



Submission to the Committee on the
Elimination of Discrimination Against
Women (CEDAW) on the **Draft General
Recommendation on trafficking of
women and girls in the context of
global migration (TWGCGM)**

Submitted on May 15, 2020

We acknowledge the land on which we work is the unceded traditional territory of the Coast Salish Peoples, including the territories of the x^wməθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and Səlílwətał (Tseil-Waututh) Nations.

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The Centre for Gender & Sexual Health Equity (CGSHE) is an academic research centre in Vancouver, Canada that aims to advance gender and sexual health equity through research, policy, and practice. Our mission is to provide leadership in gender and sexual health in Canada and globally through rigorous community-based research that meets the highest scientific and ethical standards; evidence-based policy development; and fostering the implementation of innovative, patient-centred clinical and community practice guidelines and education.



An Evaluation of Sex Workers' Health Access (AESHA) project is a community-based research study housed at CGSHE and University of British Columbia/Simon Fraser University, initiated in 2010. AESHA includes 900+ street-based and off-street sex workers who complete semi-annual interviews on working conditions and access to legal, health and social supports. Since inception, AESHA has included diverse multi-lingual staff with current/former sex workers represented across the team.

INTRODUCTION

The Committee on the Elimination of Discrimination against Women (the “Committee”) represents the leading independent body coordinating the global response on gender-based violence and discrimination, and its recommendations inform policies which impact the lives of millions of self-identified women. The existence of guidelines to uphold women’s human rights, including the rights of all groups of marginalized cis and trans women, is paramount. Our submission focuses on human trafficking in the context of women’s migration to Canada for the purpose of, or leading to, work in the sex industry. To ensure that the recommendations on TWGCGM embody CEDAW’s commendable commitment to “rights-based, evidence-led” measures, we call on the Committee to ensure that the guidelines:

- **Do not conflate trafficking in persons with sex work;**
- **Do not conflate migrant sex work with trafficking; and**
- **Acknowledge the harms of end-demand approaches and recommend the full decriminalization of all aspects of the sex industry**

1. ENSURE THAT THE GUIDELINES DO NOT CONFLATE TRAFFICKING IN PERSONS WITH SEX WORK

Trafficking in persons occurs across diverse sectors and industries, and represents an egregious human rights violation requiring careful attention. Women and girls migrate for diverse reasons, including economic needs and desires, violence, humanitarian emergencies, and climate change¹. Migrant women represent a subgroup that may indeed face enhanced vulnerability to violence and exploitation as the result of restrictive policies and norms (e.g., restrictions on legal migration, types of work, gendered power dynamics, barriers to justice) that reduce their agency and opportunities. Yet, in the context of sex industry work, robust evidence shows that the political and ideological conflation of sex work (consensual exchange of sex services)¹ and trafficking (as defined in the Palermo Protocols)² have shaped repressive policies that violate sex workers’ human rights¹. For example, the 2003 US President’s Emergency Plan for AIDS Relief’s explicit opposition to sex work, its legalization, and trafficking informed international policies that conflated sex work and trafficking. As a result, many countries passed punitive measures targeting the sex industry, including criminalizing aspects of sex work, police raids, and rescue operations^{3,4}. Rather than upholding sex workers’ rights, following such repressive enforcement, sex workers faced isolated and unsafe work environments, greater barriers to accessing healthcare, and increased vulnerability to police abuses^{3,5,6}. In their current form, the TWGCGM recommendations perpetuate the conflation of trafficking in persons and sex work, which can exacerbate violence and other rights violations faced by sex workers.

We urge the committee to add a statement to the Recommendations that clearly separates sex work from trafficking in persons and call on state parties to distinguish between them.

After para 20- Add

“Perpetrators of trafficking and gender-based violence enjoy greater impunity under legal regimes with inadequate trafficking victim identification practices. States parties are required to meaningfully distinguish between sex trafficking victims and sex workers in their anti-trafficking legislation and protocols to avoid compromising the safety of sex workers, who are predominantly women and face heightened levels of violence.

Empirical evidence from 10+ years of community-based research strongly supports the need to distinguish between sex work and trafficking in persons to uphold the human rights of all women. In 2014, amid a global wave of end-demand legislation passed in countries including Sweden and France, Canada implemented end-demand laws (PCEPA) that conflate sex work with trafficking. End-demand laws are based on assumptions that ‘that exploitation is inherent in prostitution’, depicting women sex workers as passive victims of gendered violence⁹. This lens informs the end-demand laws’ focus on criminalization of clients and third parties (venue owners/managers/security); yet robust empirical evidence demonstrates that criminalizing any aspect of sex work increases sex workers’ vulnerability to violence through forcing rushed negotiations, displacing workers to hidden spaces to avoid police detection, and limiting access to police protections^{8,10}. Peer-reviewed AESHA research involving 900+ street-based and off-street sex workers interviewed between 2010-2019 shows how conflating sex work with victimization violates safety and labour rights:

