

# Response to Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

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## 1. Introduction

At the outset, we would like to state that we welcome the initiative of the Committee on the Elimination of Discrimination Against Women (CEDAW) to elaboration a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration. There are key challenges to be faced by women who are rendered vulnerable to exploitation, because of their gender in the context of migration and its imperative that the CEDAW Committee respond to these challenges within the frame of international human rights law with the objective of strengthening the protections of women in vulnerable situations. This submission will address the issue of how the General Recommendation can address the concerns of women who may be trafficked or who choose to migrate for purposes of sex work.

As per the concept note, 'the international legal framework around trafficking, slavery and practices and

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institutions similar to slavery, is a dense network of conventions, regional instruments and national legislation.’ In this overcrowded legal field, what is it that a General Recommendation of the CEDAW Committee can contribute?

As the concept note rightly notes, under international law, the act of trafficking is defined as both a criminal offence and a human rights violation. Consequently, State parties are required to address the phenomenon not only from a criminal justice framework but one that respects protects and fulfils their obligations to uphold the human rights of persons who are most vulnerable to trafficking: its victims and survivors.<sup>2</sup>

This submission seeks to argue that even in this dense legal field of overlapping regulations, the CEDAW Committee has a unique contribution to make, the value of which cannot be overestimated. Looking at the issue of trafficking from the perspective of the protection of the rights of women in sex work is a unique lens which can address the question of the human rights of women which is otherwise forgotten in a discourse focussing on criminalisation of prostitution. Sex work is defined as a contractual arrangement where sexual services are negotiated between consenting adults<sup>3</sup>.

## 2. Analysis of context

The concept note rightly identifies the growing scale of global migration and places trafficking as an issue of concern in particular for the CEDAW Committee - as trafficking does affect women and girls disproportionately. However, it is important to note that all migration is not trafficking and this distinction has implications for the protection of women’s rights. This distinction between migration and trafficking becomes particularly difficult to make in the case of sex work as very often migration for sex work is perceived to be trafficking.

This distinction is one which is stressed by the Report of the Global Commission on HIV and the Law, which states that:

Sex work and sex trafficking are not the same. The difference is that the former is consensual whereas the latter coercive. Sex worker organisations understand sex work as a contractual arrangement where sexual services are negotiated between consenting adults. Sex work is not always a desperate or irrational act; it is a realistic choice to sell sex—in order to support a family, an education or maybe a drug habit. It is an act of agency.... Some governments deploy anti-human-trafficking laws so broadly that they conflate voluntary and consensual exchanges of sex for money with the exploitative, coerced, often violent trafficking of people (primarily women and girls) for the purposes of sex.<sup>4</sup>

Such conflation of voluntary adult sex work with trafficking for exploitation of prostitution stems from a patriarchal sense of morality about sex itself, and creates a harmful stereotype about sex workers. The erasure of their agency in participating in sex work in the global discourse takes the form of a gender stereotype that leads to the persecution of adults selling sexual services, through State and non-State actors.<sup>5</sup> This leads to profound and pervasive violation of human rights from the perspective of protecting the rights of women who the system falsely perceives to have been trafficked.<sup>6</sup>

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<sup>2</sup> Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

<sup>3</sup>The report of the UNAIDS Advisory group on HIV and sex work. UNAIDS 2011. Available at [http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/201111215\\_Report-UNAIDS-Advisory-group-HIV-Sex-Work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/201111215_Report-UNAIDS-Advisory-group-HIV-Sex-Work_en.pdf)

<sup>4</sup>Global Commission on HIV and the Law, Risks, Rights & Health, July,2012. p.39.

<sup>5</sup> Amnesty International Policy on State Obligations to Respect, Protect And Fulfil the Human Rights of Sex Workers, POL 30/4062/2016, 26 May 2016. Available online at <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>

<sup>6</sup> Gender Stereotyping as a Human Rights Violation, Report commissioned by the OHCHR, October 2013. Available online at <https://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>

Some laws not only criminalise sex work and the activities related to it but also deny sex workers fundamental civil entitlements. Sex workers may be unable to own or inherit property; register the births of their children; access education, justice, health care or banking services; or purchase housing or utilities. Deprived of the means by which others can make claims on elected officials, employers and service providers, sex workers experience social exclusion and entrenched poverty. And their disadvantaged position in negotiating access to goods and services leads to exploitation, abuse and increased vulnerability to HIV.

