

For the Committee on the Elimination of Discrimination against Women (CEDAW)

Written submission for CEDAW discussion on the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration (General discussion on TWGCGM)

February 18, 2019

Introduction

The Canadian Alliance for Sex Work Law Reform is composed of sex worker rights and allied groups and individuals across Canada. Member groups work together to fight for sex work law reform that advances sex workers' rights and well-being, including the right to be safe from trafficking and exploitation. Our member groups have expertise on both sex work and human trafficking. This expertise, combined with both anecdotal and academic evidence, informs the recommendations and analysis contained in this submission.

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.

Recommendations

1. The CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration should make a clear statement distinguishing sex work from human trafficking and require State parties to distinguish between sex work and human trafficking.
2. The CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration should make a clear statement distinguishing labour exploitation from human trafficking and require State parties to distinguish between labour exploitation and human trafficking.
3. State parties should decriminalize sex work by removing all sex work-specific criminal prohibitions, including those prohibiting the purchase of sexual services and third-party involvement; the removal of sex-work specific criminal laws aligns with the recommendations of multiple UN agencies.
4. State parties should ensure that both sex workers and migrant workers are protected under employment standards, occupational health and safety, and human rights laws, and that sex workers and migrants have the legal right to form labour unions and associations.

5. State parties should ensure that immigration policies do not prevent migrants from working in the sex industry.
6. State parties should allow migrant workers to freely change employers if they wish to do so.
7. State parties should cease all raids, detentions and deportations of migrant sex workers, including those undertaken in support of human trafficking initiatives.
8. State parties should ensure that immigration and border control agencies are never involved in anti-trafficking investigations.
9. State parties should provide resources to rights-based, sex worker-led organizations to address human rights violations, including human trafficking in the sex trade. Sex worker-led human rights organizations understand how systemic injustices prevent sex workers from accessing the supports required to resist the conditions that increase vulnerability to trafficking and know what is needed to combat these injustices. Sex worker-led organizations also know how to directly provide services that are safe, relevant and accessible to other sex workers.
10. State parties should invest in community initiatives that are non-directive, not focused on “exit” from sex work, based on human rights and address structural issues related to poverty, homelessness and education. These initiatives should be led by people in the community, for people in the community. This includes but is not limited to Indigenous community initiatives, migrant community initiatives, sex worker community initiatives, and youth-led initiatives.
11. State parties should recognize that apprehension, detention and involuntary rehabilitation are often experienced as antagonistic and are often traumatic, and avoid these anti-trafficking measures.
12. State parties should dismantle institutionalized racial, gender and occupational profiling by State actors, (including police, immigration, and border control officials.)
13. State parties should ensure migrant sex workers’ human rights are upheld, including their right:
 - to equal protection under the law;
 - to freedom of movement and residence;
 - to work;
 - to free choice of employment;

- to just and favourable working conditions; and
- to the highest attainable standards of physical and mental health.

Analysis

Migration to Canada: Reasons and Patterns

Women’s motivations for cross-border labour migration are diverse; factors include poverty, social/legal/political oppression of women in origin countries, the devastation of free trade agreements on local labour markets, globalization, and the economic disparity between the Global South and North. Other motivations include the perception of the Global North as a site of opportunity and economic advancement, as well as adventure and independence, the latter of which are often overlooked. Women who work or seek to work in the sex trade may be further motivated to migrate to work in less (or differently) repressive legal contexts or to work away from their home communities to avoid sex-work specific stigma and discrimination levelled against them or their families.

Some women who migrate to Canada with the objective of working in the sex trade have the resources (money, travel documents, contacts, legal knowledge) to travel to and reside/work in Canada without third party support. Others lack these resources and depend on third parties (personal or professional contacts, formally organized or not) to facilitate their travel, work and residency. There are also women who migrate to Canada through either regular or irregular channels without the initial intention of engaging in sex work, but later decide to work in the sex trade due to changes in circumstances (such as loss of other income sources or relationship dissolution) or to elevate their standard of living or to achieve other benefits. Canada, like many countries, restricts migrant women’s work opportunities, regulating them to precarious, exploitative and low-paying jobs. Sex work can be an attractive alternative to these markets.

