This note has been drafted by OTRAS (Organización de Trabajadoras Sexuales) the first sex worker trade union in Spain to support our partners and allies seeking to engage with the UN Committee on he Elimination of All Forms

of Discrimination Against Women (CEDAW Committee) as it elaborates a general

recommendation on trafficking in women and girls in the context of global migration

(TWGCGM). Since the CEDAW Committee announced its decision to develop the general

recommendation on TWGCGM in July 2018.

We are raising concerns about the fact that the struggle against trafficking is misused to criminalis all forms of sex work, including between consenting adults. This is detrimental to all sex workers, including victims of trafficking, as it obscures the realities of

sex work, making more difficult the identification of victims, hindering NGOs and police efforts, and

reducing victims’ protections.

This note is based on a review and analysis of the first draft of the general recommendation

released by the CEDAW Committee in mid-April 2020 for public comment. It outlines key areas

of concern in the current draft namely- 1) the overarching framework regarding ‘discouraging

the demand that fosters exploitation leading to trafficking’, 2) the use of the term ‘sexual

exploitation’ and ‘prostitution’, 3) the limitation of datasets that form the basis of the draft

general recommendation and 4) the limitation of the gender analysis that informs the draft

general recommendation. It also highlights key areas of progress including- 1) the recognition of

the adverse collateral effects of anti-trafficking efforts and 2) the introduction of an employment

and labour framework to safeguard the rights of women migrant workers, including in the

informal economy. Specific recommendations for the CEDAW Committee follow each issue area,

including references to further research and evidence on which these recommendations are

based.

**KEY CONCERNS & RECOMMENDATIONS**

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 and discouraging the demand that

fosters their exploitation through trafficking”

**Reason:**

“Demand” is a root cause of trafficking[[1]](#footnote-2) (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.

Section IV, e, “Root causes of trafficking in women and girls and discouraging the demand that

fosters their exploitation through trafficking”, 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 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. This position is also

incongruous with the CEDAW Committee’s existing body of work on Article 6 that so far,

rightly, does not indicate an equivocal espousal of client criminalization strategies as an

effective method to ‘discourage demand’.

The CEDAW Concluding Observations on Article 6 have included recognizing the adverse human rights impact of client criminalization on sex workers[[2]](#footnote-3) and recommending implementation of labour

frameworks to “prevent and combat other exploitative practices assimilated to

trafficking”[[3]](#footnote-4) .

Section IV, e, “Root causes of trafficking in women and girls and discouraging the demand that

fosters their exploitation through trafficking”, 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.

**2) THE AMBIGUOUS USE OF THE TERM ‘SEXUAL EXPLOITATION’ AND THE USE OF THE TERM**

**‘PROSTITUTION’**

**Section III Legal Framework**

**Requested change (insertion of new para 9):**

● The Committee notes that the term ‘sexual exploitation’ as utilized in this General

Recommendation does not refer to all sex work [prostitution][[4]](#footnote-5).

Reason:

● Defining sex work as ‘sexual exploitation’ exacerbates the vulnerability of sex workers

and results in human rights abuses.

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.”[[5]](#footnote-6) 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.[[6]](#footnote-7)

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):**

• “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.

3) THE LIMITATION OF DATASETS THAT FORM THE BASIS OF THE DRAFT GENERAL

RECOMMENDATION

Section IV, a, “Root causes of trafficking in women and girls and discouraging the demand that

fosters their exploitation through trafficking”, 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.[[7]](#footnote-8) Further, according the 2017 Global Estimates of Modern Slavery,

of the 16 million people in forced labour exploitation, 57.6% were female.[[8]](#footnote-9)

**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 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.”[[9]](#footnote-10) ILO data found 38.2% of all victims of modern slavery are in the

category of forced marriage. 11.9% fell into the category of “forced sexual exploitation

/ CSE of children”, while 49.9% of people in modern slavery were enslaved in other

forms of forces labour.

**4) THE LIMITATION OF THE GENDER ANALYSIS THAT INFORMS THE DRAFT GENERAL**

**RECOMMENDATION**

**Section I, para 1:**

**Requested changes (additions):**

• Article 6 of the Convention on the Elimination of All Forms of Discrimination Against

Women (the Convention) sets out States parties’ legal obligation to “take all appropriate

measures, including legislation, to suppress all forms of traffic in women and

exploitation of prostitution of women”. Despite the plethora of existing anti-trafficking

legal and policy frameworks at the national, regional and international levels, it is

essential to understand the gender dimensions of trafficking overall and in particular,

trafficking in women and girls.

