**Submitted by:** Pivot Legal Society, Coalition Against Trans Antagonism

***Theme:*** *Discouraging ‘the demand’*

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| 1 | Replace “~~discouraging the demand that fosters~~” with “shifting away from misdirected anti-trafficking models which inadequately address” | **Location:** Paras. 2, IV, 12.e), 19, 27 |
| 2 | Remove “~~, including those on the demand side~~” | **Location:** Para. 27.d) |

**Reasoning:** Guideline 2 of the U.N.’s Recommended Principles and Guidelines on Human Rights and Human Trafficking (the “Guidelines”) indicates that “[a] failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights.” As noted by the Committee in paragraph 92 of the Draft, trafficking victim identification and protection requires that legislation and laws are not overly broad, as this has resulted in adverse collateral effects on sex workers, their clients, third parties, and migrant women. This exposes sex workers to lethal violence and hardship and constitutes a State-imposed violation of their rights. States parties must therefore enact legislation which addresses this failed anti-trafficking model and foregoes an ‘end demand’ approach due to the heightened safety and health risks this approach poses women sex workers.[[1]](#footnote-1)

While the Draft aims the recommended efforts to “discourage the demand” at exploitation, this approach to anti-trafficking is akin to faith-based prohibitionist principles which seek to eradicate the sex industry altogether based on Judeo-Christian values. The Committee must avoid its implicit endorsement of State-imposed harm inflicted upon sex workers through criminalization. This is pressing given that many countries explicitly criminalize sex work in the name of protecting exploited persons; Canada, for example, re-criminalized most aspects of sex work after previous ‘end demand’ sex work laws were struck down in 2013.[[2]](#footnote-2) These new laws were also deemed unconstitutional by a Canadian court in 2020.[[3]](#footnote-3)

***Theme:*** *Prioritizing women facing compounded oppressions*

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| 3 | Replace “~~women and girls~~” with “women, girls, and nonbinary people” | **Location:** Paras. 1, 2, 3, 4, 6, 8, 11, a, 12, b, 14, 15, 16, d, 18, 19, 21, 22, 24, 25.a), 25.c), 25.c)ii, 25.c)iv, 25.c)vii, 25.c)viii, 25.c)ix, 25.f)ii, 26.b), 26.f), 29.e), 30, 30.a)ii, 31.h), f, 33, 34, 35, 36, 37, 38, 39, 41, 42.f), 42.g), 45.a), 45.e), 47, 57.e)b, 63, 66, 67, 68.b), 68.b)i, 68.k), 73, 74, 85, 87, 88.a),  88.f), 97.a), 101. |

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| 4 | Add “, and that they also differ for cisgender women from that of transgender women and nonbinary people” after “adult women” | **Location:** Para. 6 |
| 5 | Add “who are trans and/or nonbinary, disabled, Indigenous, Black, people of colour, formerly incarcerated, ” after “in poverty” | **Location:** Para. 12 |
| 6 | Add “, the enforcement of the gender binary, cisheteropatriarchy, ” after “gender-based discrimination” | **Location:** Para. 14 |
| 7 | Add “, misogynoir, and transmisogyny” after “domestic violence”; Add “, including colonialism, racism, ableism, classism, and ageism” after “marginalization” | **Location:** Para. 21 |
| 8 | Add “Trans women and nonbinary people experience additional violence due to stigma and oppression toward trans people, LGBTQ2S+ people, and gender nonconforming people as a whole. They face increased vulnerability to ill health including HIV infection and social and economic exclusion.[[4]](#footnote-4)”after “domestic violence.”  Add “, the enforcement of the gender binary, policing of gender identities and gender expressions” after “gender roles” | **Location:** Para. 22 |
| 9 | Replace “~~patriarchal~~” with “cisheteropatriarchal” | **Location:** Para. 23 |
| 10 | Add “Trans women and nonbinary people should receive access to services and treatment in a manner that respects their gender identity and gender expression.” after “trafficking.” | **Location:** Para. 43 |

**Reasoning:** Trans women and nonbinary people who are perceived as trans women face profound stigma and violence around the world due to structural oppression.[[5]](#footnote-5) Because of colonization, pervasive cisheteropatriarchal norms, and the enforcement and policing of the gender binary, trans women especially face immense violence that overlaps with housing discrimination, barriers to employment, health challenges, xenophobia, racism, transmisogyny, and anti-sex worker sentiment.

