**Submission to the CEDAW Committee**

**Re: Draft General Recommendation on Trafficking in Women and Girls in the context of Global Migration**

“Shah-Ayim” Network

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The “Shah-Ayim” Network unites sex workers and allies from four countries - Kyrgyzstan, Kazakhstan, Russia and Tajikistan.

Section I Introduction

**Requested change (addition)**

It is suggested to add para about transformation and progress the CEDAW Committee did over time on sex workers' issues under the Article 6 which are being observed in Concluding Observations to countries. It clearly demonstrates that the term "exploitation in prostitution" should be defined more precisely to avoid conflation human traffic and sex work.

**Reasons**

Concluding observations to countries contain recommendations on decriminalization sex workers, stop violence, ensure rule of law, access to justice and health services and erase stigma towards sex workers.

* **Concluding Observations to Kyrgyzstan (2015)**

#22 c. Establish an oversight mechanism allowing the monitoring of violence against women involved in prostitution by the police and stop illegal forced testing, often performed during police raids, for HIV/AIDS and other sexually transmitted diseases of women involved in prostitution;

* **Concluding Observations to Russia (2015)**

# 25c. The reports of widespread violence and discrimination against women in prostitution, enabled by the penalization of prostitution as an administrative offence under article 6.11 of the Code of Administrative Offences, which results in various forms of abuse, including extortion, beatings, rape and even killing of women in prostitution...

# 26c. Repeal article 6.11 of the Code of Administrative Offences and establish an oversight mechanism allowing the monitoring of violence against women involved in prostitution, including by the police;

* **Concluding Observations to Tajikistan 2018**

# 29.The Committee is concerned about reports that women engaged in prostitution are denied access to services provided by non-governmental organizations that implement programmes for the prevention of HIV and sexually transmitted infections and that they face discrimination, intimidation, harassment, extortion and bribery, forced testing for HIV and sexually transmitted infections, arbitrary detention and physical violence by the police.

#30. The Committee recommends that the State party:

(a) Collect statistical data on the number and nature of complaints of police abuse and complicity in corruption targeted at women engaged in prostitution and ensure that such complaints are duly investigated, that perpetrators are prosecuted and punished with appropriate sanctions and that the confidentiality of victims is preserved;

(b) Ensure that women engaged in prostitution can benefit from the assistance provided by non-governmental organizations that implement programmes for the prevention of HIV and sexually transmitted infections;

* **Concluding Observations to Kazakhstan 2019**

#27e. The social stigma and widespread discrimination, including gender-based violence, experienced by women in prostitution, including at the hands of the police;

#28. The Committee recommends that the State party:

(e) Register, investigate and prosecute cases of gender-based violence and discrimination against women in prostitution and bring perpetrators to justice, and end the practice of forced HIV testing;

(f) Conduct awareness-raising campaigns to challenge the stereotypical perceptions of women in prostitution and related stigma;

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” [[1]](#footnote-1)

**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.”[[2]](#footnote-2)**

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.[[3]](#footnote-3) Further, according the 2017 Global Estimates of Modern Slavery, of the 16 million people in forced labour exploitation, 57.6% were female.[[4]](#footnote-4)”

**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.”[[5]](#footnote-5) 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.

Section IV, **para 20:**

**Requested change (edition):**

* **This part “…** Women and girls continue to be the prime targets of traffickers, especially for the purpose of sexual exploitation,…” **is suggested** **to edit** in accordance with proposed changes in para 12.

**Reason**

* There are limitations of existing data sets on trafficking. For example, IOM data demonstrate increase of labour exploitation and decrease of sexual exploitation for the period 2005-2016[[6]](#footnote-6). Comparing situation with women in 2006 and in 2016 IOM states that share of women trafficked in 2006 is 69%, and in 2016 this share is much less – 28%[[7]](#footnote-7).

Section IV, e, **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” in any way that supports this focus. Indeed, only the former document contains a single reference to “prostitution”, and only in quoting the precise text of Article 6.

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 workers[[8]](#footnote-8) and recommending implementation of labour frameworks to *“prevent and combat other exploitative practices assimilated to trafficking”[[9]](#footnote-9)*.

