

Comments to Draft GR on Trafficking in Women and Girls in the Context of Global Migration Sex Workers and Allies South Asia (SWASA)

1. Introduction

We the members of **Sex Workers and Allies South Asia (SWASA)**¹ from Bangladesh, India, Nepal and Sri Lanka; welcome the initiative of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) to elaborate a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration. Women account for a high number of migrants -- both documented and undocumented -- many of them sex workers. Criminalisation of sex work and workers through anti-trafficking laws and policies increases the vulnerability of all women when they move in search of work. Sex workers though an integral part of the global migrant population, are invisibilised by the stigma associated with their work, and by the perception that they cater to an 'immoral demand' and that their mere presence in any country symbolises sexual and physical exploitation, slavery and servitude. In the context of this GR Sex Workers must be recognized as global migrants.

The global COVID-19 pandemic has exacerbated existing inequalities and poverty the world over, the results of which are already visible in South Asia^{2 3}. These conditions are likely to get worse with the disturbance in global markets and the lack of political will, adequate laws or social safety nets for the most marginalized. The increase in poverty will mean an increase in the numbers of persons entering sex work and international instruments especially those addressing trafficking must acknowledge that movement of adult women cannot be entirely viewed within the ambit of trafficking. It is only then that women in sex work can begin to access rights in their own nation states and in the countries, they may migrate to for work. (Para 33 – 45)

In order to ensure that the present draft GR extends its protection to all women – including all transwomen and all those who identify as women - without discrimination, this understanding of sex work must be explicitly incorporated across the document. The human-rights framework must go hand in hand with a labour rights perspective based on international labour standards.⁴

2. Recognising the dignity and protecting the rights of all women without discrimination

This draft GR has afforded the CEDAW Committee an invaluable opportunity to address and correct the harms caused to millions of women globally by the conflation of sex work and trafficking. "Prostitution" the term has been used to debase sex workers and excludes them as rights bearers both internationally and within national laws and policies.

Suggested Amendment:

Use the term "**sex work (er)**" instead of **Women in Prostitution** throughout the text of the draft GR

¹ Sex Workers and Allies South Asia is a regional alliance of over 100 sex worker-led organisations, networks, civil society organisations and activists from Sri Lanka, Bangladesh, Nepal and India that believes that sex work is dignified work and sex workers have the right to self-determination and collectivisation.

² World Bank states that South Asia is likely to record its worst economic performance in 40 years. Regional growth will fall between 1.8 and 2.8% "World Bank. 2020. South Asia Economic Focus, Spring 2020: The Cursed Blessing of Public Banks.

³ UNCTAD predicts that around 16 million people will be pushed into extreme poverty, *How COVID-19 is changing the world: A statistical perspective*. Reported in Down to Earth, COVID -19 pandemic may drive 40 – 60 mln to extreme poverty: UNCTAD report

⁴ Sex work must be recognized within the ambit of decent work as per this definition: <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm> and also be acknowledged as precarious work as per the definition here: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_164537.pdf

3. Recognition of Legal hurdles faced by migrant women sex workers in the South Asia region (Para 2)

Legislation and policies in South Asian countries largely do not adequately protect the rights of migrant women workers (including sex workers) in the unorganized sector; both within and across State borders⁵.

Suggested Inclusion

In consonance with a region-specific approach suggested (Para 6) it is suggested that the GR incorporate “concerns arising out of internal migration for work as women are vulnerable to exploitation and often lack legal protection in national legal frameworks.”

4. Region specific approach: Expanding the definition of migration (Para 6, 17)

In South Asia, the experience of sex workers stand testimony to a large number of women moving within their countries⁶ and also across borders in search of better opportunities and income. However, the stigma associated with the work and forced rescue and rehabilitation as trafficked victims, prevent them from seeking redress and access to justice when they face exploitation either while moving or in the destination countries. The definition of migration --while minimally expanded to internal migration in this draft GR (Para 25 (c i & iv), (f), 42) -- must be explicit and substantial. The term ‘internal and cross-border’ from Para 25 must be used consistently to expand the meaning of ‘Global Migration’ to include internal migration. The reality of migration and trafficking within national boundaries is pervasive and the exclusion of internal migration does not effectively address the issue of trafficking.

As acknowledged in this GR (Para 34- 41), internal migration, often forced due to conditions of conflict, is a lived experience of women and trans people who provide sexual services. Some amongst them have been trafficked. Provision of sexual services in the context of internal migration due to war has several dimensions, encompassing elements of both sex work and trafficking.

Recognition of these realities can provide greater protection to sex workers while also addressing the violence of trafficking.