Trans women have a shortened life expectancy and are victims of hate-based violence, including extortion, physical and sexual assaults, and murder. The Trans Murder Monitoring Project data from 2019 shows that victims with known occupations are mostly sex workers (61%). In the U.S., most trans people reported murdered are trans women of colour and/or Native American trans women (90%); in France, Italy, Portugal, and Spain - the countries to which most trans and gender-diverse people from Africa and Central and South America migrate - 65% of the reported murder victims were migrant trans women.[[6]](#footnote-6)

Trans women and nonbinary people deserve to have data collected to provide insight into their experiences, distinguished from cisgender women or women whose gender identity matches their assigned sex at birth. Based on limited data and anecdotes from the lived experiences of trans people, it is clear that trans women of colour, especially those who are Black and/or Indigenous, face compounded barriers and, as a result, are more likely to engage in sex work or to be at risk of sex trafficking. Thus, they are in great need of international protection.

***Theme:*** *Sex workers’ rights: Full decriminalization*

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| 11 | Add “the decriminalization of the purchase, provision and organization of sexual services and” after “including” | **Location:** Para. 25.f)iii |
| 12 | Add “, including the decriminalization of the purchase, provision, and organization of sexual services” after “law” | **Location:** Para. 29.f |
| 13 | Add “Calls for the decriminalization of the purchase, provision and organization of sexual services to assist anti-trafficking actors with the identification of sex trafficking victims;[[7]](#footnote-7)” | **Location:** After para. 31.e |
| 14 | Add: “This includes the criminalization of the purchase, provision, and organization of sexual services, which disproportionately endangers women.” after “retribution.” | **Location:** Para. 80 |

**Reasoning:** Sex work, less respectfully referred to as prostitution, remains criminalized by the vast majority of States parties.[[8]](#footnote-8) Despite that the Committee, along with hundreds of sex worker rights organizations[[9]](#footnote-9) and a growing body of scholars (including over 300 Canadian academics)[[10]](#footnote-10), has long recognized that this disproportionately impedes women’s access to justice,[[11]](#footnote-11) most States parties continue to criminalize the purchase, provision, and/or organization of sexual services in the name of anti-trafficking. A 2018 meta-analysis of 18 years of qualitative and quantitative research spanning 134 studies regarding how sex work laws and policing practices affect sex workers’ safety, health, and access to services illustrates the health and safety consequences of overbroad anti-trafficking laws which capture sex workers in their scope.[[12]](#footnote-12) Conflating sex work and sex trafficking exposes sex workers, who are predominantly women, to sexual and physical violence, HIV and other sexually transmitted infections (STIs) by virtue of the repressive policing practices[[13]](#footnote-13) which their clients are subject to.

***Theme:*** *Sex workers’ rights: Assessing adverse collateral effects of anti-trafficking measures*

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| 15 | Add: “The number of women sex workers arrested, detained and/or deported in relation to anti-trafficking legislation, policies or regulations;” and “The number of women sex workers reporting instances of violence to and by the police;” | **Location:** New points before para. 25c)viii |
| 16 | Add: “Implement monitoring and evaluation mechanisms to measure the adverse collateral effects of anti-trafficking legislation and protocols on women sex workers and migrant women, including their rates of deportation, detention, and prosecution;” | **Location:** New point before para. 68.b |
| 17 | Add “, including mechanisms to ensure that women sex workers, nor their clients, are not adversely affected by these inspections” after “agencies” | **Location:** Para.68.e |

**Reasoning**: The Committee recognizes the adverse collateral effects of anti-trafficking regimes in paras. 86 and 92 of the Draft. As such, there is a pressing need for States parties to evaluate and address the intended and unintended effects of all anti-trafficking efforts, as States parties lack monitoring and evaluation and transparency of data regarding the detention, deportation, and prosecution of policies of migrant women and women sex workers in relation to anti-trafficking. Similarly, the granting of temporary residency to trafficked persons is often highly discretionary and typically lacks regulation and oversight.

