

SHADOW REPORT GUIDELINES ON CEDAW & RIGHTS OF SEX WORKERS



I. PREFACE

This document aims to provide guidance to non-governmental organizations engaging with the CEDAW review process and providing alternative information to the CEDAW Committee on the theme of rights of sex workers. It accompanies the *Framework on Right of Sex Workers & CEDAW* as a practical tool to aid documentation and analysis using the CEDAW Convention as a frame of reference. It is one of the outcomes of increased engagement of groups of sex workers advocating for their equal rights and their identified need to engage with the CEDAW framework in their advocacy. This document was initiated by IRAW Asia Pacific) at the CEE/CIS Regional Consultation on Use of CEDAW in Advancing Rights of Women in Sex Work and Women who Use Drugs, organized in November 2014 held in partnership with Sex Workers Advocacy Network (SWAN). The consultation began a discussion on how CEDAW could be used to strengthen the protection of rights of sex workers. It was subsequently shared with and reviewed by members of sex worker-led organisations from global, regional and national networks, members of women's rights and human rights organizations and individual experts at an Expert Group Meeting on Rights of Sex Workers under CEDAW organized in partnership with the Global Network of Sex Work Projects (NSWP) in July 2016.

The guideline is based on perspectives from sex worker rights groups and from IRAW Asia Pacific's observation of the CEDAW review process and its reflection on how the CEDAW framework is understood and sought to be operationalized by the CEDAW Committee itself. The guiding questions are meant to support the recognition of sex workers as equal rights bearers under CEDAW and are by no means meant to be authoritative commentary on the scope of the rights themselves. In fact, they can and should be interpreted so that they challenge problematic notions about sex work including in current CEDAW practice. One of the central objectives of these Guidelines read together with the *Framework on Rights of Sex Workers & CEDAW*¹ is to encourage the documentation and

analysis of the rights claims of the diversity of sex workers lives, by sex worker rights advocates.

The accompanying *Framework on Rights of Sex Workers & CEDAW* sets out several clear opportunities which would benefit from legal interpretation by the CEDAW Committee and other UN treaty bodies and thereby contribute to remedying the violation of sex workers' human rights. Advocates have the opportunity to inform and shape the contours of international human rights law through documentation. In recording the challenges documented by sex workers themselves and all who work with or on behalf of them for their wellbeing, sex worker projects, networks, and NGOs can identify gaps between legal doctrine and law enforcement, between policy and reality, and become further involved in the process of legal and policy reform, including on new aspects or issues. These Guidelines aim to aid this process.

This document is divided into three parts- I) this preface which provides the background and objectives, II) an introduction to the CEDAW review process and the process of shadow reporting and III) guidelines for developing a shadow report on the theme of rights of sex workers for submission to the CEDAW Committee.