5. Legal Framework (Section III)

a. “...legal definition of trafficking... consent of victim... irrelevant...”: The challenge of understanding and implementing Consent (Para 7)

While criminal legal procedures do not consider the consent of the victim relevant, an exclusively criminal approach to trafficking is inadequate and the invalidation of consent of adult women in addressing trafficking is a violation of human rights.⁷

⁵ Ongoing research conducted by SWASA with 143 intra-State and cross-border migrant sex workers found that they faced tremendous challenges while moving in search of better incomes. Given the stigmatized and criminalized nature of work, sex workers had to rely on exploitative brokers and agents. 36% were undocumented migrant sex workers who lived in fear of being forcibly sent to rescue homes and repatriated. Lack of identification documents, bank accounts, health services and safe working conditions made their survival precarious. The collectives documented the difficulties in accessing proper health care, HIV prevention services when they were undocumented migrants. 81% of the women shared that they had left home due to poverty; for better earning opportunities; to augment family income; lack of support from maternal families; desertion or death of husband. 10% of them had left home because they had fallen in love and been duped over marriage; or trafficked to be sexually exploited (7%). Surviving Migration. SWASA, Veshya Anyaya Mukti Parishad (VAMP), Saheli Sangh, KKSUWU, SANGRAM, India; JMMS, SWAN, Nepal; SWNoB, Bangladesh; SUM, Sri Lanka; 2019-20

⁶ Cases#NP_1 to NP_5, SL_1, SL_2; Ibid.

⁷ Gender -based violence against women, updating GR No. 19. General Recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 12

All adult women are guaranteed the right to exercise choices regarding decisions that impact their lives. The law must take into account the **current wishes and consent** of the person for purposes of rescue, rehabilitation and prosecution. Even if a person may have been initially trafficked, the consent and wishes of the adult woman in the present has to be ascertained. The draft GR denies agency to persons categorized as ‘victims’ and makes *no provisions for* ascertaining the wishes and *taking the consent of persons to be prevented, rescued or rehabilitated* under the proposed law.⁸

Instead of focusing on creating conditions and laws that make migration safer for women, policies focus on deterring women’s right to mobility and movement. The GR proposes to give extraordinary powers to the judicial system to control and decide the fates of adults not accused of criminal offenses by vesting law with the authority to negate their consent.

Suggested Inclusion

(New Para in Section III) “The Committee recognizes that an adult woman’s right to exercise her choice is guaranteed under the provisions of this Convention and recommends that irrelevancy of consent must not be extended to understand or to exclude the agency and consent of an adult women on the decisions regarding her protection, rehabilitation, repatriation (for internal migrants) and livelihood choices”.

Para 29 (new sub clause) “Does not limit, abrogate, take away the consent of a rescued adult woman; in taking decisions regarding her livelihood options, rehabilitation measures, stay in rescue homes.”

Para 29 (new sub clause) “Does not incarcerate or forcibly keep or detain any adult woman inside protection homes, rescue homes, detention homes or such setting, even by reason of her protection, once the woman refuses such protection.”

Para 32 (new sub clause) “Ensure that the dignity and consent of adult women is made central to all trafficking prevention, and rehabilitation efforts. Rescued women should have the freedom to opt for programmes and schemes as per their choice and consent; at any point on the continuum.”

b. “address the phenomenon of Trafficking from a criminal justice...” (Para 9) the GR must be read in consonance and harmoniously with other Articles and GR of CEDAW

In keeping with the Human Rights principles that Rights are indivisible, interdependent and interrelated; the draft GR must be read in consonance and harmoniously with other Articles and GR of the CEDAW Convention. No provision should be interpreted or applied to harm the rights of any vulnerable community. The concerns related to ‘over reliance on the criminal justice system’ (Para 2) must be read harmoniously with the possibility of “revictimization” (Para 46).

Suggested Inclusion

⁸ In India, the anti-trafficking law states that a woman rescued in raid and rescue operations can be handed over into the safe custody of her parents, husband or guardian and this includes adult sex workers (migrant and non-migrant). (P71) Of the total sample of 243 women who had been picked up in anti-trafficking raids, 193 women who had voluntarily entered had been forcibly incarcerated from between one month (42%) to three years (7%). P54, P63; **Raided: How Anti-Trafficking Strategies Increase Sex Workers’ Vulnerability to Exploitative Practices**, SANGRAM. Available online at <http://sangram.org/resources/RAIDED-E-Book.pdf>

Address the phenomenon of Trafficking from a criminal justice framework but also “a labour and social justice framework”.

c. Preventing Conflation of trafficking with sex work : Explicit protection to informal sector and irregular migrants key to prevention vulnerability to trafficking

Across the South Asia region, conflation of ‘trafficking’ with sex work in legal/criminal procedures and social intervention programmes have adversely affected migrant women who engage in sex work as gainful work. (Para 18). They often do not possess identification documents required to benefit from citizenship rights⁹. They are often wrongly identified as victims of trafficking and subjected to further harassment which in turn deprives them of mechanisms to access justice (Para 2, 22, 24, 25(iv), 30).

