

CEDAW Secretariat  
Office of the High Commissioner for Human Rights (OHCHR)  
Palais Wilson  
52 rue des Pâquis  
CH-1201 Geneva 10  
Switzerland  
By E-mail: [cedaw@ohchr.org](mailto:cedaw@ohchr.org)

28 September 2016

**Re: Draft Update of General Recommendation No. 19**

Dear Distinguished Committee Members,

Equality Now and our partners Coalition Against Trafficking in Women (CATW), European Women's Lobby (EWL) and Coalition for the Abolition of Prostitution (CAP International) respectfully submit this letter in response to the Call for comments on the Draft Update of General Recommendation No. 19 on Gender Based Violence (hereinafter 'the Draft Update').

Equality Now is an international legal advocacy organization working to promote the rights of women and girls, especially regarding discrimination in law, female genital mutilation, sexual violence, and sex trafficking. CATW is one of the oldest non-governmental organizations working internationally to end human trafficking and the commercial sexual exploitation of women and girls from a gender-based perspective. CATW engages in advocacy, education, victim services and prevention programs for victims of trafficking and prostitution in Asia, Africa, Latin America, Europe and North America. EWL brings together the women's movement in Europe to influence the general public and European Institutions in support of women's human rights and equality between women and men. EWL is the largest European umbrella network of women's associations representing a total of more than 2000 organizations in all EU Member States and Candidate Countries, as well as 19 European-wide organizations representing the diversity of women and girls in Europe. EWL envisions a society in which women's contribution to all aspects of life is recognized, rewarded and celebrated - in leadership, in care and in production; all women have self-confidence, freedom of choice, and freedom from violence and exploitation; and no woman or girl is left behind. CAP international is an affiliation of fourteen frontline NGOs providing assistance to prostituted persons and victims of human trafficking in human beings for the purpose of prostitution. CAP international and its members stand in support of all women, men and children affected by prostitution and in opposition to the system that exploits their precariousness and vulnerabilities.

We thank you for recognizing the need to provide more comprehensive guidance to States parties to facilitate the elimination of gender-based violence against women, and in particular that “[b]esides ensuring that laws, policies, programmes and procedures do not discriminate against women, according to article 2 (c) and (g), States parties must have an effective legal and services framework in place to address all forms of gender-based violence against women... States parties are responsible for preventing these acts or omissions – including through training and the adoption, implementation and monitoring of legal provisions....” (Draft Update, para. 13(a)) We think this Update will re-energize government efforts and increase the much needed political momentum. At the same time, we think it imperative that this Update not lose sight of some of the most pressing challenges that impede the respect and progression of women's and girls' rights. Thus, we are concerned that key references on prostitution and trafficking of women and girls are missing from the Draft Update.

First, we note that this Draft Update “complements and updates the guidance to States parties set out in General Recommendation No. 19, and provides further clarification of their obligations to all women within their territories.” (para. 6). Given this language and the significance of the original General Recommendation 19

(hereinafter GR19), we assume that the intent of this Draft Update is that it be read together with the original GR19. Our submission is also based on the assumption that the Draft Update will not replace the original GR19 especially since key provisions contained in GR 19 (mainly paras. 11-16) are not reflected in the Draft Update. We strongly recommend that clarification be made in the final document that the Update does not replace the original GR19.

Second, it is unfortunate to see that that the issues of the sex trade, sex trafficking, prostitution and sex tourism have not been directly reflected in the Draft Update. Paragraph 4 highlights that gender-based violence ‘has persisted in all countries of the world and, in some cases, has increased in severity.’ The sex trade continues to be the source of the most pervasive and severe human rights violations. Millions of women and girls around the world are exploited in the commercial sex industry, mainly in prostitution, which is often the end destination of sex trafficking. The demand for commercial sex and the exploitation of women and girls in prostitution is fueled by the rise of economic instability and broken down security and rule of law systems. More importantly, prostitution and the sex trade continue to promote a culture where women and girls are objectified on the basis of their gender and subjected to sexual violence, psychological trauma and other human rights violations on a daily basis.