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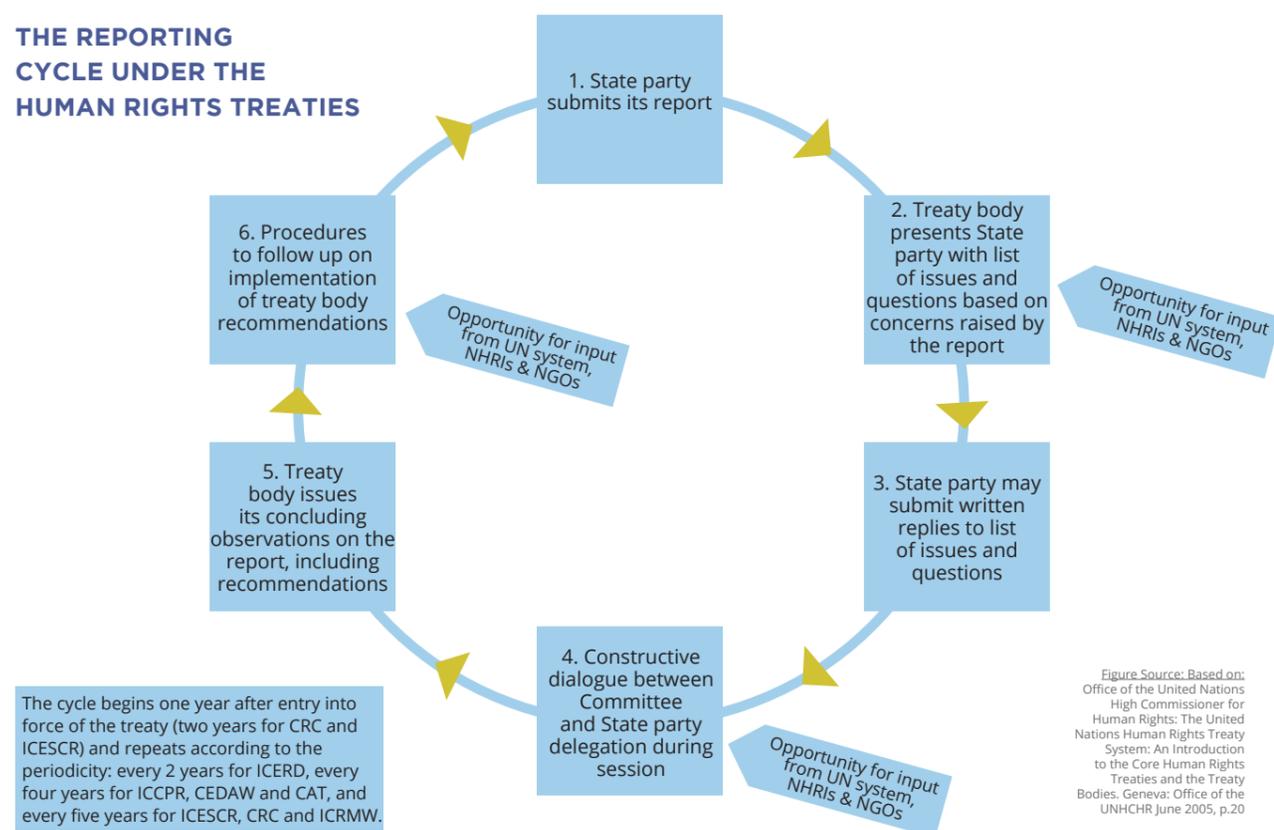
¹ IRAW Asia Pacific and NSWP, Framework on Rights of Sex Workers under CEDAW, January 2018

II. INTRODUCTION TO SHADOW REPORTS AND THE CEDAW REVIEW PROCESS

Under Article 18 of the CEDAW Convention (hereafter, the Convention) all State parties are required to submit periodic national or **state reports** to the CEDAW Committee (hereafter referred to as the Committee) on *'the legislative, judicial, administrative or other measures'* taken by them to give effect to the provisions of the Convention and the progress made with respect to these. The **initial report** has to be submitted one year after ratification of the Convention and thereafter a **periodic report** has to be submitted every four years. Once a State party has prepared and submitted its report, it is scheduled to be reviewed by the Committee at its periodic **review sessions**. Two sessions before the State party is scheduled for the review, the Committee holds a **pre-session working group** meeting that draws up a **list of issues and questions** which the state has to address in writing prior to its review. NGOs engage with the CEDAW review process through submitting alternative information or **shadow reports** to the Committee for their consideration both at the pre-session working group and during the actual review session. There is also opportunity for NGOs to make oral statements to the Committee at the public **Informal Meeting with NGOs** scheduled at each review session. Following the **constructive dialogue** with the state party under review (held at a public meeting that NGOs can attend as observers), the CEDAW Committee adopts a set of **concluding observations** recommending specific action for the state party to undertake to enhance protection for women's rights.

Pursuant to **follow-up procedures**, States parties are requested to report back to the Committee within two years on measures taken to give effect to the "follow-up recommendations". These recommendations are clearly identified in a paragraph at the end of the concluding observations. Again, NGOs have an opportunity to submit a follow-up shadow report to aid the work of the Committee in assessing state compliance with the follow-up recommendations.

THE REPORTING CYCLE UNDER THE HUMAN RIGHTS TREATIES



STATE REPORTS

The State party report consists of two documents: a common core document and the convention-specific report. The **common core document** presents general, factual information that is relevant for the Committee to understand the political, legal, social, economic and cultural context in which human rights are implemented in the State. The State should keep the common core documents current and it should be updated as required whenever the State is submitting the convention-specific report. If no update is required to be made, this should also be mentioned in the convention-specific report.