Trafficking remains pervasive globally. Perpetrators enjoy widespread impunity and women and girls continue to be subjected to extreme forms of gender-based violence, constituting a violation of their human rights and an obstacle to their achievement of substantive equality. Men, boys and transgender and non- binary persons are also victims of trafficking, but the patterns and practices of trafficking differ according to the gender of the trafficked person. The call for strategic global action by States to combat trafficking, especially in women and girls, is echoed in the Global

Compact for Safe, Orderly and Regular Migration and the 2030 Agenda for Sustainable Development.

**Reason:**

● We acknowledge and appreciate the Committee’s mandate to understand and provide

guidance to States’ parties on the patterns and impact of trafficking on women and girls.

However, the Committee's sole focus on trafficking in women and girls risks obscuring

factors that emerge through a nuanced analysis of the gender dimensions of trafficking

and migration in the 21st century. In this regard, we believe that two principles (in

addition to those already articulated by the Committee) should underline the

Committee’s analysis and recommendations.

● The full scope of understanding the gender dimensions of trafficking: While the focus of

CEDAW is discrimination against women, the Committee has often taken up larger

issues of gender, gender-based discrimination and gender-based violence, including

violence against persons because of their real or perceived sexual orientation and/or

gender identity. This General Comment appears to take a step back from that larger

analysis, despite the fact that there is an important analysis about the gender

dimensions of trafficking (and migration) that pertain to this particular GR. While it is

important to focus on the specific implications of trafficking in the 21 st century and the

context of migration on women and girls, it is also important to frame this within a larger

gender analysis, including an approach that observes the connection between a strict

binary construction of gender and the gender-specific manifestations of discrimination.

● Refrain from reinforcing gender stereotypes: One important element of using a broader

framework of the gender dimensions of trafficking and migration is generating a clearer

understanding of how gender stereotypes operate within the context of trafficking. For

instance, an approach that relies on a stereotyped assumption of predatory masculinity

fails to fully consider the intersections of gender, race, class, nationality, and geography

as critical components of the gender-related patterns of trafficking. Similarly, an

approach that relies on a stereotyped presumption about women’s victimhood, fails to

fully encompass the myriad ways in which women engage in trafficking and migration

patterns[[10]](#footnote-11).

This observation highlights the importance of an analysis and set of recommendations that

do not contribute to inadvertently advancing a narrative of women as helpless victims

incapable of making decisions for themselves. The Committee should pay special attention

not to invoke gender stereotypes that can fuel repressive policies that restrict women’s

rights ‘for their own good’, for instance, exclusionary migration policies that limit women’s

freedom of movement under the guise of keeping women ‘safe’ at ‘home’. Language to

avoid includes women being ‘lured’ by traffickers [e.g. Section IV, a para 22] and instead

consider using ‘defrauded’, ‘coerced’, or similar terms that acknowledge a competent adult

has been subject to malfeasance.

**5) 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, 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 suffers from the lack of rights and protections 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 liberty,

movement, assembly, health and safety, to dignity and livelihood. 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, 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 much 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.

**6) THE INTRODUCTION OF AN EMPLOYMENT AND LABOUR FRAMEWORK TO SAFEGUARD THE**

**RIGHTS OF WOMEN MIGRANT WORKERS, INCLUDING IN THE INFORMAL ECONOMY**

Section IV, g, “Root causes of trafficking in women and girls and discouraging the demand that

fosters their exploitation through trafficking”, 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 migrant 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 migrant 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 realized.

1. 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-2)
2. CEDAW/C/NOR/CO/9, para 28 [↑](#footnote-ref-3)
3. CEDAW/C/CHE/CO/4-5, para 29 [↑](#footnote-ref-4)
4. United Nations Office on Drugs & Crime, Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, 2015 [↑](#footnote-ref-5)
5. NSWP, Briefing Note: Sex Work is not Sexual Exploitation, 2019. [↑](#footnote-ref-6)
6. United Nations Office on Drugs & Crime, Issue Paper: The International Legal Definition of Trafficking in Persons, 2018 [↑](#footnote-ref-7)
7. United Nations Office on Drugs & Crime, Global Report on Trafficking in Persons, 2018 [↑](#footnote-ref-8)
8. International Labour Organization & Walk Free Foundation, Global estimates of modern slavery: Forced labour and forced

   marriage, Geneva, 2017 [↑](#footnote-ref-9)
9. United Nations Office on Drugs & Crime, Global report on Trafficking in Persons, 2009. [↑](#footnote-ref-10)
10. United Nations Office on Drugs & Crime, Global report on Trafficking in Persons, 2009. [↑](#footnote-ref-11)