Finally, the Committee highlighted the link between prostitution and gender-based violence in the original GR19 in paras 11-16. In our analysis of international law on prostitution and trafficking (Annex 1), we welcomed the support and attention that the Committee has given to these issues in its Concluding Observations in recent years. Similarly, we have captured our assessment of how international law and policy (via General Assembly Resolutions, Human Rights Council Resolutions, and the Reports of Special Rapporteurs) have addressed the interlinkage between prostitution and the sex trade. Moreover, target 5.2 of the Gender Equality Goal of the Sustainable Development Goals calls for the elimination “of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation (Target 5.2). Similarly, the Goal 16 on peaceful and inclusive societies calls for “[e]nd[ing] abuse, exploitation, trafficking and all forms of violence against and torture of children.” (Target 16.2) We strongly urge that references to violations affecting women and girls in prostitution be reinforced in this Draft Update in particular two main sections:

- Explicit reference to women in prostitution should be made in Draft Update paragraph 11, which references "women affected by particular circumstances or who belong, or are perceived as belonging to certain groups, may be subject to specific and intersecting forms of discrimination." Like gay, lesbian, transgender, and intersex communities, which are specifically mentioned in the remainder of the paragraph, commercially sexually exploited women and girls are affected by particular circumstances, are perceived as belonging to certain groups, and are subjected to intersecting forms of discrimination. The original GR19 highlights discrimination against women in prostitution stemming from poverty, unemployment, traditional values and even political instability. “Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.” (Original GR 19, para. 15).
- In Draft Update paragraph 10 on "gender-related factors such as ideas of men's entitlement over women, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women and the widespread impunity for it." This paragraph presents an opportunity to highlight again that these traditional attitudes (which are similar to those in the original GR 19, para. 11) “also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.” (Original GR 19, para. 12).
- In the Recommendations section of the Draft Update, Paragraph 15, subparagraph (c) (iv) we urge you to make specific mention of the depiction and advertising of commercial sexual exploitation in “Strengthening the institutional capacity of national human rights institutions to confront media that portray images or contents that are gender discriminatory and objectify or demean women or

promote violent masculinities” by expanding this to include images or contents that ‘objectify or demean women as sexually available and/or for purchase or promote violent masculinities’ in line with the Original GR 19, para. 12.

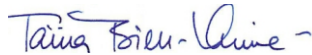
- In the Draft Update, Paragraph 15, subparagraphs (g)-(I) reference stronger legal sanctions and criminal proceedings for all forms and cases of gender-based violence against women. We urge you to make specific mention for stronger judicial accountability systems and access to services for women and girl survivors of commercial sexual exploitation. Equality Now brought the first known civil suit in the United States on behalf of four adolescent girls who had been sexually exploited as part of fishing tours in the Amazonas in Brazil which were provided by a US-operated company. After four years and many procedural delays, the case was dismissed from US courts on a legal technicality. Although a settlement was reached, it took four years for the girls to get a glimpse of justice for the human rights violations they experienced. Exploitation of women and girls in prostitution and trafficking are not only a violation of CEDAW’s Article 6, but also a violation the 1949 Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It is imperative that legal sanctions and criminal proceedings are in place to hold perpetrators to account.

Thank you in advance for your consideration of our request.

Yasmeen Hassan  
Global Executive Director  
Equality Now



Taina Bien-Aime  
Executive Director  
CATW



Joanna Maycock  
Secretary General  
EWL



Grégoire Théry  
Executive Director  
CAP International



## **An Account of UN international law on prostitution and sex trafficking**

This is an analysis of all UN international law and policies related to prostitution and sex trafficking. We examined references in international law and policy as they pertain to the link between prostitution and trafficking and targeting demand for commercial sex by criminalizing the buyers of commercial sex while decriminalizing those in prostitution.

### **Methodology**

In preparing this analysis, we reviewed UN instruments that tackle prostitution, trafficking, organized crime, and gender equality. Our research has been focused in the last five years, with some exceptions to capture core international legal instruments.

Materials reviewed:

- UN 1949 Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Convention).
- Convention on the Elimination of Discrimination against Women (CEDAW).
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).
- Resolutions of the UN General Assembly Third Committee (from 2010-2015).
- Resolutions of the Human Rights Council (from 2010-2015).
- Reports for the UN Special Rapporteurs on trafficking in persons, violence against women, sale of children, child prostitution and child pornography, and extreme poverty and human rights both to the General Assembly and the Human Rights Council.
- Concluding Observations of the Committee on the Elimination of Discrimination against Women.
  - Within 2010-2015, the Committee has examined about 135 countries. In almost all, the Committee has commented on the issues of trafficking and exploitation for prostitution.

### **The link between sex trafficking and prostitution**

The link between prostitution and sex trafficking is set out primarily in the UN 1949 Convention, the UN Palermo Protocol, and CEDAW.