The **convention-specific report** addresses the substantive articles of the CEDAW Convention and should indicate the impact of policies to implement the Convention. It provides a record of the performance of the State according to the standards of the Convention. It outlines the problems and obstacles to women's equality as well as means to address these. Most significantly, it provides information on the steps taken to address issues raised by the committee in its concluding observations on the State party's previous report.

REPORTS UNDER THE SIMPLIFIED REPORTING PROCEDURE

Where there has been significant delay by States in submitting their convention-specific report, they may request the Committee to allow them to submit reports under the Simplified Reporting Procedure. Under this procedure, the Committee will send a set of **List of Issues Prior to Reporting** to the concerned State to direct the preparation of the State report. The number of questions/ issues included in the list are no more than 25. More information regarding this procedure can be found [here](#).

INITIAL REPORT

This report is the State's first opportunity to present information to the Committee on the extent of its compliance with the Convention articles. In particular, the initial report should outline the constitutional and legal framework for the implementation of the Convention rights, explain the legal and practical measures adopted to give effect to the Convention rights and demonstrate the progress made in ensuring implementation of the Convention articles.

PERIODIC REPORT

This report submitted by the State to the Committee every four years, focuses on the concluding observations made by the Committee on the previous State report and addresses the progress made and the current situation concerning the enjoyment of the Convention rights.

NGO REPORT / SHADOW REPORT

Reports submitted by national and international NGOs to the Committee provide country-specific information on issues relevant to the implementation of the Convention by the States or focus on specific themes. They highlight gaps in implementation of the Convention articles or the Committee's concluding observations and include recommendations for ensuring implementation of the Convention.

Shadow reports are to be submitted to the Committee via its Secretariat at least three weeks prior to the beginning of the session. The reports should be sent electronically in Word format to the following e-mail address: cedaw@ohchr.org. They should not exceed 3,300 words if being submitted by one NGO and not exceed 6,600 words if being submitted by NGO coalitions.

While submitting shadow reports, NGOs should:

- Indicate their full name;
- Indicate the State party scheduled to which the information relates; and
- Indicate whether or not the submission can be posted on the CEDAW website for public information purposes.
- Indicate whether the submission and other details should be kept confidential, in case of any security or privacy concerns.

Hard copies of the report need not mandatorily be submitted. However, NGOs wishing to do so can mail 15 hard copies of their report to CEDAW Secretariat, OHCHR - Palais Wilson, 52, rue des Pâquis, CH-1201 Geneva 10, Switzerland.

Shadow reports can also be submitted to the Committee at its **pre-sessional working group**. In fact, the Committee stresses the importance of NGO engagement at the stage at which questions are being formulated for the State. The procedural guidelines for submission of shadow reports to the pre-sessional working group in terms of the deadline, word limit and other issues remain the same.

III. GUIDELINES FOR WRITING A SHADOW REPORT

This section is set out in two parts: A) provides an overview of key points to consider while developing a shadow report, and B) outlines a series of questions that aim to support the interrogation and analysis of key issues concerning sex workers rights as framed under specific articles of the CEDAW Convention. Note that these are not meant to be an exhaustive list and that each question need not be answered specifically. Rather the questions should be used as a way to prompt information relating to the specific article. Additionally, reference should be made to the accompanying *Framework on Rights of Sex Workers under CEDAW* to clarify meanings of key concepts and terminologies and to elaborate on the scope of specific rights.

A. GENERAL GUIDANCE

Shadow reports are a key advocacy tool for sex workers rights advocates by which they can critically engage with the reporting and monitoring process of the CEDAW Committee by providing data (including statistical data and case studies) regarding the context of right protection of sex workers in their countries. The shadow report should contain information related to the various substantive rights guaranteed under CEDAW as well as recommendations for steps to improve rights holders' enjoyment of these rights. Further, they should provide a critical analysis of the information provided in the State Party report. Such shadow reports help the CEDAW Committee to raise certain issues that may not be presented in the official report, or to check on the validity or veracity of government reports using the alternative information provided by NGOs.