The UNAIDS Guidance Note on HIV and Sex Workers draws clear distinction between voluntary sex work and trafficking, and reiterates the agency of people in sex work.<sup>7</sup>

All adult sex workers have the right to determine whether to remain in or leave sex work. Policies and programmes should support sex workers to acquire the life, education and vocational skills and training they need to make informed decisions and have meaningful choices about their lives...

... Sex workers have been arrested and imprisoned under anti-trafficking statutes, even when they have never been trafficked and do not seek “rescue”. Raids of workplaces of sex workers in the name of anti-trafficking are harmful and wasteful, often displacing sex workers and ironically undermining the anti-trafficking work of sex worker organisations.<sup>8</sup>

Recognising that anti-trafficking laws have detrimental effects on the ability of sex workers to fulfil their right to good health or seek justice for violations of their rights under criminal laws, the Guidance Note states –

There is a growing body of evidence that “raiding” sex work venues and forcibly “rescuing” or “rehabilitating” sex workers results in increased displacement of sex workers, mobility of sex work venues and migration among sex workers; it also has a direct impact on HIV risk. Forced rescue and rehabilitation practices lower sex workers’ control over where and under what conditions they sell sexual services and to whom, exposing them to greater violence and exploitation. In turn, this leads to social disintegration and a loss of solidarity and cohesion (social capital) among sex workers, including reducing their ability to access health care, legal and social services. Low social capital is known to increase vulnerability to sexually transmitted infections among sex workers and therefore has a detrimental impact on HIV prevention efforts. The conflation of sex work and trafficking directly limits the ability of migrant sex workers to protect themselves from HIV, since they are often assumed to be trafficked. Migrant sex workers often live with the constant threat of being reported, arrested and deported which creates a real barrier to accessing health and welfare services. Female migrant sex workers are frequently assumed to be trafficked when “moral panics” around migration and sex work are created for populist political gain. Such situations are counterproductive to creating enabling environments for sex workers to practice or promote safer sex and other HIV risk reduction strategies<sup>9</sup>.

Recommendations made by the Guidance Note in this regard include decriminalisation of prostitution including purchase and selling of sexual services and management of brothels, and the application of criminal law in ways that do not violate sex workers rights including their inherent right to dignity, as well as enforcement of work-related protections for sex workers to prevent harassment, abuse or violence, as in case of all other categories of workers.<sup>10</sup>

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<sup>7</sup> UNAIDS Guidance Note on HIV and Sex Work, 2012. UNAIDS/09.09E / JC1696E (Last updated April 2012). P 17 Available online at [http://www.unaids.org/sites/default/files/media\\_asset/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en\\_0.pdf](http://www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf)

<sup>8</sup> The Legal and Policy Environment and the Rights of Sex Workers – Annexure 1 to UNAIDS Guidance Note referred *ibid.*, p 4

<sup>9</sup> Differentiating Sex Work and Trafficking – Annexure 3 to Guidance Note *Ibid.*, p 17

<sup>10</sup> Differentiating Sex Work and Trafficking – Annexure 3 to Guidance Note *Ibid.*, p 19

Criminalisation has been evidenced to have a detrimental effect on the right of sex workers to sexual and reproductive health, therefore the General Comment 22 on ICESR recommends that legal and policy reform be carried out to ensure that sex workers can access health services without fear of reprisal. (Para 32, 49(a) of CESCR, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, para. 32. Available at - <https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health>

Ground level studies have shown that female migration is oftentimes characterized as trafficking, especially when it comes to the issue of sex work.<sup>11</sup> As a SANGRAM study put it:

The anti-trafficking discourse also tends to invalidate the narratives of millions of women who migrate due to economic or other pressures. Safe migration for women and the right to choose a livelihood continue to be hindered by narrow conversations on morality and culture and notions of whether or not all women especially single women-who move are potentially victims of sexual exploitation.<sup>12</sup>

Thus decisions by women related to the right to livelihood are characterized as trafficking as there is a moralistic framework surrounding female sexuality in which it is assumed that no woman would ever make the choice to do sex work. It is imperative that the issue of coercion be disentangled from the question of choice and the autonomy of women and their rights under CEDAW be protected.<sup>13</sup>

