



RESPONSES TO THE CEDAW COMMITTEE'S DRAFT GR ON TRAFFICKING IN WOMEN AND GIRLS IN THE CONTEXT OF GLOBAL MIGRATION

Introduction

This note is in response to the UN Committee on the Elimination of All Forms of Discrimination Against Women - CEDAW Committee's elaboration of a general recommendation on trafficking in women and girls in the context of global migration (TWGCGM), the first draft of which was released for public comment by CEDAW in April 2020 ([first draft of the general recommendation](#)).

It is submitted by DAWN (Development Alternatives with Women for a New Era). DAWN is a feminist network from the global south. We work for economic and gender justice through research, analysis, training and advocacy and feminist networking and movement building. DAWN has engaged with the CEDAW committee during a number of country reviews and also during the elaboration of CEDAW GR 30. In this instance DAWN offers its comments on this draft General Recommendation following closely and in agreement with the analysis and comments set out by the Sex Workers Inclusive Feminist Alliance (SWIFA). The comments are made with a view to support the CEDAW Committee's mandate to enhance the complete protection of women's human rights.

Key Areas of Concern

We identified four main areas of concern we discern in the current draft. These are:

- 1) The overall frame within which the GR is located which is based on 'discouraging the demand that fosters exploitation leading to trafficking';
- 2) The use of the term 'sexual exploitation' and the word '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.

We emphasize the recognition of the adverse collateral effects of anti-trafficking efforts and the introduction of an employment and labour framework to safeguard the rights of women migrant workers, including in the informal economy.

We make specific recommendations for the CEDAW Committee and include references where relevant on which these recommendations are based.



Recommendations and Reasons

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 trafficking¹ (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 too broad and we believe can have adverse repercussions for sex workers. It is based on the Nordic Model that focuses solely on the buyers of sex work and can lead to deleterious effects on the human rights of sex workers. The CEDAW Committee itself has a number of deliberations based on Article 6 that do not support client criminalization strategies as an effective method to 'discourage demand'. This clause and framing therefore runs counter to Article 6. The CEDAW Concluding Observations on Article 6 have included recognizing the adverse human rights impact of client criminalization on sex workers² and recommending implementation of labour frameworks to "*prevent and combat other exploitative practices assimilated to trafficking*"³

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.

² CEDAW/C/NOR/CO/9, para 28

³ CEDAW/C/CHE/CO/4-5, para 29



- The definition of trafficking needs to reflect contemporary realities and as the Special Rapporteur on Violence Against Women (SRVAW) indicates women move and are moved, consensually and non-consensually, legally and illegally, for numerous reasons, including social, political, cultural and economic reasons. The element that distinguishes trafficking from other forms of movement is the non-consensual nature of trafficking⁴.

[See - E/CN.4/2000/68, para 13, page 9—“Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of: (ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i)].

This non consensual transportation can occur for various reasons and shapes both contemporary forms of trafficking and migration, the SRVAW’s definition proposes making trafficking conditional only upon consent and purpose of transport, rather than legality or illegality of transport.

This approach views trafficking as one violation rather than the total sum of a continuum of violations experienced by trafficked women in the course of movement.

Therefore concentrating on ‘root causes’ and singling out buyers of sex work reduces trafficking to a one dimensional focus with adverse effects on the rights of sex workers.

- Additionally, a law and order approach to combat trafficking is contrary to the protection of human rights and may create or exacerbate existing situations that cause or contribute to trafficking in women.

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].⁵**

⁴ E/CN.4/2000/68, para 13, page 9

⁵ United Nations Office on Drugs & Crime, [Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, 2015](#)

The GR makes no mention of the words ‘sex work’ anywhere in the document and hence the need for clarity and the introduction here of the term ‘sex work’ and the later deletion of the word ‘prostitution’ as it occurs in the text.

Reason:

- Sex work should not be defined as ‘sexual exploitation’. This only leads enhancing the vulnerability of sex workers and makes them prey to human rights abuses. The conflation of sex work with ‘sexual exploitation’ is a major factor in perpetuating coercive and precarious working conditions in sex work. It’s inevitable conclusion is harmful legislation that limits sex workers’ access to justice and services. In a critically important deliberation, 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.”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.⁷
- The legal framework and state obligations developed by the SRVAW thematic report on trafficking placed importance upon recognition and protection of human rights of trafficked women in terms of labour rights, migrant workers’ rights (including through the implementation of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), free movement and agency, while recommending strong action against and protection from trafficking, in combination with protection of human and labour rights of women in the sex sector⁸. And does not equate trafficking with the exploitation of prostitution.

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:

⁶ NSWP, [Briefing Note: Sex Work is not Sexual Exploitation](#), 2019.

⁷ United Nations Office on Drugs & Crime, [Issue Paper: The International Legal Definition of Trafficking in Persons](#), 2018

⁸ E/CN.4/2000/68



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 Further, according the 2017 Global Estimates of Modern Slavery, of the 16 million people in forced labour exploitation, 57.6% were female.⁸**

Reason:

- We agree with the reasoning given by SWIFA and reiterate that “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 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 forced 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 understand the Committee’s mandate to provide guidance to States’ parties on the patterns and impact of trafficking on women and girls. However, the contemporary realities of trafficking and migration requires a clear gendered analysis that incorporated the more nuanced dimensions and implications of trafficking.
- In this context we recall and affirm the Committee’s inclusive approach to gender, gender-based discrimination and gender-based violence, including violence against persons because of their real or perceived sexual orientation and/or gender identity. We strongly emphasis the need to build on this positive practice and articulate this General Recommendation within the full scope and understanding the gender dimensions of trafficking and migration instead of limiting it to the discrimination of women and girls in the context of trafficking and migration. This is without doubt an important and necessary focus but it is also imperative to frame trafficking and migration within a larger gender analysis, including an approach that is conscious of the connection between a strict binary construction of gender and the gender-specific manifestations of discrimination.
- In the absence of safe regular migration pathways, women and girls, as well as men and boys are exposed to sexual harassment and sexual and physical violence. This is observable in borderzones of parts of Latin and Central America, where sexual violence and transactional sex over border-crossing are frequent, and where impunity is normalized⁹.
- The scope of the Committee’s mandate and its evolution to reflect the realities of the 21st century will also benefit from a non reinforcement of gender stereotypes. An understanding and articulation of how gender stereotypes occur in the contemporary contest of trafficking and migration will only serve to strengthen the reach and value of this General Recommendation. We also believe a non stereotyped approach will allow for a moe nuanced understanding of the various intersectionalities such as class, race, nationality, geography, ethnicity as they play out in the contemporary context and patterns of trafficking and migration. It will also preclude the

⁹ Llavanders Blanco, M. “Human mobilities as an area of feminist research, advocacy and resistance”, DAWN working paper, work in progress.



tendency to view women and girls as mere victims and dissuade protectionist remedies that will only serve to further violate the human rights of women.

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