LANGUAGE: Shadow reports can be prepared and submitted in any of the six UN languages (English, French, Spanish, Russian, Arabic and Chinese). However, it is important to note that shadow reports are not translated by the UN for the CEDAW Committee Members. Hence, it is advisable to submit the shadow report in English as all Committee Members have English as a working language.

STRUCTURE: The shadow report should be concise, focusing clearly on priority issues and relevant solutions and demands from the perspective of sex worker rights groups to aid the Committee in constructing its recommendations. The report should have a clear executive summary as it assists the CEDAW Committee in understanding what is contained in the report and where they should read more carefully on specific issues. It should also include a cover page with the title, author(s), date of the report and the relevant CEDAW Committee session.

The best way to organise a shadow/alternative report is by the Articles of the CEDAW Convention, because the CEDAW Committee reviews the government report article by article. The broad structure of the CEDAW Convention is as follows:

- Articles 1 to 5 provide the general obligations of the State to provide a legal and policy framework for the implementation of the Convention as well as the social context that may impede the achievement of women's right to equality;
- Articles 6 to 16 provide specific substantive areas of equal rights for women under the Convention
- Articles 17 to 23 outline the role of the CEDAW Committee and the procedures pertaining to the Convention and finally;
- Articles 23 – 30 outline the administration and interpretation of the Convention.

The shadow report need only provide information on the substantive articles of the CEDAW convention, i.e. Articles 1 to 16

B. ARTICLE SPECIFIC GUIDANCE²

PART 1: ARTICLES 1 – 5

Article 1: Discrimination
 Article 2: Policy Measures
 Article 3: Guarantee of Basic Rights and Fundamental Freedoms
 Article 4: Special Measures
 Article 5: Sex Role Stereotyping and Prejudice
(Refer also to General Recommendations 28, 33 and 35)

ARTICLE 1: DEFINITION OF DISCRIMINATION

1. Does the Constitution or any law of your country put in place a specific definition of discrimination as in Article 1 of CEDAW? If yes, does this definition mention specific categories/ grounds that would be protected against discrimination, e.g. discrimination on the basis of race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity?
[NOTE: This list of 'grounds of discrimination' is not exhaustive. If there are other additional grounds included in your country's constitutional and/ or legal framework relating to discrimination, please mention them.]
2. Does the definition include both direct and indirect³ forms of discrimination?
3. Does the Constitution place a due diligence obligation⁴ upon the State to prevent violations of the rights to equality and non-discrimination by non-State/ private actors? How does the legal system address breaches of this obligation by the State?
4. Are there specific provisions in the law that prohibit intersectional and multiple forms of discrimination against specific social groups and/or disadvantaged/marginalised groups of women⁵, specifically sex workers? If so, has the law been used or is there potential to use it to protect the rights of sex workers?
5. Can you highlight the specific interrelation of rights and patterns of discrimination against sex workers that occur in intersecting contexts, in public and private life and ranging from health, family life, education, protection against violence and access to justice.

² IMPORTANT NOTE: This document employs the term sex worker/s throughout. As the remit of this project is to address the multitude of the diversity of women's lives, this expressly includes women and transwomen. CEDAW obligations specifically defined in General Recommendation No. 28 identify discrimination based on sexual orientation and gender identity as discrimination under the scope of the Convention. (CEDAW Committee, General Recommendation No. 28)

³ Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure. (CEDAW Committee, General Recommendation No. 28)

⁴ The due diligence obligation mandates States to take 'reasonable and serious' measures to prevent violations of human rights by private actors.

⁵ This document employs the terms "marginalized group"/ "differently situated group" to highlight the status of sex workers who may be subject to multiple and intersecting forms of discriminations on grounds including those based on gender identity/ expression, sexual orientation, non-national/ citizen status, rural-urban status, health/ HIV status, criminal record etc.

ARTICLE 2: POLICY MEASURES TO ELIMINATE DISCRIMINATION

1. What is the status of sex work⁶ in domestic laws?

[NOTE: Please respond to this question by referring to the legal context that is most relevant in your country from among the options listed below.]