- The Preamble of the **1949 Convention** recognizes that prostitution “and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”
- Article 6 of **CEDAW** calls on states parties to suppress “all forms of traffic in women and exploitation of prostitution of women.”
- **General Recommendation 19** of CEDAW states that sex trafficking and “new forms of sexual exploitation, such as sex tourism...are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse” and “the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals... contributes to gender-based violence.” (paras. 14 and 12).
- **Human Rights Council** resolutions reflect the concerns that all forms of discrimination can lead to violence against women and girls, especially those who are victims of commercial sexual exploitation.<sup>i</sup>
- Article 9(5) of the **Palermo Protocol** calls on states parties to enact policies “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”
- The **Beijing Platform for Action (BfPA)**, the most comprehensive existing global roadmap for achieving gender equality, urges countries to address “root factors...that encourage trafficking in women and girls for prostitution and other forms of commercialized sex...in order to eliminate trafficking in women and girls.” (Strategic Objective D.3 131(b)).
- Other sources of international policy (General Assembly resolutions, CEDAW Committee Concluding Observations) highlight the need to address the various root factors for trafficking to prevent sexual exploitation of women.<sup>ii</sup>

### **Addressing the demand for commercial sex that fuels sex trafficking**

Several international instruments require states parties to address the demand for commercial sex which fuels sex trafficking.

- Article 9(5) of the **Palermo Protocol** requires states to enact policies “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

- The **Human Rights Council** has also noted the same,<sup>iii</sup> while **General Assembly resolutions** have noted (in preambular paragraphs) that the “demand for prostitution”<sup>iv</sup> or the “demand for fostering sexual exploitation”<sup>v</sup> “is met by trafficking in persons.”<sup>vi</sup>
- The General Assembly and the Human Rights Council have called on states to address demand, to enact legislation that will deter and hold exploiters accountable, prosecute traffickers, offenders and intermediaries.<sup>vii</sup>
- The **High Commissioner’s** 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking (p.9), in the **UN Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293, OP. 18)** all support discouraging the demand by expressly recommending that states parties “...Promote awareness-raising campaigns aimed at persons at risk of being trafficked and at the general public through education and the effective involvement of the mass media, non-governmental organizations, the private sector and community leaders with a view to discouraging the demand that fosters the exploitation of persons, especially women and children, and that leads to trafficking, and collect and disseminate best practices on the implementation of those campaigns.
- The **CEDAW Committee** has also called on states to discourage and even criminalize the demand for prostitution.
  - Concerned that prohibiting prostitution did not include criminalization of prostitution, the Committee recommended to Swaziland to provide “data... on existing programmes aimed at addressing prostitution, including by criminalizing demand and implementing exit programmes for women who wish to leave prostitution.”<sup>viii</sup>
  - The Committee has called on Lithuania to “[t]ake appropriate measures to combat exploitation of prostitution, including by criminalizing demand for prostitution,”<sup>ix</sup> and to Belgium to “[t]ake measures to discourage the demand for prostitution, including by considering the criminalization of the purchase of sexual services.”<sup>x</sup>
  - The Committee has recommended to Finland to “[p]ursue steps to criminalize the demand for prostitution and take measures to discourage such demand.”<sup>xi</sup>
  - The Committee has called on states like Korea, Denmark, the Bahamas, Cameroon, Croatia, Poland, to discourage the demand for prostitution in order to suppress trafficking and the exploitation of people in prostitution.<sup>xii</sup>
- The **UN Special Rapporteurs on trafficking** in persons have focused on different approaches to targeting demand, in accordance with the aforementioned UN instruments.
  - In 2006, Sigma Huda recommended that “[s]tate parties should be encouraged to criminalize the use of prostituted persons as a way of fulfilling their obligation under article 9, paragraph 5 of the [Palermo] Protocol.”<sup>xiii</sup>
  - In 2014, Joy Ezeilo commended that “[s]tates should identify and analyse factors that generate demand for exploitative sexual services ... and take strong legislative, policy and other measures to address these issues. Measures to discourage demand should be based on existing experience and accurate information about patterns of trafficking in persons occurring in their jurisdiction...”<sup>xiv</sup> In 2010, she noted that “measures to prevent trafficking will not be effective or sustainable unless the underlying social, economic or political factors that create an environment conducive to trafficking are addressed.”<sup>xv</sup>
  - Maria Grazia Giammarinaro has noted (in 2015) that international law ‘requires that States act with due diligence to prevent trafficking and human rights violations with which it is associated,’ including to address demand for commercial sex, such that due diligence on the part of States should require action on these wider processes, all of which foster demand for, and vulnerability to, trafficking.”<sup>xvi</sup>

### Terminology

International legal instruments do not use the term sex work. Rather, the 1949 Convention makes use of terminology such as “purpose of prostitution,” “purpose of the prostitution of others,” “exploits the prostitution of another person,” while CEDAW uses “exploitation of prostitution of women.” Similarly, the Palermo Protocol makes use of “the exploitation of the prostitution of others” or “exploitation of persons” and the BfPA uses “prostitution and other forms of commercialized sex.”

