30 October 2020

Dear Office of the Human Rights High Commissioner,

**Re: Draft General Comment No. 5 (2020) on Migrants’ Rights to Liberty and Freedom from Arbitrary Detention**

Thank you for the opportunity to provide feedback on the Draft General Comment No. 5 (2020). We agree that States should be given specific guidance on fulfilling their obligations under the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and appreciate the important work that General Comments do in setting out state expectations.

However, we are concerned that the rights and needs of migrant sex workers are entirely absent from this General Comment and urge the Committee to include express statements recognizing the discriminatory laws and policies that make this population specifically vulnerable to arbitrary detention and deprivation of liberty.

**About Scarlet Alliance**

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Scarlet Alliance and our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our project work and the work of our membership we have consistently maintained high levels of access to sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance and many of our member sex worker organisations and projects within Australia have CALD (culturally and linguistically diverse) projects employing bi-lingual project workers resulting in extremely high levels of engagement with CALD and migrant sex workers throughout Australia, across a range of work place types. Scarlet Alliance continues to be guided in our work by the Migrant Sex Worker Advisory Committee.

**Criminalisation, detention and deportation of migrant sex workers**

We appreciate that the General Comment critiques the concerning trend toward the criminalization of migration (paragraph 1). We note that, for migrant sex workers, the issues are not only the criminalization of migration but also the compounding presence of racially discriminatory immigration policies and criminalization of sex work. These factors continue to impact migrant sex workers’ rights to liberty and freedom from arbitrary detention.

Deprivation of liberty often occurs as a result of syndicated efforts by police, immigration and media to identify and target migrant sex workers. The result is not only detention but deportation. To protect migrant sex workers from arbitrary detention, sex work must be decriminalized and sex workers on temporary visas should not be subject to discriminatory penalties or restrictions on work. We urge the Committee to recognize these specific drivers to arbitrary detention in the General Comment.

At present the General Comment addresses the risk of human trafficking at various points and yet it does not address the human rights consequences of anti-trafficking measures upon migrant sex workers, including the risks of deportation and detention. We note that the General Comment obliges states to implement identification procedures for trafficking victims. However, in many cases, it is the criminal justice approach to trafficking that negatively impacts migrant sex workers. Migrant sex workers who are subject to police and immigration raids in their workplaces and subject to questioning and harassment would be considered to have their liberty deprived because they are in police or immigration custody.

We draw the Committee’s attention to the 2019 Submission by the Sexual Rights Initiative (2.3 Sex Workers) which argues that discriminatory laws, policies and regulations addressing migration have a disproportionate effect upon migrant sex workers, often resulting in their detention.[[1]](#footnote-1) The review and repeal of immigration laws and policies that unfairly discriminate against sex workers and remove travel restrictions that prohibit sex workers from entering any country because of their sex work history should be addressed in the General Comment.

**Recommendations for the General Comment No. 5**

We make the following recommendations:

* In paragraph 4, include “criminalisation of migrant sex work” and “racially discriminatory migration policies” as examples of the immigration control measures implemented by States that have a severe impact on the rights of migrant workers.
* In paragraph 17, include “sex work on a temporary visa” in examples of activities that result in immigration detention that are not offences that violate the law to an extent that warrants criminalisation.
* In Section E (‘Principle of non-detention of persons in vulnerable situations’) include “migrant sex workers” in the list of vulnerable populations.
* In Section G (‘Prohibition of slavery, servitude and forced or compulsory labour’), insert the following: “States should take a human rights-based approach to address and prevent human trafficking. A human rights-based response to trafficking requires the establishment of safe migration pathways, non-discriminatory immigration policies and translated visa information.”
* In Section G (‘Prohibition of slavery, servitude and forced or compulsory labour’), paragraph 28, include a statement that “Decriminalisation of sex work is necessary to the prevention of human trafficking”.
* At paragraph 91, the General Comment notes that detained migrants should have access to healthcare and psychological services. The General Comment should also provide for detained migrants to have access to free legal advice.

Thank you for the opportunity to contribute and please do not hesitate to contact me on ceo@scarletalliance.org.au if you would like to discuss our submission further.

Regards,



Ms Jules Kim

Chief Executive Officer

Scarlet Alliance, Australian Sex Worker Association

1. <https://www.ohchr.org/Documents/HRBodies/CMW/GC5/SexualRightsInitiative.docx> [↑](#footnote-ref-1)