The Risk of Human Trafficking: Contributing Factors

In Canada, there is little empirical evidence on the scope and nature of cross-border (and domestic) human trafficking. This is largely attributable to varied conceptual understandings of “human trafficking” (domestic and international legal definitions notwithstanding), many of which conflate either all sex work, or all sex work involving third parties, with human trafficking. This lack of evidence paired with this conflation have resulted in federal, provincial and municipal governments, civil society organizations and researchers portraying human trafficking as a growing and pervasive problem.¹ As one scholar has described,

¹ T. O’Doherty et al., “Misrepresentations, Inadequate Evidence, and Impediments to Justice: Human Rights Impacts of Canada’s Anti-Trafficking Efforts,” in E. M. Durisin, E. van der Meulen and C. Bruckert, *Red Light Labour: Sex Work Regulation, Agency, and Resistance* (UBC Press: Vancouver, 2018).

“The claims about human trafficking in Canada tend to emphasize a dominant, and mainly single, narrative about women and girls being forced into commercial sex work that is centered around four main themes: (1) trafficking of women and girls for the purpose of sexual exploitation (also referred herein as ‘sex trafficking’) is a serious and growing problem; (2) sex trafficking is linked to transnational organized crime and domestic criminal gangs; (3) internationally, women and girls from Asia and Eastern Europe are at risk of being trafficked across Canada’s borders for the purpose of sexual exploitation; and (4) domestically, Indigenous women and girls are at particular risk of being trafficked for the purpose of sexual exploitation.”²

Setting aside such non evidence-based narratives, we can nonetheless identify structures and systems that render migrant women, including those seeking to engage in sex work, vulnerable to trafficking and other abuses. Often, women who are racialized, poor, or from the Global South are denied access to regular channels of labour migration. Resultant irregular immigration status precludes women workers from accessing basic labour protections and exposes them to potential abuse under threat of detention and deportation. Further, State im/migration policies and a global shift towards increasingly closed borders can require some women to call upon third parties to supply them with migration supports such as travel funds, documentation and living/work arrangements. The clandestine and illegalized nature of these supports create conditions for labour exploitation; for example, some women may incur extreme debt, up to the point of debt bondage, or find themselves working in egregious conditions. Women may not be in direct communication with some or all of the people facilitating their migration or residency in destination countries, and may thus have little control over negotiating the terms and conditions of their travel or living /work conditions.

Caution must be taken, however, to distinguish exploitation of women’s migration and labour from human trafficking, as the latter requires enumerated actions, means and purpose. The negative impact of human trafficking initiatives on both migrant and domestic sex workers necessitates an understanding and application of this distinction. Workers in many industries may experience poor working conditions, particularly people in precarious work and/or informal industries (for example, agriculture, hospitality, garment, sex work, construction). Exploitative working conditions and violence are realities that sex workers in general may face in the contexts of poverty, racism, precarious immigration status, colonization, and many other factors that prevent them from legally earning an adequate income. Poor working conditions, however, are distinct from human trafficking, which is defined in Canadian law (in the context of cross-border migration) as knowingly organizing a person to come into Canada “by means of

² H. Millar & T. O’Doherty, in collaboration with SWAN Vancouver Society, *The Palermo Protocol & Canada: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada (2002-2015) Key Findings*, 15 October 2015.

abduction, fraud, deception or use or threat of force or coercion.”³ Conflating labour exploitation within the sex trade with human trafficking risks alienating sex workers from their personal and labour supports (who may be mistaken as traffickers) as well as from police, social services and health care.

Although private actors may be involved in human trafficking, State policies on both im/migration and sex work are the primary drivers of such abuse if and when it occurs. For example, in Canada, immigration regulations explicitly prohibit temporary residents and foreign nationals from working in sex-trade related businesses. Migrant women entering the country for the purposes of working in the sex trade are unable to obtain a valid visa to do so, and those working for sex work-related businesses are in automatic violation of their immigration conditions, which is a ground for deportation. The subsequent fear of detention, arrest and deportation deters migrant sex workers from seeking help when they or a colleague is trafficked. Those who employ migrant sex workers are also subject to increased surveillance and racial profiling, which has negative impacts on working conditions and safety measures.

