploitation and trafficking is difficult to discern and ultimately leads to harmful legislations, increased violence, hyper-policing, and limits the abilities of immigrant and migrant sex workers to seek safe refuge or, legal assistance if they are trafficked in any form of illicit human, labor, or sexual economies.

**Section IV (Title) (deletion) and replacement**

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

**U.S. Recommendation:**

The Committee must distinguish root causes of demand and not as a broad interpretation symbiotic with exploitations. Anti-trafficking policies in the U.S. present harmful and dangerous approaches to combatting human trafficking, especially in immigrant and migrant communities that laws and governments do not protect and serve or, wholly represent. The Committee must acknowledge the destructive impacts that punitive policies have on immigrant and migrant sex workers that lead to sexual abuses, deportations, entrapment, incarcerations, etc. Without clear definitions of root causes and separating it as a sole entity of demand, reifies trafficking in all forms, (i.e. labor, sex, and human trafficking) and furthers the demand for these economies to thrive in clandestine markets regardless of government objectives to curb or eradicate trafficking.

1. 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).

**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.”**U.S. Recommendation:**

The GR is based on limited data implemented by the UNODC. Based on this document, UNODC acknowledges serious gaps and failings in trafficking data and results in biased statistical information. Incorrect or insufficient data distorts the realities of and skews the balance of other forms of human trafficking such as forced labor, debt bondage, domestic servitude, forced matrimonies, warfare, and gender bases of demand. The U.S. coalition recommends a broader scope of statistical data be implemented in a comprehensive framework that reflects the entirety of human trafficking phenomenon

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

**(27) “Discourage the demand that fosters all forms of exploitation of persons, especially**

 **women and children, that leads to human trafficking by:”**

	1. **Adopting or strengthening legislative and other measures to implement prevention techniques through educational, social or cultural measures, including in particular those targeted toward potential users of trafficked goods or services;**
	2. **Where applicable, instituting penal legislation to sanction the users of goods and services that result from trafficking in persons;****Also Applies to: Section VI, a, para 92 ‘Adverse collateral effects of anti-trafficking efforts’:**

**U.S. Recommendation:**

The Committee must make clear or extract the muddled language as to not conflate consensual sex work with sex trafficking. These recommendations are used to criminalize and add punitive consequences to immigrant and migrant sex workers as well as consumers of consensual sexual commerce. We urge the Committee to apply useful and careful language that does not fragment nor separate the human rights of immigrant and migrant sex workers regarding any form of human trafficking. In the U.S., coalitions of higher academia, faith-based, and law enforcement have driven the trafficking narratives to promote carceral sanctions of those who have been directly affected by human trafficking. Ill-thought punitive solutions to support a one-stop-shop ideology of trafficking in any manner, devalues the complexities of what drives human capital and detrimental to combatting the varied methods of illicit economic consumptions. End-demand applications do not eradicate trafficking and furthers underground economies to thrive. The U.S. coalition highly recommends that education before carceral solutions must be demanded to fully comprehend the complexities of human trafficking.

In the U.S., sex workers who are trafficked are immediately arrested and, in the case of immigrant and migrant sex workers, legal ramifications go further such as: long-term incarceration in “migrant camps”, deportations, sexual abuses while detained, coercion, violence, sexual assaults/rape by law enforcements, forced labor or sexual trade, etc., defining the very crux of trafficking. The GR offers no dissimilarities in these interpretations and is recommended that a more comprehensive explanation be added in the context of human trafficking.

**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~~.”****U.S. Recommendation:**

The language promotes the Swedish/Nordic model which can produce dire effects for the buyers of consensual sexual commerce and opens up multiple avenues to target sex workers. The U.S. coalition recommends the deletion of this particular interpretation.

**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~~.”****U.S. Recommendation:**

In the U.S., federal and state laws have targeted consensual sex workers using technologies as safety nets, information sharing that keeps them safe from violence, etc. The fact that underlying political motives from the U.S government to control technologies have fallen onto sex worker’s backs with dire consequences. The GR makes no distinctions between consensual sex work, exploitation, or trafficking in this summary. Until this is demarcated as linear, the U.S. coalition finds the GR highly problematic and must eliminate this specific language from the document.

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

**Requested change (addition in red):**

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

The addition prevents rampant abuses from authoritative stakeholders and secures the rights of immigrant and migrant sex workers self-determinations.

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

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

	* Move para. 58 ‘Employment and labor 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 immigrant and 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 immigrant and migrant women’s labor.”
	* Clause f): “Facilitate the self-organization and unionization of women workers, including women immigrant and migrant workers, in unregulated or unmonitored labor 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.”**U.S. Recommendation:**

We applaud the Committee response to correlate labor exploitations and trafficking. However, these restructures and additions will address all aspects of immigrant and migrant labor(s) in sexual commerce.

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	* Clause f): “Facilitate the self-organisation and unionization of women workers, including women immigrant and migrant workers, in unregulated or unmonitored labor 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.”**U.S. Recommendation:**

These recommendations speak for itself on necessary implementations to ensure the safety and well-being reflecting immigrant and migrant sex workers.

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

	* ”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.”**U.S. Recommendation:**

That CEDAW continue to monitor the punitive effects of stakeholder (i.e. law enforcement, service providers, diversion models, etc.) practices as not to hinder self-determinations of immigrant and migrant sex workers

**Section V, a, para 66 (b): Requested change (insertion of new subsection iv)**

	* “Differentiation of sex work, sexual exploitation and trafficking in persons.”**U.S. Recommendation:**

The U.S. coalition recommends the Committee appoint non-biased representatives to monitor U.S. government and civil society participation of social, legal, and punitive actions regarding immigrant and migrant sex workers. The conflation of consensual sex versus sex trafficking must be examined to determine gaps in resources, services, and overall safety and well-being of immigrant and migrant sex workers. Fear of violence and punitive consequences should never replace accessibility to ensure that sex workers who have been impacted by any form of human trafficking, are allotted full resources to live and, thrive.

 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).

 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).

 UNODC, [*Global Report on Trafficking in Persons*](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)*,* (2018).

 Ibid.

 Inter-Agency Coordination Group against Trafficking of Persons (ICAT), *Preventing Trafficking in Persons by Addressing Demand,* (2014).

 [↑](#endnote-ref-1)