- Criminalizing clients under the guise of protecting sex workers results in punitive policing which displaces sex workers to isolated spaces where they have little ability to screen clients, negotiate transaction terms, or access protection¹¹⁻¹⁴. Peer-reviewed research found that enforced displacement by police is directly linked to increased risk of physical violence and rape¹⁵.
- Criminalizing third parties under the guise of protecting sex workers constrains sex workers’ access to supportive third party services (i.e., security protection, admin, drivers); undermines access to safer indoor venues; increases venues’ vulnerability to violent robberies and assaults; restricts condom availability; and restricts sex workers’ access to police protections^{8,16,17}.

Representations of sex workers as exploited victims and polices informed by these representations uphold unsafe labour conditions. The recommendations’ conflation of sex work and trafficking is harmful and will contribute to poor, broadly aggregated data collection at the country level, resulting in ineffective data which wrongfully amalgamates sex workers and trafficked persons and thus makes actual trafficking survivors more difficult to identify and support. This conflation results in an inaccurate assessment of the scope, and sectors across which trafficking occurs, undermining countries’ ability to develop proportionate, effective interventions¹⁸.

“Harassing the clients is exactly the same as harassing the women. You harass the clients and you are in exactly the same spot you were before. I’m staying on the streets. I’m in jeopardy of getting raped, hurt.”

— cis woman sex worker⁷

“Two massage parlours down on [X street], did not phone the police when they were robbed. At gunpoint. That is how fearful some people are, because technically what they’re doing is against the law, so why bother phoning the police.”

— cis man
venue manager/security⁸

2. ENSURE THE THAT GUIDELINES DO NOT CONFLATE MIGRANT SEX WORK WITH TRAFFICKING

In Canada, most migrant sex workers report no experience of trafficking and that they willfully chose to do sex work^{19,20}. However, the conflation of migration and trafficking has informed punitive laws and policing which undermine migrant sex workers' safety and health. Due to assumptions about trafficking, Canadian immigration policy explicitly prohibits sex work among work permit holders and temporary residents²¹. Thus, migrant workers are the only groups for whom selling sex services is criminalized in Canada, yet are documented to face language barriers, economic marginalization, barriers to formal employment, non-recognition of credentials, and discrimination,^{20,22-24} rendering sex work one of few accessible avenues for relatively well-paying, flexible work^{19,20,22}.

The criminalization of many migrant sex workers under the guise of preventing trafficking exacerbates barriers to reporting violence and accessing needed health and social supports among migrant sex workers, amplifying their vulnerability and undermining their health and safety. Our peer-reviewed AESHA research has found that:

- Fewer than 2% of migrant sex workers in Vancouver reported being coerced into sex work.²⁵ Migrant women chose sex work for family and economic reasons, flexibility, and relatively higher pay amid facing language barriers, barriers to formal employment, and discrimination.²⁶
- Sex workers with precarious immigration status faced 2.5-fold increased odds of client condom refusal, enabling violent perpetrators to target racialized migrant women²⁷ knowing that workers and workplaces are unlikely to call police due to fear of criminal charges and deportation.^{26,28}
- Migrant sex workers faced 58% decreased odds of reporting violence relative to Canadian-born workers, with no incidents of migrants reporting violence to police post-implementation of end-demand laws.⁸ Migrant sex workers faced violent robberies and assaults with weapons in their workplaces, yet avoided contacting authorities due to fear of arrest, charges and police harassment, leading to impunity for violent perpetrators.⁸
- Fear of workplace inspections by authorities (i.e., police, immigration) was directly linked to reduced access to needed healthcare services among migrant sex workers.²⁹

This evidence shows that the criminalization of migrant sex workers - under the guise of protecting them from trafficking - enhances risk of workplace violence and barriers to police protections. Given evidence that the conflation of migrant sex work with trafficking informs police and immigration enforcement activities which disproportionately harm racialized women^{18,30}, we urge the Committee to affirm evidence that criminalizing sex work among migrant women does not protect them, but rather enhances vulnerability^{19,31}. **The Committee should call for policies which uphold the rights of all migrant women while acknowledging the reality of sex work; recognizing adult migrant women's autonomy and right to make labour decisions; and prioritizing migrant sex workers' safety and access to justice.**

We urge the committee to clearly distinguish migrant sex workers from trafficked persons.

