ICRSE Statement on CEDAW Committee General Recommendation No 38 (2020) on Trafficking in Women and Girls in the Context of Global Migration

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Brussels, Belgium

ICRSE is deeply disappointed by the CEDAW Committee General Recommendation (GR) on trafficking in women and girls in the context of global migration (2020) and strongly condemns the regressive interpretation of Article 6 of the Convention of All Forms of Discrimination against Women (the Convention).

ICRSE provided comprehensive and evidence-based recommendations to the Committee on the Elimination of Discrimination Against Women (the Committee) together with many other progressive civil society organisations and UN agencies in order to turn the attention of the Committee to the root causes of exploitation and violence against migrant sex workers.

A significant number of submissions to the Committee presented evidence-based arguments on the effects of misleading anti-trafficking and anti-prostitution policies. However, driven by ideological concerns, the Committee decided to ignore the information obtained and chose to turn its back on the millions of women who are directly affected by these misguided policies. It has been proven once again that when it comes to human trafficking, sex workers’ voices and views are ignored.

- The Committee provides strong references to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others (Para 8) and encourages State Parties to adopt this outdated Convention (para 121 (h)). The 1949 Convention considers all prostitution as trafficking and all sex workers as victims, which is in direct contrast to the definition of the Palermo Protocol, which considers exploitation as the defining criteria of human trafficking. Thus, the GR strives to go beyond the Palermo definition of human trafficking and encourages states to conflate sex work with the ‘exploitation of prostitution’ and human trafficking. Additionally, as it was mentioned very accurately in a statement by the UN Special Rapporteur on violence against women on the 1949 Convention, ‘the Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable
beings in need of protection from the evils of prostitution. As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women’s marginalization and vulnerability to human rights violations.’ (Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/2000/68, 2000, para. 22. #)"

- The conflation of sex work and sexual exploitation is reinforced by the language used in the GR, wherein the terms of sexual exploitation and exploitation of prostitution are used interchangeably, often alone without references to human trafficking or placed alongside human trafficking with no clear distinction made. Neither sexual exploitation, nor exploitation of prostitution are defined in international law. The Committee’s GR fails to make the distinction between sex work and trafficking by framing sex work as ‘exploitation of prostitution of women’ instead of adopting a nuanced approach that is human rights based and backed by evidence. The conflation of sex work with trafficking and sexual exploitation has dangerous real life consequences for sex workers, in particular for migrant sex workers. This framing fails to address the diversity of exploitative working practices that occur in the sex industry. It also contributes to the denial of sex workers’ agency, the exacerbation of sex workers’ vulnerabilities, and the marginalisation and stigmatisation that lead to criminalisation, detention and deportation of migrant sex workers globally.

- The Committee went beyond the obligation of State Parties stipulated by the Palermo Protocol to “discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking” by recommending State Parties to “discourage demand that fosters exploitation of prostitution and leads to human trafficking,” (para 61) By calling to ‘discourage the demand that fosters exploitation of prostitution and leads to human trafficking,’ CEDAW Committee’s GR aligns itself with the ideologically biased ‘End Demand’ approach to sex work, denying women’s bodily autonomy and their agency to make their own decisions. As ICRSE previously stated in its submission to CEDAW, ‘any single “anti-demand” measure cannot provide a solution to address exploitation and trafficking in human beings in the sex industry and that root causes must be addressed instead’. Rights-based strategies to address demand should focus on addressing discriminatory attitudes and beliefs, particularly
those directed against women and migrants. They should aim to secure adequate labour protection for all persons, including migrants and those working in the informal economy, such as sex workers.

- Furthermore, the para 30 of the GR stresses “the need to address the demand that fosters sexual exploitation is especially important in the context of digital technology which exposes potential victims to increased risk of trafficking” without further clarification or evidence. This may encourage states to introduce harmful legislation, such as FOSTA/SESTA in the US, that significantly compromises sex workers’ safety and independence.

- The GR obligates States to investigate, prosecute and punish individuals including “those on the demand side.” (para 63 (a)) In all the countries that have adopted ‘end demand’ legislation regarding sex work, sex workers, in particular migrant sex workers, continue to be targeted by law enforcement. The so-called Swedish model (criminalisation of clients of sex workers) has been introduced in European countries such as Sweden, Norway, Ireland, Northern Ireland and France. The model has caused an increase in violence against sex workers, the deterioration of sex workers’ living conditions, and an increase in isolation and stress. Adopting an ‘end demand’ approach to prostitution in anti-trafficking legislation will exacerbate sex workers’ vulnerabilities and endanger sex workers’ health and safety, while making no meaningful contribution to the efforts to end trafficking. Consequences of the current anti-trafficking framework include police raids, detention, forced rehabilitation, diversion of funding, and denial of sex workers’ agency. Aligning anti-trafficking legislations more with end demand approaches to sex work will only serve to intensify the harm imposed on sex workers.

Major anti-trafficking organisations such as the Global Alliance Against Trafficking in Women (GAATW) and La Strada International (LSI) as well as other NGOs such as Amnesty International, Platform for International Cooperation on Undocumented Migrants (PICUM), and International Lesbian and Gay Association (ILGA) are all calling for a labour-rights and victim-centred approach to anti-trafficking and an end to the criminalisation of sex work. Furthermore, UN agencies such as WHO, UNAIDS, UNDP, and UNFPA recognise that violence against sex workers must be prevented and addressed in partnership with sex workers and their organisations, and that sex workers and their organisations should be meaningfully included in policy making. Finally and most importantly, these UN agencies...
have found that, in the context of consensual sex work, criminal laws actually cause harm, especially for already marginalised groups. CEDAW Committee’s GR must adopt an evidence and human rights-based approach that is in line with the position of growing numbers of civil society and human rights organisations globally.

ICRSE will continue its work advocating for better inclusion of sex workers and their voices in policy making processes. Anti-trafficking legislation can’t be successful without an evidence-based approach that includes the voices and needs of marginalised communities. The earlier the CEDAW Committee accepts this reality, the sooner we can start creating a fairer and safer society for all.

To finalise, we would like to repeat our recommendations to the CEDAW Committee once again.

• When elaborating General Recommendations, the CEDAW Committee must distinguish between consensual sex work performed by migrants and trafficking in human beings.

• For the purpose of the General Report, the CEDAW Committee must recognise the diversity of the exploitative working practices that occur in the sex industry and the need to address them through effective policy measures that are not necessarily associated with anti-trafficking policies. The Committee must recommend the inclusion of sex workers and sex worker-led organisations in decision-making processes and policy development.

• Regardless of legal frameworks, programmes that aim to prevent violence against sex workers and exploitation in the sex industry that may or may not lead to trafficking in human beings should consult sex workers and sex worker-led organisations. It is also essential to remove stereotypical and stigmatising perceptions of sex workers and to recognise the agency of people working in the sex industry.

• States should regularly evaluate the possible unintended effects of (anti-trafficking and related) policies and measures. People directly addressed or affected by such policies should take an active role in such evaluations, including sex workers.