We note that even if sex-work specific immigration restrictions were repealed, women migrant workers in Canada — sex-working or otherwise — would still be made vulnerable to exploitation on account of other problematic immigration policies, such as employer-specific work permits that tie some migrant workers’ immigration status to a single employer. This deters workers from leaving that employer even in cases of abuse.

States’ criminalization of sex work and sex work related activities further promotes the risk of human trafficking. This includes the criminalization of clients and third parties under “Nordic” or “end-demand” regimes. Criminalization pushes women in the sex trade into social and geographic isolation, exposing them to violence and hindering their access to supports. Workers, clients and third parties avoid law enforcement for fear of criminal investigation, reducing the likelihood that crimes against sex workers, including trafficking, will be reported. In Canada, a “Nordic” regime of sex work regulation⁴ was introduced in 2014, initiating the criminalization of the purchase of sexual services. Prior to this law, sex work clients were one of the best sources of information about abuse of sex workers. As opposed to other industries where trafficked people can be held in complete isolation, sex work by its nature requires private contact with clients outside the trafficker’s immediate circle. But clients are less likely to come forward for fear of criminal prosecution. Similarly, the criminalization of most third party and management activities dissuades those actors from reporting suspected cases of trafficking. The criminalization of sex work management and, by extension, sex work businesses, effectively precludes women working in those contexts from accessing protections under employment,

³ Section 118 of *Immigration and Refugee Protection Act* (S.C. 2001, c. 27)

⁴ Bill C-36, *Protection of Communities and Exploited Persons Act*, SC 2014, c.25

labour relations, occupational health and safety, and human rights laws. Working conditions and workers' safety suffer, and abuses, including trafficking, can occur. The criminalization of clients and third parties costs society and trafficking victims a significant anti-human trafficking tool.

For migrant women working in the sex trade, the intersection of restrictive immigration and criminal laws creates a climate of fear and a context where trafficking and other abuses may occur.

The Impact of Anti-Human Trafficking Constructs and Measures on Migrant Women in the Sex Trade

Sex work is sometimes framed as a form of human trafficking or, more generally, as a form of inherent violence against women. This framing underpins Canada's "Nordic"-inspired criminal law that equates sex work with exploitation. By doing so, such laws trivialize actual incidents of violence against sex workers, deny sex workers their right to address incidents of violence, violate sex workers' right to autonomy, and invalidate sex workers' right to consent to sex when exchanging sexual services for money.

When sex work is perceived as human trafficking, anti-trafficking policing becomes *de facto* anti-sex work policing, and sex workers and the people with whom they work are indiscriminately targeted for surveillance and investigation. Women who work in the sex industry, including migrant women, often rely on the support of third parties to help organize their work, communicate with clients, offer additional security precautions or advertise their services. The conflation of sex work with human trafficking means colleagues, employers and family members may be mistakenly identified as traffickers. As well, sex workers themselves frequently act as third parties for other workers, and in Canada sex workers have been charged with trafficking offences in the absence of exploitation because they work with or provide services to other sex workers. In addition to the harm inflicted upon people incorrectly identified as traffickers, this indiscriminate approach diverts police resources away from actual anti-human trafficking interventions.

Trafficking detection tools used by police, health and social service providers, and customer service providers conflate signs of trafficking with the signs of stigmatization, criminalization, and precarious or "illegalized" immigration status. This leads to sex workers isolating themselves from important services to avoid invasive and potentially harmful questions and disclosures.

Migrant women in the sex trade are often the explicit targets of anti-trafficking policies and practices, which are typically underpinned by racist, misogynistic and xenophobic views. Racial profiling is used to investigate, detain and deport racialized migrant women. Members of

racialized communities engaged in the sex trade are stigmatized by law enforcement and policy makers, and problematically mischaracterized as “organized crime rings.” Migrant sex workers — particularly workers who are Asian and racialized — are stereotyped as trafficked victims without autonomy or the capacity to make their own life decisions or to exercise agency in potentially constrained circumstances.