Para 42e- Add “, including the implementation of non-punishment legislation for migrant trafficking victims whose entry or conduct while trafficked could attract criminal or administrative liability”

Para 50- Add “and in the context of sexual service provision where migrant sex workers are specifically targeted due to their inability to access meaningful supports from law enforcement authorities” after “unprotected”

Para 86- Add “The Committee notes that migrant women have been disproportionately subjected to such instances of violent anti-trafficking efforts by law enforcement authorities.” after “networks.”

3. ACKNOWLEDGE THE HARMS OF END-DEMAND AND RECOMMEND THE FULL DECRIMINALIZATION OF ALL ASPECTS OF THE SEX INDUSTRY

The Committee asserts that trafficking persists due to States' failure to "discourage the demand that fosters the exploitation of women and girls, which leads to trafficking." (section 2). **Yet, a strong body of evidence shows that end-demand approaches violate sex workers' human rights, undermine their access to health and police protections, and fail to meaningfully address trafficking.** In recent years, end-demand laws have been implemented in numerous countries¹⁰ in an effort to reduce demand for sexual services^{30,32}. However, the efficacy of end-demand laws in decreasing trafficking have been critiqued by many labour and anti-trafficking organizations including the International Labour Organization, Global Alliance Against Traffic in Women, La Strada International, and Freedom Network-USA.

In Canada, since end-demand laws were enacted in 2014, our peer-reviewed AESHA research has found that:

- 72% of sex workers reported no improvements in working conditions thus highlighting that end-demand laws did not increase their safety; 26% reported negative changes, including reduced ability to screen clients, reduced access to safe workspaces, and having to take riskier clients and work longer hours to meet their financial needs³³.
- Only 26% of incidents of violence against sex workers were reported to police from 2010-2018. 87% of migrant sex workers and 58% of Canadian-born workers experienced unreported violence. Despite end-demand laws' purported aim of protecting vulnerable communities and encouraging sex workers to report violence³⁴, there was **no improvement in rates of reporting violence after the implementation of end-demand legislation**⁸.

Global evidence shows that end-demand approaches overlook trafficking in other gendered labour sectors to focus exclusively on the sex industry, increasing stigma against sex workers; and aim to punish sex work clients rather than protecting women sex workers' rights¹⁸. Trafficking centers on profit and exploitation: eliminating sexual services would not eliminate trafficking, but shift it to another sector in which workers lack rights and protections¹⁸. The Committee must advocate for increased rights for all women, rather than endorse approaches which uphold violence and discrimination against certain groups (i.e., sex workers) and fail to meaningfully support trafficked persons.

We urge the Committee to consider these evidence-based changes:

Para 2- Replace "discourage the demand that fosters the exploitation of women and girls, which leads to trafficking" with "implement legislation which protects both trafficked persons and sex workers, as both groups face high levels of violence due to ineffective trafficking victim identification measures."

Para IV, 12e, 19- Replace "discouraging the demand that fosters" with "shifting away from harmful trafficking frameworks which inadequately address"

Para 27- Replace "Discourage the demand that fosters" with "Implement robust legal measures that effectively address"

Para 57b- Add ", including restrictions on employment in the sex industry" after "women's migration"

We call on the Committee to **recommend decriminalization of all aspects of sex work**, which is a recognized evidence-based ‘best practice’ for advancing the rights of sex workers. Decriminalization has the potential to assist anti-trafficking efforts by fostering cooperation and trust between police and sex workers; reducing police and client violence against sex workers; and enabling sex workers to report exploitation and access the labour protections afforded to other workers.^{18,19,35} Full decriminalization of all aspects of sex work aligns directly with the Committee’s efforts to fulfilling women’s right to non-discrimination, and has been endorsed by over 300 Canadian academics³⁶ and international policy bodies including the World Health Organization, UNDP, UNAIDS, Global Network of Sex Work Projects, Amnesty International, and the Global Commission on HIV and the Law^{5,37-41}. Strong empirical evidence from Canada and globally indicates that decriminalization will have sustained positive effects on the health and safety of all sex workers^{6,42}, and is not associated with increases in trafficking in persons^{18,36} **We urge the Committee to recommend the full decriminalization of sex work (repeal all criminal laws prohibiting sex work) to prevent the harmful misuse of anti-trafficking laws to violate sex workers’ rights.**

We urge the Committee to recommend the full decriminalization of sex work (repeal all criminal laws prohibiting sex work) to prevent the harmful misuse of anti-trafficking laws to violate sex workers’ rights.

Para 25.f)iii- Add “the decriminalization of the purchase, provision and organization of sexual services and” after “including”

Para 29.f)- Add “, including the decriminalization of the purchase, provision, and organization of sexual services” after “law”

Para 27- Replace “Discourage the demand that fosters” with “Implement robust legal measures that effectively address”

After 31e)- Add “Calls for the decriminalization of the purchase, provision and organization of sexual services to assist anti-trafficking actors with the identification of sex trafficking victims;”

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