- Is there legalization of sex work? If yes, are there specific measures to regulate aspects of sex work, such as street-based sex work or indoor sex work; solicitation; taxation; mandatory health screening, etc.? What are the limitations and how does it impact rights of sex workers?
- Is their criminalization of sex work? If yes, are there specific laws that criminalise sex workers, clients and/or 3rd parties (pimps, brothel owners, administrative staff, etc.)? How are the laws implemented? How does it impact rights of sex workers?
[NOTE: For certain categories of sex workers, other laws may penalize their conduct, including citizenship laws, same sex penalties, moral offenses/debauchery codes, gender dress regulations etc in addition to prostitution-directed laws.]
- Is there penalization of sex work? If yes, what administrative or public order laws penalize sex workers, clients and/or 3rd parties (pimps, brothel owners, administrative staff, etc.)? How are the laws implemented? How does it impact rights of sex workers?
- Is there decriminalization of sex work? If yes, does decriminalisation cover all aspects of sex work such as soliciting, pimping or owning brothels?

2. If sex work is criminalized or penalized by law in your country, how is this law implemented?

- Are sex workers charged under these laws? Are 3rd parties (pimps, brothel owners, administrative staff) charged under these laws? What is the effect on this on sex workers?
- Are the buyers of sex penalized? What is the effect on this on sex workers?
- Do sex workers who are charged under these laws have information about their fair trial rights- e.g. right to be informed of the cause detention, right to appoint a lawyer, right to be free of torture, etc.?
- Do sex workers who are charged under these laws have access to legal aid services?
- If sex work is criminalized and punishable by imprisonment in your country, is there data on the number of sex workers that are currently in prison? Is there data on other persons involved in the sex sector who are arrested, jailed or imprisoned or fined?
- If sex work is penalized and punishable by fines in your country, is there data on quantum of fines paid by sex workers?

3. Are sex workers as a group addressed by other laws and policy frameworks, e.g. public health laws and policies, civil laws regarding rights in the family or labour laws? What is the practical impact of these laws and policies on the rights of sex workers?

[NOTE: There may be instances where transwomen may be covered by other laws which are directed at controlling gender expression or identity, or which refuse to accept their gender designation and treat their sexual conduct with men as same sex conduct etc.]

4. Is there any specific law to hold public and private actors accountable for their discriminatory acts and violations?

- Are adequate sanctions in place for discrimination against sex workers by public and private actors?
- What steps have been taken by the State to ensure that sex workers are informed about their rights?
- What legal remedies are available to sex workers who have been discriminated against or have had their rights violated?
 - o Are sex workers able to access these remedies in an effective and timely manner?

- o Do sex workers have access to adequate legal aid services to enable them to access these remedies?
- o Are these remedies effective in eliminating discrimination sex workers?
[Note that transwomen may be affected by intersecting and different laws regarding accountability for discrimination (see above)]

5. Is there a process for monitoring discriminatory practices against sex workers by public authorities, including law enforcement agencies, justice sector and health sector actors? Is there a mechanism for ensuring independent and effective investigation and redress in cases of discrimination by public authorities? Are there any training and awareness programmes on human rights for public authorities to combat prejudices and stereotypes against sex workers?

6. Has there been a comprehensive review of legislations that are discriminatory against sex workers and a plan developed for legal reform? Does it include all laws (penal and administrative), policies and national action plans?

7. What is the status of CEDAW Convention and other international laws in the domestic legal system? Has specific enabling legislation been enacted to incorporate CEDAW Convention into domestic laws? Are there other ways in which the CEDAW Convention has impacted domestic laws and policies, either through direct reference or indirectly?

8. Is the CEDAW Convention applicable in the courts? If yes, have any of the provisions of the CEDAW Convention been directly invoked/used in domestic courts in cases of discrimination, violations and to gain equal rights for sex workers? What was the outcome of these cases?

9. Are there competent and sensitised state machinery or tribunals (including national human rights institutions and office of Ombudsman) to hear cases on discrimination and inequality?