It should be noted that in cases where the woman is trafficked, all her rights must be respected post the 'rescue'. She is an autonomous agent, who is entitled to full human rights, especially under CEDAW.<sup>14</sup> Studies have shown that an emphasis on the criminal legal framework around trafficking while necessary, can end up harming the rights of the 'trafficked woman' as she becomes a statistic in the fight against trafficking.<sup>15</sup>

It is submitted that a fidelity to the import and purpose of CEDAW must necessarily highlight the rights of all women under CEDAW in the context of a complex ground reality in which there is an interplay between sex work, migration and trafficking. Any interpretation of Article 6 of CEDAW must be sensitive to the overall purpose and object of CEDAW and must rigorously ensure that no class or group of women, especially sex workers face de facto discrimination on account of an interpretation of Article 6. This at its very core is the meaning of universal human rights.

This recognition of the complexity is evident in General Recommendation 26 on CEDAW which while on women migrant workers, recognizes that there is an overlap with trafficking. The GR recognizes that 'women migrant workers may become victims of trafficking due to various degrees of vulnerability they face' and also emphasizes that many elements of the present general recommendation are also relevant in 'situations where women migrants have been victims of trafficking'.<sup>16</sup> The implication of the above statement is that any GR on trafficking must be sensitive to the potential overlap with migration and must not compromise on protecting the rights of migrant women as well as victims of trafficking.

### 3. Limitations of the Concept Note in addressing a complex reality of trafficking and migration

It must be regretfully stated that the Concept note does not show any conceptual clarity. While this submission welcomes the laying out of the scope and ambit of the General Recommendation as noted below:

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<sup>11</sup> Explanatory Note on Amnesty International's Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers Index: POL 30/4063/2016 26 May 2016. Available online at <https://www.amnesty.org/download/Documents/POL3040632016ENGLISH.PDF>

<sup>12</sup> Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices, SANGRAM. Available online at <http://sangram.org/resources/RAIDED-E-Book.pdf>

<sup>13</sup> Ratna Kapur, *Makeshift Migrants and Law*, Routledge, New Delhi, 2010.

<sup>14</sup> Raided, *supra*

<sup>15</sup> Explanatory Note on Amnesty International's Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers *supra*

<sup>16</sup> Committee on the Elimination of Discrimination against Women - Recommendation no. 26 on women migrant workers. December 2008. CEDAW/C/2009/WP.1/R. Available online at [https://www2.ohchr.org/english/bodies/cedaw/docs/gr\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](https://www2.ohchr.org/english/bodies/cedaw/docs/gr_26_on_women_migrant_workers_en.pdf)

The scope of the General Recommendation will be restricted to focusing on the gender equality and non-discrimination obligations that must be upheld by State parties in all anti-trafficking interventions. It will not broach a policy discussion on the theme of prostitution.<sup>17</sup>

However regrettably, the note proceeds to make many generalisations about sex work itself, which conflates trafficking with sex work and which can end up denying the protections of CEDAW to all women including sex workers<sup>18</sup>. To briefly note some of the observations in the concept note:

**Migration and increased risk:** Migrant women and girls face an increased risk of experiencing sexual ..... To understanding the highly gendered phenomenon of migration and the specific ways in which women and girls are impacted the Committee recommends that female migration be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, unpaid care work, the universal prevalence of gender-based violence, **including caused by the demand side of the commercial sex industry**, and the worldwide feminization of poverty and labour migration<sup>19</sup>.

The concept note in para 27 while detailing the gendered phenomenon of migration and the worldwide feminisation of poverty and labour migration, includes the demand side of the commercial sex industry. This inclusion is directly linked to the clients of women and trans women in prostitution and goes against the stated scope of the GR. Demand analysis has often been succeeded by end demand legislation and its impact has been to target all clients of sex workers in an effort to stop or abolish prostitution. In India, the Justice Verma Commission which formulated the definition of trafficking made a clear distinction between trafficking and “sex workers engaged in sex work of their own volition and their clients”.<sup>20</sup>

**Trafficking for gender-specific purposes:** Women and girls are being trafficked for the purposes of: sexual exploitation, including forced prostitution, sexual entertainment, travel for sexual exploitation, sexual slavery, forced and “contractual” marriage, begging, domestic servitude and domestic labour, and, organ transplantation. The listed purposes of trafficking perpetuate gender-stereotypes of work and are often driven by male exertion of power and control over women, thereby increasing their risk of gender-based violence and abuse. In the Committee’s view these practices are incompatible with the equal enjoyment of rights by women and their dignity.<sup>21</sup>

