



HOPS
HEALTHY OPTIONS PROJECT SKOPJE

Comments to CEDAW: Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration, May 2020

HOPS- Healthy Options Project Skopje introduced the first needle exchange program for prevention against HIV among people who use drugs in 1997 and in 2000 it began implementing the first program for support of sex workers in Skopje. HOPS is a recipient of the 2010 International Award for Action on HIV/AIDS and Human Rights awarded by the Canadian HIV/AIDS Legal Network and Human Rights Watch.

The Coalition Sexual and Health Rights of Marginalized Communities MARGINS was founded in 2007 as a non-formal, joint platform and the result of the joint efforts of several organizations. Since 2011, the Coalition has been registered as an individual legal entity, i.e. as an NGO whose founders include: HOPS – Healthy Options Project Skopje, HERA, IZBOR – Strumica, EGAL and STAR-STAR and Stronger Together. Since then, MARGINS has been working on equal access and enjoyment of human rights of marginalized communities (sex workers, people living with HIV, people who use drugs, marginalized women and LGBT people) and better life quality in different social spheres.

STAR-STAR initially operated as an activists' movement of a group of young people who shared a common goal – improvement and promotion of sex workers' rights; and towards the middle of 2010 STAR-STAR was formally registered as first sex worker-led organization. Today, STAR-STAR is an integral part of the civil sector promoting their aspirations, contributions and needs, striving towards an open society which would recognize, accept and respect differences.

KEY CONCERNS & RECOMMENDATIONS

Section III Legal Framework

Requested change (insertion of new para 9):

- “The Committee notes that the term ‘sexual exploitation ’as utilised in this General Recommendation does not refer to all sex work.¹”

Reason: 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.”**² The International Labour Organization (ILO) in its Conventions on Forced Labour Convention (Convention No. 29, adopted in 1930)³ and the Protocol to this Convention defining forced and compulsory labour, as well as the Abolition of Forced Labour Convention (Convention No. 105, from 1957)⁴ considers forced prostitution and sexual exploitation under the definition of forced labour. Human trafficking appears in many sectors of the economy, however the way this issue is often addressed is focusing on dealing with trafficking with women and children in the sex industry. Including the ILO conventions within the legal framework on human trafficking and the obligations of the state-parties in the area of labour relations will considerably help in dealing with all forms of human trafficking.

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”~~

Reason:

- “Demand” is a root cause of trafficking and should be subsumed within root causes, not placed alongside them.

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 labour or domestic servitude.⁵ Further, according the 2017 Global Estimates of Modern Slavery, of the 16 million people in forced labour exploitation, 57.6% were female.⁶”

Reason: 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 modern slavery and human trafficking. UNODC also note the serious gaps and weaknesses in trafficking data, noting that

¹ United Nations Office on Drugs & Crime, 2015, “[Issue Paper The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol](#)”.

² NSWP, 2019, “[Briefing Note: Sex Work is not Sexual Exploitation](#)”.

³ International Labour Organization (ILO), Forced Labour Convention, C29, 28 June 1930, C29.

⁴ International Labour Organization (ILO), Abolition of Forced Labour Convention, C105, 25 June 1957, C105.

⁵ UNODC, 2018, “[Global Report on Trafficking in Persons](#)”.

⁶ ILO & Walk Free Foundation, 2017, “[Global estimates of modern slavery: Forced labour and forced marriage](#)”.

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.”⁷ The situation is similar in the Republic of North Macedonia as well. Most of the reported cases of human trafficking, reported by the National Commission to Combat Trafficking in Human Beings, refer to trafficking in women for sexual exploitation. The cases of human trafficking for forced begging, that are very visible in public spaces throughout the country, are highly neglected and go unpunished. The way to deal with the demand, which is in the recommendation, implies punishing people giving money to children beggars, and this will not serve the purpose of eradicating trafficking, finding and punishing the perpetrators and protecting the victims.

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”~~

Reason: This clause is a barely-veiled attempt to 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, that rightly, does not indicate an equivocal espousal of client criminalisation strategies as an effective method to ‘discourage demand’. The CEDAW Concluding Observations on Article 6 have included recognising the adverse human rights impact of client criminalisation on sex workers⁸ and recommending implementation of labour frameworks to “prevent and combat other exploitative practices assimilated to trafficking”⁹. The promoted model of punishing the clients of the services, in order to protect the women, is contrary to the basic goal of the Convention - achieving de facto equality. Thus, introducing a law that will supposedly protect women from their clients, objectifies sex workers and deprives them of an opportunity to make informed and individual decisions. This is a protectionist approach not aimed at liberating and emancipating women; on the contrary, it deprives sex workers of effective and timely protection in cases of violation of their rights.