10. If these institutions and procedures for delivering justice are in place, how effective are they in addressing the violations and providing remedies in cases of discrimination against sex workers or other forms of rights violations, such as violence?

- Do sex workers report cases of discrimination or violence to state authorities, including the police?
- How responsive are state authorities to reports of rights violations by sex workers?

11. Is there data on cases brought by sex workers to these institutions and what are the processes for monitoring and use of the data to improve legal protections and state services to sex workers?

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

1. Do relevant national machineries also address development issues in relation to sex workers, create equal opportunities for sex workers, and ensure equal access for sex workers to those opportunities and equal results? e.g. through Ministry of Women or Office of Gender Equality?

- What are the powers and mandate of these machineries? Do they have specific mandate to address discrimination experienced by marginalised/vulnerable groups of women, including sex workers? Do they have authority to coordinate, resources and competence to play a catalytical role with other sectors? Can these machineries be more effective? How?
- What is the level of coordination with other institutional machineries?

⁶ This document employs the term sex work as the consensual exchange of sexual services between two adults for money or other material consideration. This means that the status of both seller and buyer must be considered in this discussion as well as the status of third parties who enable this work. Lastly, it must also consider persons who may harm, commit violence or exploit the labor of people in the sex sector.

6. Have the national development plans in your country addressed the development and advancement of sex workers on a scale that is representative of the population?
 - In the national development plans (including poverty eradication strategies), has the government incorporated macro-economic and social policies that will ensure that sex workers have access and enjoyment to overall economic and social development based on the principles and framework of the CEDAW Convention?
 - Are there specific budgetary allocations to support the implementation of the above plans?
 - How effective are the implementation of these plans?
 - What are the challenges in implementation of these plans?
7. Is there adequate data to assess progress made in the implementation of the CEDAW Convention related to rights of sex workers, such as data disaggregated by age, sex, ethnicity, gender identity or sexual orientation, health, migrant or refugee status and other relevant variables?
 - Is information or data accessible?
 - What are the challenges?
8. Has the government involved NGOs, including sex workers groups in planning and implementation of any of the above?

ARTICLE 4: TEMPORARY SPECIAL MEASURES TO ACHIEVE EQUALITY

(refer also to General Recommendation 25)

1. Has the government instituted any temporary special measures to improve the specific situation of sex workers in your country that would bring them closer to experiencing equality, i.e. the implementation of affirmative action policies in access to health, employment, political decision-making?

2. How effective are these temporary specific measures? What are the challenges?
3. Are there mechanisms in place to monitor the implementation of temporary special measures and to measure their progress in accelerating de facto equality for sex workers?

ARTICLE 5: SEX ROLE STEREOTYPING AND PREJUDICE

1. What impact does stereotyping of women and men, and the roles that they play within the family and society, have in forming perceptions regarding sex workers? What are the various stereotypes that exist and perpetuate negative perceptions against sex workers as well as buyers of sex? How do stereotypes around homosexuality, gender difference among other issues affect ideas about policy, family and society?
2. Has the state been complicit in perpetuating stereotypes or negative perceptions of sex workers that leads to stigmatisation and discrimination, through its laws, policies, strategies or propaganda?
3. What has the government done to overcome negative perceptions of sex workers and stereotyping of women's roles within the family and the society, that often lead to incitement of hatred and intolerance against sex workers?
4. What actions has the government taken to eliminate harmful practices against sex workers, including forcible STD and HIV/AIDS testing based on stereotypes?
5. Does the media play a role in perpetuating and inciting animosity, negative perceptions and violence against sex workers? Are there effective measures in place to ensure that the media does not contribute to the prejudices and stereotypes against sex workers?
6. What role do learning and religious institutions play in perpetuating discrimination against

sex workers based on regressive religious or prejudicial beliefs? Are there effective measures or interventions by the State to hold these institutions accountable?