While it may be true that women are mainly trafficked for sexual purposes, it is also true that women migrate for the purpose of providing sexual services. The above paragraph extracted from the concept note conflates both. In particular, when trafficking is conflated with sexual entertainment, the Concept contributes to producing a stereotype. The stereotype which is reproduced in the concept note is that all women who participate in the sex industry are victims of trafficking and that a woman in sex work can only be a victim. When the Concept Note declares that ‘these practices are incompatible with the equal enjoyment of rights by women and their dignity’, it does grave disservice to an entire class of women who do participate in the sex industry and who do not view their labour as ‘undignified labour’. In fact the Concept note instead of modifying stereotypes ends up constructing a stereotyped role and identity for women in sex work as passive victims engaging in undignified labour, thereby violating the mandate of Article 5 of CEDAW.

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<sup>17</sup>Para 53, Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

<sup>18</sup>Report of the Special Rapporteur on Violence against women, its causes and consequences, Mission to India. Human Rights Council, 26<sup>th</sup> session, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Rashida Manjoo (UN Doc. A/HRC/26/38/Add.1), April 2014; Available at [https://www.ohchr.org/en/hrbodies/hrc/regularsessions/.../a-hrc-26-38-add1\\_en.doc](https://www.ohchr.org/en/hrbodies/hrc/regularsessions/.../a-hrc-26-38-add1_en.doc)

<sup>19</sup>Para 27, Concept note, supra

<sup>20</sup>Clarification issued by Justice Verma Commission on intent of Section 370 Indian Penal Code, 8 February 2013 Available at <https://www.sangram.org/upload/resources/Amending-section-370-IPC-verma-commission-clarifies-intention-behind-legislation.pdf>

<sup>21</sup>Para 30, Concept note, supra.

**Sector-specific migration perpetuates victimization:** With limited job opportunities available for women in countries of origin, transit and host countries, many migrant women end up in informal employment, particularly in the care, domestic and male-driven entertainment sectors, including in forced prostitution. The concentration of women in these sectors not only perpetuates traditional gender stereotypes about what constitutes “women’s work” but also provides no or few labour protections, such as workplace inspections, complaint mechanisms and protection from violence and abuse, thereby heightening the exposure of migrant women to severe forms of human rights violations and trafficking, as victims remain unseen, unheard and unprotected.<sup>22</sup>

This observation in para 29 of the Concept note is also troubling as it disregards the mandate of Article 5 to modify gender stereotypes and contributes to further stigmatizing and stereotyping women in sex work. The ‘stereotype’ that the Committee must combat is not the perception that sex work is women’s work but rather the stereotype that sex work lacks dignity and that women in sex work are solely victims who lack agency .

These three observations indicate the subtle way in which trafficking begin to take on a more expansive form and ends up criminalizing the work of women. In particular the inclusion of sexual entertainment, and end demand analysis indicates the slow slippage between trafficking and sex work.

#### 4. What a GR on trafficking must address

While the concept note is based upon a highly selective reading of negotiated text and agreed language, it ignores the fundamental norms of international human rights law. It is submitted that the GR on trafficking unwittingly ends up denying the protection of universal human rights to women in sex work and women who are victims of trafficking. The GR must be based on the following concepts and address the following issues which are rooted in international human rights law.

##### A. Universality of human rights

While this is the core mandate of the international human rights framework, it is important to reiterate its importance. While addressing the issue of trafficking, the universal mandate of CEDAW as applying to women in sex work and women victims of trafficking must be reiterated.

##### B. Reading Article 6 of the Convention in relations to other CEDAW protections

The Vienna Declaration and Programme of Action, noted that human rights are ‘indivisible, interdependent and interrelated’.<sup>23</sup> This would mean that we must read Article 6 in the context of the broader protections offered by the Convention. The interpretation of Article 6 has to ensure complete protection to women who are victims of trafficking, even as it seeks to create a more robust framework around trafficking.

##### C. Redress stereotypes affecting women in the sex industry flowing from the conflation of all sex work as trafficking under Article 5

Though this GR is on trafficking, it is imperative that the stereotypical perception that all sex work is trafficking has to be addressed frontally. Stereotypes regarding women in the sex industry render them particularly vulnerable to exploitation and violence. Prostitutes are a marginalized group to whom significant social stigma is attached.<sup>24</sup> As Justices Sachs and O’Regan of the South African Constitutional Court opined in their dissenting opinion in the Jordan case, anti-prostitution laws that

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<sup>22</sup>Para 29, Ibid.