***Theme:*** *Sex workers’ rights: Differentiating trafficking from sex work*

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| 18 | Add: “Perpetrators of trafficking and gender-based violence enjoy greater impunity under legal regimes with inadequate trafficking victim identification practices. States parties are required to meaningfully distinguish between sex trafficking victims and sex workers in their anti-trafficking legislation and protocols to avoid compromising the safety of sex workers, who are predominantly women and face heightened levels of violence.[[14]](#footnote-14)” | **Location:** After para. 20 |
| 19 | Replace “~~prostitution~~” with “sex trafficking” | **Location**: Para. 24 |
| 20 | Add “Distinguishes sex work from sex trafficking to assist victim identification and protection efforts;” | **Location:** After para. 29c |
| 21 | Add “Overbroad human trafficking legislation which inadvertently targets non-perpetrators has been shown to detract from victim identification efforts and further endangers women and girls, including women sex workers.” after “national law.” | **Location**: Para. 69 |

**Reasoning:** The Committee has acknowledged that sex work is distinct from the exploitation of prostitution;[[15]](#footnote-15) despite this, almost all States parties’ anti-trafficking laws do not reflect this life-saving distinction. Anne Therese Gallagher, Co-Chair of the International Bar Association’s Presidential Task Force on Trafficking, noted that a shortage of data regarding States’ criminal justice responses to trafficking and “disproportionate and politically motivated targeting of certain sectors, including the sex industry” diminishes anti-trafficking efforts.[[16]](#footnote-16) Recent quantitative research confirms the relationship between this conflation and national anti-trafficking legislation in Canada, noting that “Canadian laws and law enforcement efforts follow a largely reductive narrative that erroneously treats sex work as synonymous with trafficking in persons irrespective of individual agency or consent (Millar and O’Doherty 2015)”.[[17]](#footnote-17)

The Committee also recognizes the urgency of the criminalization faced by women sex workers[[18]](#footnote-18) and has yet to adequately address the pervasive conflation of trafficking with sex work. The Draft presents a crucial opportunity to highlight this difference and call for the decriminalization of all aspects of sex work to address this longstanding and widespread violation of sex workers’ rights.

***Theme:*** *Secularization*

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| 22 | Replace “~~faith-based actors~~” with “civil society organizations” | **Location:** Para. 68.j |

**Reasoning:** Religious interests do not merit special mention in anti-trafficking legislation, given the unfortunate correlation between faith-based sex work prohibition efforts and the persistent rights violations experienced by women sex workers. For that reason, secularizing anti-trafficking efforts is a key measure in the protection of disadvantaged women, including sex workers and survivors of sexual violence, and in ensuring that they do not experience adverse collateral effects due to anti-trafficking measures. The Committee notes that State responsibility for gender-based violence – including that which results from national anti-trafficking measures and the criminalization of sex work – “is an obligation of an immediate nature [and] delays cannot be justified on any grounds,”[[19]](#footnote-19) including religious grounds.

***Theme:*** *Unionization of sex workers*

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| 23 | Add “, including unionization opportunities for domestic workers, agricultural workers, factory workers, and sex workers” after “supply chains” | **Location:** Para. 27.c |
| 24 | Add “, including unionization opportunities for domestic workers, agricultural workers, factory workers, and sex workers” after “and girls” | **Location**: Para. 30.a)ii |
| 25 | Add “, sex work” after “care work” | **Location:** Para. 58.b |
| 26 | Add “and sex work” after “Recognize in law the care”; Replace “~~economy~~” with “and sex work economies” | **Location**: Para. 58.c |