### A quick summary of findings:

- International legal instruments recognize a link between prostitution and trafficking.
- International legal instruments call on states to “discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.” (Palermo Protocol, Article 9(5)). While states have been left to devise ways to meet this objective, several have addressed this to include criminalization of buyers.
- International legal instruments use the terms “prostitution,” but not “sex work.”

## ENDNOTES

---

<sup>i</sup>A/HRC/RES/7/24, 27/03/2008 PP 7; See also, A/HRC/RES/14/2, 23/06/2010, PP 8 preamble.

<sup>ii</sup>See, A/RES/69/149, OP 14 (2014); A/RES/67/145, OP 11 (2013); A/RES/65/190 OP. 8 (2011). See also, See, Malawi (2010), para 25; Egypt (2010), para. 26; Botswana (2010), para. 27; Belarus (2011), para. 22; Chad (2011), para 25 (e); Kuwait (2011), para. 33; Congo (2012), para. 28(e); Zimbabwe (2012) para (26a); Guyana (2012) para (25a)).

<sup>iii</sup>See, A/HRC/RES/8/12 (OP 2(f)), 18/06/2008.

<sup>iv</sup>A/RES/67/145 (2012) OP 22; A/RES/65/190 (2010) OP 19.

<sup>v</sup>See, A/GA/RES/69/149 (2014).

<sup>vi</sup>A/RES/67/145 (2012); A/RES/65/190 (2010). See also *A/HRC/RES/26/8, A/HRC/RES/23/5 (2013)*.

<sup>vii</sup>A/RES/69/149 (2014) OP 11, A/RES/65/190 OP. 7; See also, A/RES/68/192 OP11; A/RES/67/145, OP5; A/RES/67/190 OP. 5; A/RES/69/149 (2014) OP 14, 65/190 OP8. Reference to “punish[ing] the offenders” or “punishing perpetrators” has also been made in General Assembly Resolutions. See A/RES/69/149 (2014), OP24; A/RES/65/190 (2010), OP 16; A/HRC/RES/8/12 (2008) OP 2(a).

<sup>viii</sup>CEDAW Committee, Concluding Observations: Swaziland, para 24-25(e), U.N. Doc. CEDAW/C/SWZ/CO/1-2 (2014).

<sup>ix</sup>CEDAW Committee, Concluding Observations: Lithuania, para 27(g), U.N. Doc. CEDAW/C/LTU/CO/5 (2014).

<sup>x</sup>CEDAW Committee, Concluding Observations: Belgium, para 26(b), U.N. Doc. CEDAW/C/BEL/CO/7 (2014).

<sup>xi</sup>CEDAW Committee, Concluding Observations, Finland, para 21(d), U.N. Doc. CEDAW/C/FIN/CO/7 (2014).

<sup>xii</sup> See e.g., CEDAW Committee, Concluding Observations: Republic of Korea, para. 23(f), U.N. Doc. CEDAW/C/KOR/CO/7 (2011); Denmark, para. 35, U.N. Doc. CEDAW/C/DEN/CO/7 (2009). See e.g. CEDAW Committee, Concluding Observations: Bahamas, para 26(e), U.N. Doc. CEDAW/C/BHS/CO/1-5 (2012) and Republic of Korea, para 23(d), U.N. Doc. CEDAW/C/KOR/CO/7 (2011); Cameroon, para 21(g) CEDAW/C/CMR/CO/4-5 (2014); Poland, para 27 (g), CEDAW/C/POL/CO/7-8 (2014); Belgium, para 26 (b), CEDAW/C/BEL/CO/7 (2014); and Croatia, para. 21, CEDAW/C/HRV/CO/4-5 (2015).

<sup>xiii</sup>Commission on Human Rights, Integration of the human rights of women and a gender perspective, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, U.N. Doc. E/CN.4/2006/62 (2006), page 16.

<sup>xiv</sup>A/HRC/23/48 para 85a (2014).

<sup>xv</sup>A/65/288 para. 20.

<sup>xvi</sup>A/70/260, para. 20 (2015).