<sup>23</sup> Para 5 of the Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

<sup>24</sup> Committee on the Elimination of Discrimination against Women - General Recommendation on Women’s Access to Justice /C/GC/33 23 July 2015 Paras 8, 9, 10, 49 and 51 deal with the effect of stigma and social censure on the ability of women in sex work to access justice for violations (criminal and civil) committed against them by State and non-State actors

characterize the prostitute as the primary offender reinforce a pattern of sexual stereotyping that conflicts with gender equality. The prostitute, typically female, is stereotyped as a social outcast, a fallen woman 'who bring[s] misfortune on [herself] and invite[s] disregard for her bod[y]'.<sup>25</sup>

#### D. Recognize and Redress the harm to and indirect discrimination against women in sex work by anti -trafficking laws

The purpose and intent of anti-trafficking laws may be to criminalize those who engage in trafficking. However ground level studies have shown that regardless of the intent of these laws, the effect of these law is to render women in sex work vulnerable to deeper levels of exploitation<sup>26</sup>. As such these laws, though their intent may be different, may end up having the effect of discriminating against women in sex work as well as trafficked women and end up violating the mandate of Article 1.<sup>27</sup> It is imperative that the GR recognize the fundamental discriminatory effect of the anti-trafficking laws.

In this context it is important to note the remarks made by the Special Rapporteur on Violence Against Women in April 2014<sup>28</sup>, wherein she observed that the tendency to conflate sex work with trafficking in persons resulted in a situation where the assistance provided to them is not targeted to their specific needs. She recommended that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.<sup>29</sup>

Similarly in the Concluding Observations to the India Report in 2014 'The Committee expressed, 'concern[ed] at the persecution of women in prostitution as a result of measures taken to address trafficking, such as raid and rescue operations.'<sup>30</sup> A similar concern was expressed by the Committee in the concluding observations to the Nepal Report in 2018 when 'The Committee [expressed] concern[ed] that the Human Trafficking and Transportation (Control) Act punishes women in prostitution rather than the exploitation in prostitution. It also expresses concern at the absence of regulation of work in and monitoring of the entertainment and hospitality service sector. The Committee is further concerned at reports of harassment and violence against women in prostitution by law enforcement officers, carrying of condoms being used as evidence of engaging in prostitution, and at extortion and arrest of women in prostitution.'<sup>31</sup>

#### E. Ensure full application of labour laws to women in sex work

In its concluding observations on Thailand in 2017, the Committee notes that 'even women employed in legally operating enterprises in the entertainment sector do not benefit, in practice, from the protection of labour laws and social benefits available to other workers.' It recommends that, the state 'Ensure the full application of labour laws and social benefits in all enterprises in the entertainment sector, especially to women employed in the legally operating enterprises in that sector'.<sup>32</sup>

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<sup>25</sup>Jordan and Others v The State [ 2 October 2002] Constitutional Court of South Africa CCT 31/01 (dissenting opinion, Sachs J and O' Regan, J) paras 64 and 87.

<sup>26</sup>Raided, supra

<sup>27</sup>National criminal laws need to complement harm reduction strategies and programmes. In this regard, criminal laws should not impede, but facilitate measures taken by States to reduce the transmission of HIV and to provide HIV-related care and treatment for people using drugs. - Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; Available at [https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/a.hrc.14.20.add.3\\_aev.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/a.hrc.14.20.add.3_aev.pdf)

<sup>28</sup>Report of the Special Rapporteur on Violence against women, its causes and consequences, Mission to India. Human Rights Council, 26<sup>th</sup> session, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Rashida Manjoo (UN Doc. A/HRC/26/38/Add.1), April 2014; Available at [https://www.ohchr.org/en/hrbodies/hrc/regularsessions/.../a-hrc-26-38-add1\\_en.doc](https://www.ohchr.org/en/hrbodies/hrc/regularsessions/.../a-hrc-26-38-add1_en.doc)

<sup>29</sup>Para 78 e, Report of Special Rapporteur, supra

<sup>30</sup>Committee on the Elimination of Discrimination against Women - Concluding observations on the combined fourth and fifth periodic reports of India' CEDAW/C/IND/CO/4-5 July 2014

<sup>31</sup>Committee on the Elimination of Discrimination against Women - Concluding observations on the sixth periodic report of Nepal. CEDAW/C/NPL/CO/6. November 2018.