GENERAL RECOMMENDATION 35 UPDATING GENERAL RECOMMENDATION 19 ON GENDER BASED VIOLENCE AGAINST WOMEN (GBVAW)

1. What are the various forms of violence faced by sex workers, i.e. violations that result in death, physical, sexual, psychological or economic harm or suffering threats of such acts, harassment, coercion and arbitrary deprivation of liberty? (This may include but is not limited to femicide/murder, sexual violence and rape, domestic violence, harmful practices such as female circumcision, violence in custodial settings, violence at the workplace, violence in technology mediated settings, etc.)?
 - What is the extent of this gender-based violence? Provide statistical data on the incidence of violence of all kinds against sex workers.
 - Is there disaggregated data and information available regarding the incidence of violence against sex workers who may face intersectional/ multiple forms of discrimination, including LBT women, women living with HIV, refugee or migrant women, etc.?
 - Is there information regarding the perpetrators of GBVAW (clients, people posing as clients, public authorities, health officials and private health care providers, partners, etc.)?
 - Do sex workers face specific violations of their sexual and reproductive health and rights (SRHR), including forced testing, forced sterilization, forced abortions or abuse and mistreatment while seeking SRHR information of services? What are the specific concerns of transwomen in the sex sector?
2. What legislation is in force to protect sex workers against these forms of violence?
 - Are there laws that increase the vulnerability of sex workers to GBVAW?

How do these laws function to increase risk (e.g. through denial of information, perpetuating impunity for state officials, broad regulatory powers in the context of health)?

- Are sex workers using these laws? Is there data on their access to these laws?
 - How effective are these laws in addressing the forms of violence faced by sex workers and in providing remedies to them?
 - What are the obstacles to sex workers accessing legal remedies and how can these obstacles be addressed? How are differently situated groups of sex workers able to access these laws?
 - What remedies are available to sex workers under these laws and how appropriate / effective are they?
 - What specific remedies if any are in place regarding GBVAW by state authorities, in policing, in jail and in prisons and other forms of detention?
1. Is there a specific national action plan on gender-based violence in your country? How does it address the specific context of violence as faced by sex workers? Are sex workers consulted in the preparation of relevant plans that impact them?
 2. What preventive and protective measures have been adopted by the government to eradicate GBVAW (such as awareness raising to modify gender-based stereotypes and socio-cultural patterns of behaviour that that legitimize, exacerbate or tolerate GBVAW, training for public authorities on effectively dealing with GBVAW cases)? How effective are these measures?
 3. What kind of infrastructure and support services (e.g. shelters, legal aid services, health care services, psychosocial counselling services, etc.) are available for sex workers who are victims / survivors of GBVAW? Are sex workers able to access these services? What are the obstacles for access and use of these services and how can these obstacles be addressed?

PART 2: ARTICLES 6 – 16

Article 6: Trafficking and Exploitation of Prostitution

Article 7: Political and Public Life (*refer also to General Recommendation 23*)

Article 8: Participation at the International Level

Article 9: Nationality

Article 10: Equality in Education (*refer also to General Recommendation 36*)

Article 11: Employment

Article 12: Healthcare and Family Planning (*refer also to General Recommendation 24*)

Article 13: Economic and Social Benefits

Article 14: Rural Women (*refer also to General Recommendation 34*)

Article 15: Equality before the Law

Article 16: Marriage and Family Life (*refer also to General Recommendation 21*)

ARTICLE 6: TRAFFICKING AND EXPLOITATION OF PROSTITUTION

1. Are there separate laws and policies to address trafficking⁷ and sex work? Do the legal frameworks conflate trafficking and sex work either substantively or in practice?
2. Does a conflation (i.e. reduction of trafficking to equal any form of sex work) between trafficking and sex work take place in the implementation/ operationalization of the law, e.g. do women working without coercion in sex work get detained under the provision of trafficking law? Are persons charged under trafficking law for buying sex? Are there other examples of such conflation in practice?
3. What is the definition of trafficking under the law? Does it incorporate/ refer to the Palermo Protocol definition of “trafficking”?
 - If yes, does the law provide clear definitions or guidelines for determining the following terms⁸:
 - o Exploitation
 - o Sexual exploitation
 - o Abuse of power
 - o Position of vulnerability
 - If yes, does the law recognize other form of exploitation such as other forms of labour exploitation (domestic work, begging, agricultural work, etc) separately and expressly?
4. Are there holistic measures adopted by the State to address the root causes that place women (especially marginalised groups of women) in vulnerable situations and make them susceptible to “exploitation”, including poverty, discrimination and social exclusion, as well as laws preventing safe and voluntary movement within or across borders? Does it include anti-poverty programmes and opportunities for women to access education, training and employment in place to address these causes? Do they include removal of other barriers (e.g. barriers to employment based on caste, class, and national status etc.)?
5. Are women, including transwomen who have been trafficked subject to criminal prosecution under the law on trafficking? If yes, what is the impact of this on the rights of sex workers?
 - What is the state policy with respect to repatriation of foreign women, including transwomen who have been trafficked (according to the national law) into your country? What is the impact of this on the rights of sex workers? E.g., is repatriation, voluntary, confidential, and with