The framing of this GR must be effectively altered to recognize women’s contribution as informal sector workers and thus be included within national and international legislation on the rights of informal workers, more specifically, migrant workers whether in domestic work, sex work, other care work and sexual labour. Often these groups are undocumented workers with an irregular migration status¹⁰ and very vulnerable to exploitation.

Suggested Inclusion

(New para in Objective and Scope, Section II) “The Committee recognizes that the inclusion and protection of a gender- transformative labour rights framework for women in the unorganized sector will encourage non- discrimination, equality in opportunity, right to equal wages, just and dignified working conditions, social protection measures; and go a long way in addressing the root causes of trafficking of women in the context of migration.”

Para 2 “An inquiry into the experience of women and girls... those who choose to migrate ‘including -the purpose of entering sex work’, reveals the potential...”

Para 46 new sub clause (c) ‘Recognizing that migrant women workers who chose to enter sex work or choose to remain in sex work even as they are survivors of trafficking, are the ones most often re-victimized through anti-trafficking measures, the principle of *non-re-foulement* must be upheld by not including all migrant women sex workers, within the category of victims of trafficking.’

6. Discouraging demand (Para Title “IV” Root causes and discouraging the demand that fosters exploitation through trafficking Para 12- 24 ; Para 27 b.)

“The phenomenon persists due to States parties’ failure to effectively address the root causes of trafficking in women and girls” The notion that demand fosters exploitation through trafficking is problematic on several grounds:

While some of these push factors of migration are mentioned (Para 24), the interpretation is narrow. Women and children migrate as part of the household, to avoid prevailing exploitation or deprivation. Minors within families who are part of irregular channels of migration are not victims of trafficking. Also, intermediaries facilitating this migration are engaging in exploitation through profiteering rather than exploitation through trafficking.

⁹ Case study IN_MH_3, Surviving Migration. SWASA, VAMP, Saheli Sangh, KSWU, SANGRAM, India; JMMS, SWAN, Nepal; SWNoB, Bangladesh; SUM, Sri Lanka; 2019-20

¹⁰ Case Study IN_KL_1, ibid.

Curbing availability of goods/services by restricting demand. The approach of curbing demand for services and goods deemed hazardous (such as alcohol or tobacco) does not subject users to penal legislation. Pt. 27 instead seeks to discourage demand that leads to trafficking by “penal legislation to sanction users of goods and services that result from trafficking in persons”(27b) and removal of such goods from supply chains by public agencies and private businesses (27c). However, there is no agreed definition of the term ‘demand’ in the context of trafficking in persons¹¹. Further, while the goods/services are being offered because there is a demand for them, the argument that the populations are being trafficked for the sake of offering those goods/services would be fallacious.

Demand analysis has often been followed by “end demand” legislation and its impact has been to target clients of sex workers. The experience of sex workers in Nepal and India points to the deleterious effect of ill-conceived “end demand” legislation by criminalizing clients in exacerbating the harassment, hardship of sex workers and impacting their livelihood¹². The move to end exploitation by penalising the users of good and services is ill conceived, simplistic and needs to be reconsidered. **(Para 27 b)**. The GR must focus on making State parties accountable by strengthening labour laws, make these laws binding on employers, companies, ensuring timely implementation; to address exploitative practices.

Suggested deletion

Delete the Term **“Discouraging the Demand that fosters their exploitation through trafficking”** throughout the text.

Delete 27 b) **Where applicable, instituting penal legislation to sanction the user of goods and services that result from trafficking in persons.**

Suggested Inclusion

Para 27 (new sub clause) State parties must strengthen protection to migrant women workers through existing labour laws, inclusion of migrant workers (Regular and irregular), open dialogue with receiving countries to make these labour protections applicable in receiving countries, ensure all social protection for informal sector women workers including migrants.

7. Access to Justice (Section VI)

a. “Impact of Criminalisation of Vulnerable women” must be explicitly recognized

Many vulnerable populations are marginalized¹² due to the criminalised nature of their identity or work and the resulting stigma. Women and trans women in sex work are unable to receive free legal aid or access mechanisms of justice once their identity of being in sex work is revealed. Section VI fails to make this vital connection between the vulnerability of sex workers to discriminatory laws and policies that criminalise their work. Sex Workers from India (2014)¹³, Bangladesh (2016)¹⁴, Sri Lanka (2017)¹⁵, Nepal

¹¹ CTOC/COP/WG.4/2010/3

¹² A survey conducted by the National Network of Sex Workers members in 2019 with regular clients of sex workers in Maharashtra recorded 144 cases of client harassment and demands for bribes by police under threat of the “new law”. The amounts varied from Rs. 500 to Rs. 15000 per client. In Nepal, sex workers from JMMS and SWAN report that clients have been threatened and released only after they pay large sums of money. Indian courts have called on law enforcement to register cases against clients.