<sup>32</sup>Committee on the Elimination of Discrimination against women- Concluding Observations on the Sixth and Seventh Periodic Report of Thailand CEDAW/C/THA/CO/6-7 July 2017.

The International Labour Organisation (ILO) has recommended that sex work be recognised as work to protect workers and their clients.<sup>33</sup> In the concluding observations to Germany in 2009, the Committee encouraged the State to ensure that improve the social security of prostitutes, including their working conditions in terms of health and hygiene.<sup>34</sup> In the concluding observations to Netherlands in 2010, the Committee called on the State to allocate “adequate funding for the empowerment of prostitutes”.<sup>35</sup>

#### F. Ensure full protection of migrant workers guidelines, treaties and recommendations to women in sex work; including safe mobility, right to work and safe working conditions.

The GR should recognise that women in sex work migrate within the country and between borders in search of better income and livelihood opportunities. The exclusion of sex workers from the frame of migrant workers denies them the opportunity to address violence and exploitative practices within their work. In a research conducted by Veshya Anyay Mukti Parishad (VAMP), Saheli Sangh and SANGRAM<sup>36</sup> with migrant sex workers, the women enumerated their challenges including lack of information of safe routes of migration, inability to understand the language in the destination, the illegal nature of aspects of sex work forcing women to opt for agents and brothel owners who exploited them, lack of access to health services and safe working conditions.

In this context, it is important to mention that the protection of rights of migrant women workers envisaged under GR 26 should be extended to workers from formal, informal work sectors, women engaged in stigmatized forms of work such as sex workers and entertainment sector workers.

#### G. Ensure non - discriminatory access to health of women in sex work

In the Concluding Observations on Australia in 2018 the Committee expressed concern that, ‘the lack of harmonization of state and territory legislation on women in prostitution impedes their access to health care, support and legal services and employment. The Committee went on to ‘recommend[s] that the State party harmonize state and territory legislation to ensure that women in prostitution have non-discriminatory access to health-care, support and legal services, and employment.’<sup>37</sup> The Concluding Observation of Monaco in 2017 observed that, Monaco should, ‘In cooperation with neighbouring countries, ensure that women in prostitution have non-discriminatory access to social and health benefits’.<sup>38</sup> The Concluding Observations of Tanzania in 2016 noted that Tanzania must, ‘Repeal discriminatory provisions of the Penal Code and eliminate discriminatory practices faced by women in prostitution, including when accessing health care services.’<sup>39</sup>

#### H. Protection from violence of women in sex work

General Recommendation 19, ‘Recognises that unlawful status contributes to violence faced by sex workers and they must be provided equal protection of all laws against rape and violence. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence.’<sup>40</sup>

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<sup>33</sup> Recommendation concerning HIV and AIDS and the world of work (No. 200), ILO 2010. Available at [http://www.ilo.org/aids/lang-en/doc/Name--WCMS\\_142706/index.htm](http://www.ilo.org/aids/lang-en/doc/Name--WCMS_142706/index.htm)

<sup>34</sup> Committee on the Elimination of Discrimination against women- Concluding Observations on the Sixth Periodic Report of Germany CEDAW/C/DEU/CO/6.

<sup>35</sup> Committee on the Elimination of Discrimination against women- Concluding Observations on the Fifth Periodic Report of Netherlands CEDAW/C/NLD/CO/5.

<sup>36</sup> Surviving Migration: Sex workers on the move. Veshya Anyay Mukti Parishad (VAMP), Saheli Sangh, SANGRAM; 2019.

<sup>37</sup> Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Australia. CEDAW/C/AUS/CO/8. Adopted by the Committee at its seventieth session (2–20 July 2018).

<sup>38</sup> Committee on the Elimination of Discrimination against Women- Concluding observations on the combined initial to third periodic reports of Monaco. CEDAW/C/MCO/CO/1-3. Adopted by the Committee at its sixty-eighth session (23 October–17 November 2017).

<sup>39</sup> Committee on the Elimination of Discrimination against Women - Concluding observations on the combined seventh and eighth periodic reports of the United Republic of Tanzania. CEDAW/C/TZA/CO/7-8. March 2016.