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
* 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 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.
* Example: **In Kyrgyzstan**, where individual adult sex work is neither a crime nor an offense, police raids are constantly under way. MIA Orders on such raids are usually closed. At the same time, there are few examples when the content of these orders became public. For example, on July 10, 2015, the newspaper published[[10]](#footnote-10) an article about the raid with a demonstration of a copy of the Plan to conducting preventive and investigative measures under the code name “Butterfly”. In this document, one of the reasons for the raid was "identifying recruiters for sexual exploitation". Meanwhile the usual raid is as follows: the place where the sex workers are located is pulled up by a mini bus, accompanied by the police. All sex workers who are in this moment on the street, without explanations are forced to get into the mini bus with words or with the use of physical force and are taken to the police station. Police extort money in exchange for release. Those who have money with them, give it away and go out. Those who have no money remain at the police station, they are fingerprinted and photographed for the so-called card index, protocols on administrative offenses are also drawn up for sex workers under the article “Petty hooliganism” or “Disobeying a lawful order of a police officer”. Thus, it is clear that the police are not taking any action to identify those who recruit for sexual exploitation. During repeated meetings with the police department, which is briefly called the “Department of Morals”, police officers say that there are many allegations of missing girls, so they need to keep a file of sex workers with photos and fingerprints. At the same time, no regulatory document contains such a norm. The effectiveness of raids to search for missing women and to identify those who recruit is very low.
* Example: **Russia** is the destination country for migrants, including migrant sex workers from Central Asia, the global south and African countries. Migrant sex workers are subjected to much more brutal forms of harassment and violence from the police. Migrants sex workers are constantly under the threat of deportation, they practically cannot protect themselves with the use of legal tools. For example, police raids are often targeted: the police are looking for migrant women sex workers, because they cannot protect themselves, they do not speak Russian well or do not speak at all. They are afraid to be deported, and are willing to pay the police or provide sexual services for free in order to continue working.
* Example **Kazakhstan**: It was nationwide raid “Stop traffic” in 2019. In one of cities police conducted raids to saunas where sex workers were operating. It was covered by mass media[[11]](#footnote-11). As a raid result police registered files against sex workers on solicitation in public place. Following the logic of described raids police entered to saunas by force, meanwhile sex workers were waiting for their clients in saunas and no one was solicited in public place. It’s obvious that no traffickers or someone subjected to traffic were identified. It is usual example how police conflate sex work and traffic in practice.

1. United Nations Office on Drugs & Crime, 2015, “[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)”. [↑](#footnote-ref-1)
2. NSWP, 2019, “[Briefing Note: Sex Work is not Sexual Exploitation](https://www.nswp.org/sites/nswp.org/files/briefing_note_sex_work_is_not_sexual_exploitation_nswp_-_2019_0.pdf)”. [↑](#footnote-ref-2)
3. UNODC, 2018, “[Global Report on Trafficking in Persons](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)”. [↑](#footnote-ref-3)
4. ILO & Walk Free Foundation, 2017, “[Global estimates of modern slavery: Forced labour and forced marriage](https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm)”. [↑](#footnote-ref-4)
5. UNODC, 2009, “[Global report on Trafficking in Persons](https://www.unodc.org/documents/Global_Report_on_TIP.pdf)”. [↑](#footnote-ref-5)
6. Migration data portal. Human trafficking; available at <https://migrationdataportal.org/themes/human-trafficking> [↑](#footnote-ref-6)
7. Global Trafficking. IOM victim of trafficking data, 2006-2016. – p.4; available at <https://www.iom.int/sites/default/files/our_work/DMM/MAD/A4-Trafficking-External-Brief.pdf> [↑](#footnote-ref-7)
8. CEDAW/C/NOR/CO/9, para 28 [↑](#footnote-ref-8)
9. CEDAW/C/CHE/CO/4-5, para 29 [↑](#footnote-ref-9)
10. <https://www.vb.kg/doc/319547_sverdlovskoe_yvd:_prostitytki_pagybno_vliiaut_na_imidj_bishkeka.html> [↑](#footnote-ref-10)
11. <https://tengrinews.kz/crime/oblavu-na-prostitutok-organizovali-v-jambyilskoy-oblasti-365225/> [↑](#footnote-ref-11)