Migrant and domestic sex workers report experiencing anti-human trafficking law enforcement, including police raids, as a form of intimidation, harassment and surveillance, and as a gross violation of privacy. In addition to these inherent harms, anti-human trafficking initiatives further entrench fear and distrust of police. For migrant sex workers, who may have language barriers and be unfamiliar with the law and their legal rights, such raids and incursions into their homes and workplaces can be especially frightening. Law enforcement collaboration with immigration or border security agencies (such as the Canada Border Services Agency) often results in anti-immigration tactics such as arrest, detention and deportation. This pushes migrant sex workers further into isolation, discourages them from seeking supports, and deters them from reporting actual cases of human trafficking to law enforcement, thus frustrating the ultimate objective of such campaigns. It also places limited resources into anti-trafficking investigations rather than into other desperately-needed initiatives for sex workers.

Migrant sex workers report to our member groups that when they are interrogated by law enforcement, they have two options: either they denounce their work, identify as victims and *possibly avoid* detention and deportation, or they admit that they are autonomously making decisions and working to provide for themselves, in which case they *will* be fined, detained and/or deported.

Although the General Recommendation under discussion is specific to the trafficking of women and girls in the context of global migration, we are compelled to flag the disproportionate targeting of additional communities of marginalized women under Canada’s anti-human trafficking measures. Indigenous women who sell or trade sex are already over-policed and under-protected; anti-trafficking measures exacerbate these harms and reinforce racist and colonial State and police practices. Young people are also explicitly targeted in anti-trafficking campaigns; anti-trafficking measures designed to protect youth who sell or trade sex cause the same harms to those youth as they do to sex workers over 18. As with adults, anti-human trafficking initiatives facilitate exploitation, by driving both youth and those involved with them away from police, social services, and other supports.

The Canadian Alliance for Sex Work Law Reform formed in 2012 and is composed of sex worker rights and allied groups and individuals in cities across Canada: Calgary, Edmonton, Hamilton, London,

Longueuil, Montreal, Kingston, Québec, Sault Ste. Marie, St. John's, Toronto, Vancouver, Victoria, and Winnipeg. Members work together to fight for sex work law reform, sex workers' rights, and community well-being.

Member groups include: Angel's Angels (Hamilton); Action Santé Travesties et Transexuel(le)s du Québec (ASTTeQ) (Montréal); BC Coalition of Experiential Communities (Vancouver); Angel's Angels (Hamilton); Butterfly Asian and Migrant Sex Workers Network (Toronto); Canadian HIV/AIDS Legal Network (Toronto); Downtown Eastside Sex Workers United Against Violence (SWUAV) (Vancouver); Émissaire (Longueuil); FIRST (Vancouver); Maggie's Toronto Sex Workers Action Project (Toronto); Maggie's Indigenous Sex Workers Drum Group (Toronto); Migrant Sex Workers Project (Toronto); PEERS (Victoria); Projet Lune (Québec); Prostitutes Involved Empowered Cogent Edmonton (PIECE) (Edmonton); Providing Alternatives, Counselling and Education (PACE) Society (Vancouver); Rézo, projet travailleurs du sexe (Montréal); Safe Space (London); Safe Harbour Outreach Project (S.H.O.P.) (St John's); Sault Ste. Marie Sex Workers' Rights (Sault Ste. Marie); Sex Professionals of Canada (SPOC); Sex Workers Advisory Network of Sudbury (SWANS) (Sudbury); Stella, l'amie de Maimie (Montreal); Stop the Arrests! (Sault Ste. Marie); Strut! (Toronto); Supporting Women's Alternatives Network (SWAN Vancouver); HIV Community Link Shift Program (Calgary); West Coast Cooperative of Sex Industry Professionals (WCCSIP) (Vancouver); Sex Workers of Winnipeg Action Coalition (Winnipeg).