<sup>40</sup> Committee on the Elimination of Discrimination against Women- General Recommendation No. 19 (11th session, 1992)



In its Concluding Observations on Thailand the Committee expressed concern that, 'a large number of women and girls are subjected to exploitation through prostitution in the State party and that women in prostitution are criminalized under the Suppression and Prevention of Prostitution Act of 1996, whereas those who exploit women in prostitution are rarely prosecuted.

It also notes with concern that women working in the entertainment sector are presumed to be guilty of prostitution under the Act, arrested and subjected to humiliating treatment following violent police raids and targeted in entrapment operations by police officers. The Committee is further concerned at reports of official complicity in the exploitation of women in prostitution, including large-scale extortion by corrupt police officers.<sup>41</sup> In its concluding observations on Kenya the Committee expresses concern[ed] that women in prostitution are at high risk of gender-based violence, including abuse by the police, murder, gang rape, extortion, robbery, forced sex practices, and forced non-usage of condoms. The Committee notes with concern the widely held prejudices against women in prostitution and that they face fines or arrest when they seek access to justice as well as social services and health care.<sup>42</sup>

### I. Ensure temporary residence permits to survivors of trafficking

In its concluding observations to Monaco in 2017 the Committee even while it stressed the need to prosecute trafficking proposed measures to protect the survivors of trafficking. The Committee proposed to 'Strengthen measures to protect potential victims from trafficking, including by sensitizing the general public on the criminal nature of trafficking, setting up a free 24/7 hotline and encouraging reporting by victims and witnesses, and providing witness protection programmes and temporary residence permits to victims, irrespective of their ability or willingness to cooperate with the prosecutorial authorities'.<sup>43</sup>

### J. Ensure the right to education and work of women in sex work

The concluding observations of the Committee to Bangladesh in 2016 noted that Bangladesh must 'Provide effective protection and prevent discrimination and violence against women in prostitution and their children, including police harassment and forced evictions, and ensure that they have adequate access to health care, education, accommodation and alternative livelihood opportunities'.<sup>44</sup>

### K. Addressing root causes of trafficking

Acknowledging the root causes of the trafficking issue can only be through an agenda focused on rights and development. The Concept Note rightly highlights 'combatting trafficking through sustainable development and particularly highlights the link of the goal of ending poverty, ending hunger, ensuring quality education, promoting decent work and growth to the agenda of ending trafficking. This is an important approach as a socio-economic rights agenda and an agenda of inclusive development is an important counter to a sole focus on criminalisation to address trafficking.

This submission is based on the premise that the best way to tackle trafficking is through its root causes. This would mean a strong emphasis on Goal 8 of the SDG which is to 'Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'.<sup>45</sup>SDG 8.7<sup>46</sup> in particular, can only be achieved by interlinking with efforts to achieve other SDGs, especially SDGs

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<sup>41</sup> Committee on the Elimination of Discrimination against women- Concluding Observations on the Sixth and Seventh Periodic Report of Thailand CEDAW/C/THA/CO/6-7 July 2017.

<sup>42</sup> Committee on the Elimination of Discrimination against women- Concluding Observations on the Eighth Periodic Report of Kenya CEDAW/C/KEN/CO/8 November 2017.

<sup>43</sup> Committee on the Elimination of Discrimination against women- Concluding Observations on the Third Periodic Report of Monaco CEDAW/C/MCO/CO/1-3 November 2017.

<sup>44</sup> Committee on the Elimination of Discrimination against women- Concluding Observations on the Eighth Periodic Report on Bangladesh CEDAW/C/BGD/CO/8 November 2016.

<sup>45</sup> United Nations Sustainable Development Goal <<https://sustainabledevelopment.un.org/sdg8>>.

<sup>46</sup> Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms. SDG 8.7 United Nations Sustainable Development Goal <<https://sustainabledevelopment.un.org/sdg8>>

1 (against poverty), 2 (against hunger), 3 (health and well-being), 5 (gender equality), 10 (reduced inequalities) and 16 (peace, justice and strong institutions). A multi-pronged strategy that responds to the needs of all affected constituencies, including contract workers, domestic workers, bonded labourers, intra and inter-state as well as international migrant workers, and sex workers (including intra and inter- state and migrant) is necessary in order to achieve SDG 8.7.