**Reasoning:** As noted in paragraph 58.f, the Committee recognizes unionization as a powerful tool to help workers access their labour rights and protections enshrined in international law. We submit that this recommendation must be extended to migrant and non-migrant women sex workers and other women in the adult entertainment industry as well, as these classes of women are entitled to “the right to form and to join trade unions for the protection of their interests”, per Article 23(3) of the Universal Declaration of Human Rights.[[20]](#footnote-20) Women in these unregulated sectors are disproportionately exposed to violence and exploitation; the Committee must emphatically implore States parties to protect the employment rights which these disadvantaged classes of women do not currently enjoy in most domestic systems.[[21]](#footnote-21)

1. General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I), para. 6. [↑](#footnote-ref-1)
2. *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, paras. 164-165. [↑](#footnote-ref-2)
3. *R. v. Anwar*, 2020 ONCJ 103 at para. 215. [↑](#footnote-ref-3)
4. ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO, UNAIDS (2015). *United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children* at p. 2*.* Retrieved from: <https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF> [↑](#footnote-ref-4)
5. *Ibid.* at p. 1. [↑](#footnote-ref-5)
6. Trans Murder Monitoring (2019). *TMM Update Trans Day of Remembrance 2019: 331 reported murders of trans and gender-diverse people in the last year.* Retrieved from: <https://transrespect.org/en/tmm-update-trans-day-of-remembrance-2019/>. [↑](#footnote-ref-6)
7. General recommendation No. 33 (2015) (CEDAW/C/GC/33), at para. 51(l). [↑](#footnote-ref-7)
8. Global Network of Sex Work Projects (2019). *Global Mapping of Sex Work Laws.* Retrieved from: <https://www.nswp.org/sex-work-laws-map>. [↑](#footnote-ref-8)
9. The Global Network of Sex Work Projects (NSWP) is a membership organization [made up of over 200 local, regional, and national sex worker-led organizations](about:blank) from every continent except Antarctica. [↑](#footnote-ref-9)
10. Abel, G. et al (2014). *Open Letter to Federal Party Leaders: Evidence-Based Call for Decriminalization of Sex Work in Canada and Opposition to Criminalizing the Purchasing of Sex*. Retrieved from: <http://www.cgshe.ca/app/uploads/2019/11/CGSHE-Open-Letter-English-French-2014-03-27-.pdf>. [↑](#footnote-ref-10)
11. General recommendation No. 33 (2015) (CEDAW/C/GC/33), para. 9. [↑](#footnote-ref-11)
12. Platt, L., Grenfell, P., Meiksin, R., Elmes, J., Sherman, S. G., Sanders, T., ... & Crago, A. L. (2018). *Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies*. PLoS medicine, 15(12). [↑](#footnote-ref-12)
13. *R. v. Salmon and Foster*, 2020 ONSC 786 at paras. 24-28. [↑](#footnote-ref-13)
14. General recommendation No. 33 (2015) (CEDAW/C/GC/33), para. 49. [↑](#footnote-ref-14)
15. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, A/RES/34/180, art. 6. [↑](#footnote-ref-15)
16. A. T. Gallagher (2016). *Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice.* Anti-Trafficking Review, issue 6, pp. 1–11. Retrieved from: <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/75/86>. [↑](#footnote-ref-16)
17. Millar, H., & O’Doherty, T. (2020). *Racialized, Gendered, and Sensationalized: An examination of Canadian anti-trafficking laws, their enforcement, and their (re)presentation*. Canadian Journal of Law and Society / Revue Canadienne Droit Et Société, 1-22. [↑](#footnote-ref-17)
18. General recommendation No. 33 (2015) (CEDAW/C/GC/33), para. 49. [↑](#footnote-ref-18)
19. General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 21 [↑](#footnote-ref-19)
20. Universal Declaration of Human Rights art. 23. [↑](#footnote-ref-20)
21. Siegmann, K. A. (2019). ‘*Decent work for sex workers’ as ILO’s centenary treat*. Retrieved from: <http://column.global-labour-university.org/2019/04/decent-work-for-sex-workers-as-ilos.html> [↑](#footnote-ref-21)