¹³ Status of sex workers in India, CASAM, SANGRAM, VAMP, MASUM, 2014

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_NGO_Ind_17395_E.pdf

¹⁴ Status of sex workers in Bangladesh, Sex Workers Network, SWASA, 2016

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BGD/INT_CEDAW_NGO_BGD_25667_E.pdf

¹⁵ Status of sex workers in Sri Lanka, Abhimani Women’s Collective, Stand up Movement, PDP, CSDF and WRC; Sri Lanka 2017

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26289_E.pdf

(2018)¹⁶ and SANGRAM (2017)¹⁷ have submitted to the CEDAW Committee the impact of criminalisation on their lives including seeking justice when faced with violence, arrest and detention by law enforcement¹⁸, forced incarceration through wrongly implemented anti – trafficking policies. Migrant sex workers from India to Gulf countries and from Thailand to India report¹⁹ that their passports are confiscated by agents and they are forced to live in extremely difficult conditions, contractual payments are not honoured and their movements are severely restricted²⁰. GR 33²¹ and 35²² explicitly recognize that criminalisation of sex work makes sex workers vulnerable to increased violence and also poses an impediment in their right to accessing justice.

Suggested Inclusion

(Section VI new para) **The Committee recognizes that laws and policies that criminalize sex workers, push them to the margins and make them vulnerable to trafficking within the State and across borders, and contributes to under-reporting gender-based violence and prevents them from accessing justice.**

Para 84 new sub clause i **“Repeal or amend laws that criminalize sex work, and render sex workers vulnerable to violence, unable to seek assistance if they are trafficked and prevent sex workers from accessing timely legal assistance, including free legal aid.”**

b. Protecting sex workers from collateral damage and harm (Para 92)

As mentioned in the draft GR, sex workers are subject to several punitive measures in the forms of raids and infringing on their basic human rights. It is a paradox that marginalized women are doubly failed by the state mechanisms and anti-trafficking measures end up increasing their vulnerability and create barriers to achieving substantive **equality (Para 50, 51, 54, 86, 92b)**.

We suggest that a clear recognition of this situation of marginalized sex workers and affirmation of the same in the GR will go a long way in creating enabling conditions for protecting their human rights and dignity, and will be a step forward in **“transformative and radical change in women’s exercise of their autonomy and self-determination and in the true spirit of the Convention”**.

The deleterious impact of anti-trafficking laws and policies have most impacted sex workers globally. The present draft GR must explicitly recognize this harm which has been caused to sex workers and stateless women **(Para 92 b – 92 d)**.

Suggested Inclusion

Include the specific term **“sex workers” and all other categories of women affected**; rather than the general expression such as “against any group of women” (Para 92b); “no group of women” (Para 92 c), “of women” (Para 92 d). This insertion will benefit sex workers and help prevent the violent practices of raids, forced rescue and rehabilitation.

¹⁶ Status of sex workers in Nepal, Jagriti Mahila Mahasangh (JMMS), 2018

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_CSS_NPL_32558_E.pdf

¹⁷ Recommendations on ensuring and protecting the human rights of sex workers; For the consideration of the CEDAW Committee, 2017 SANGRAM India. <https://www.sangram.org/upload/resources/Recommendations-for-the-CEDAW-Committee-FINAL.pdf>

¹⁸ Cases#NP_1 to NP_5; Surviving Migration. SWASA, VAMP, Saheli Sangh, KKSUWU, SANGRAM, India; JMMS, SWAN, Nepal; SWNoB, Bangladesh; SUM, Sri Lanka; 2019-20

¹⁹ Cases# IN_KL_1, IN_INTL_1, IN_INTL2, IN_INTL_3, IN_INTL_4. *ibid*.

²⁰ *Ibid*.

²¹ Access to Justice General recommendation No. 33 (2015) (CEDAW/C/GC/33), para. 49

²² Gender based violence, GR No. 35 (2017) (CEDAW/C/GC/35) para 12,



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- Sex Workers Network of Bangladesh
- Jagriti Mahila Mahasangh Federation, Nepal
- SWAN, Nepal
- Veshya Anyaya Mukti Parishad (VAMP), India
- Saheli Sangh, India
- Karnataka Sex Workers Union, India
- Stand Up Movement,
- Women's Resource Centre (WRC), Sri Lanka
- Praja Diriya Padanama (PDP); Sri Lanka
- Sangama, India
- Women's Initiatives, WINS, India
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