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.”~~

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:

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

⁷ UNODC, 2009, “[Global report on Trafficking in Persons](#)”.

⁸ CEDAW/C/NOR/CO/9, para 28

⁹ CEDAW/C/CHE/CO/4-5, para 29

- 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 in particular women migrant workers in unregulated or unmonitored labour sectors.”

Reason: We acknowledge and 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 realised.

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 a wider anti-migrant, and specifically anti-sex work, narrative. States must 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 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. In practice, we are witnessing police actions where sex workers are detained and their rights are grossly violated, but the authorities justify the actions as an effective combat against human trafficking. Such police actions are particularly aimed at migrant sex workers, as they often lack legal resident status (or are undocumented), thus if they find themselves in a situation of human trafficking or sexual exploitation, they are not encouraged to report it to the police because. This is because they receive inappropriate treatment by the police or face possible deportation. It is not uncommon that domestic sex workers are also targets of police raids.

In November 2008, the Ministry of Interior of the Republic of North Macedonia carried out a huge police action in Skopje, when over thirty persons were detained, including 23 sex workers. After all of the detainees were identified; the potential clients, human rights activists from CSO HOPS and random passers-by were released, but the sex workers were not. The sex workers were held throughout the whole night, at Bit-Pazar police station, in inhumane and degrading conditions. The next morning, they were taken to the Clinic for Infectious Diseases and Febrile Conditions and were tested for HIV, hepatitis C and other blood and sexually transmitted diseases. At first, the reasons for the arrest were not known. According to an announcement provided by the Ministry of Interior after the action, the sex workers were considered victims of human trafficking, and the action was aimed to rescue them. However, they did not receive treatment of victims in the course of the detention, during the detention at the police station or after their release. The police, the Centre for Social Work or other competent institutions, did not offer to the detainees any protection services for victims of human trafficking, i.e. the perpetrators of human trafficking were never punished. Furthermore, seven of the detained sex workers, who tested positive of hepatitis C, were accused of a criminal deed *Transmission of an infectious disease*, a crime against health as defined by the Criminal Code.

Interchanging/identifying human trafficking with sex work often leads to inconsistent policies and practices. Namely, the police action in 2008 was a clear example of uncoordinated and inconsistent action within the same system. This led to undermining the good results achieved through the yearly HIV prevention programmes among the key communities, including sex workers. The civil society organizations working on HIV prevention of key communities, including sex workers provide services supported by Global Fund to Fight AIDS, Tuberculosis and Malaria and later, by the Ministry of Health. In the above-mentioned case, the Ministry of Interior persecuted the sex workers just because they were sex workers. The lack of differentiation between sexual exploitation and voluntary sex work, as well as stigmatization of sex work, leads states to criminalize sex workers instead of investigating cases of human trafficking with due diligence. In our country, sex work is still an illegal activity (labelled as Misdemeanour against public order and peace), and this further leads to insufficient protection of the victims by the real human traffickers.

Namely, in 2019, three sex workers were arrested, detained and accused of allegedly trafficking a child for sexual exploitation. The presented evidence and allegations in the indictment reveal that the prosecution clearly has not conducted a full and thorough investigation. The case rests mostly on the testimony by the child-victim who is subject to influence by her real abusers. Her statement often changes, is not consistent and at times, it is contradictory. Although there are reasonable grounds to suspect that the child was a victim of trafficking by male traffickers, the prosecution completely ignored these facts, did not conduct an investigation with a due diligence, and focused solely on the accused sex workers. Even, one of the alleged traffickers, caught at the spot with the girl, was proposed as a witness! The incrimination of the sex workers for child trafficking was based only on the fact that they lived and provided sexual services in the same area as the child-victim.

The law enforcement agencies are not sensitive to human trafficking and the gender based-perspective in this context and they fail to introduce the principle of impunity for victims of trafficking who have conducted a crime as a result of weakness, fear, insecurity, limitation of free will and free choice. While the sex workers were in custody, the child victim was trafficked to a neighbouring country. The state discriminated against sex workers due to the persisting stigma of sex work, but also against the child-victim who unfortunately remains insufficiently protected and remains a target for further abuse by the real perpetrators.