⁷ See Section II, Framework on Rights of Sex Workers of CEDAW, IWRAW Asia Pacific & NSWP for a complete discussion of these terms

⁸ See Section II, Framework on Rights of Sex Workers of CEDAW, IWRAW Asia Pacific & NSWP for a complete discussion of these terms.

assurances of safety and security on return? Are their measures to provide for extended stay while trafficked persons assess their interests? Is the stay funded? Can trafficked persons received benefits and or services?

6. Are there adequate measures and programmes to provide relevant legal, material and psycho-social support to women who have been trafficked? Are these measures and programmes available to sex workers? Are measure to identify trafficked persons adequate to the various sectors, and rights respecting? Do they protect against unintended consequences of investigations into informal movement and the rights of undocumented migrants?
7. Is there adequate data gathered by the State, disaggregated by sex, ethnicity, social status, age, gender identity and expression and other relevant variables to assess the situation of women who are trafficked both internally and across borders? Is there any data collected specifically on various forms of labour exploitation that trafficked person face?
8. Has the State established transparent and accountable cross-border co-operation and coordination with both country of origin and country of destination (*as relevant*) towards protection of rights of women who have been trafficked? By what institutions is cross-border action taken?
9. Is there a specific national action plan on trafficking? How was it developed, i.e. was the process public and consultative? How is it implemented, i.e. by what institutions in government and is it transparent, rights protecting in its implementation?
10. Are sex worker advocacy groups consulted by the State in formulation of various responses (including so-called rehabilitation policies, protection from traffickers, rights to remedy) around trafficking?

ARTICLE 7: PARTICIPATION IN POLITICAL AND PUBLIC LIFE

1. Are there specific barriers to sex workers voting in elections or in being represented?
2. Are there any barriers to sex workers participating in or forming non-governmental organisations and associations? Are there specific restrictions relating to registration or funding requirements in laws that prevent sex workers from forming NGOs or associations? Are there practical barriers to organizing by sex workers?
3. Are there administrative requirements that impede the day-to-day working of NGOs or associations formed by sex workers?
4. Are there specific measures, including temporary special measures in place to address the barriers that sex workers face to equal participation in political and public life, arising from stereotypes, prejudices, illiteracy, language, poverty and impediments to women’s freedom of movement?

[Note: Public life includes both running for and holding office at any level of government as well as non-governmental advocacy.]
5. Are sex workers organisations and associations consulted or represented in any processes related to legislative or procedural reforms and programmes?

ARTICLE 8: REPRESENTATION

1. What are the barriers to sex workers participating in the work or programmes of international organisations at the regional or international levels?

ARTICLE 9: NATIONALITY

1. Is the right to choose residence for sex workers hindered by the existence of unequal rights to nationality and citizenship, particularly for sex workers who are also refugees/ asylum seekers, displaced, indigenous and belong to ethnic or religious minority groups of have diverse gender expression?
2. Are sex workers able to transmit citizenship to their children regardless of the father, his nationality or where the child is born?
3. Are there barriers to sex workers transmitting citizenship to their foreign spouse?

ARTICLE 10: EDUCATION

1. Has the State recognized in law and policy the right of access to education for all, including sex workers? Has the State instituted policies to ensure non-discrimination in access to education at all levels?
2. What is the literacy rate among sex workers? Are there government programs to combat illiteracy among sex workers?
3. What actions has the State taken to ensure access to education, including lifelong education, sex workers?
4. What is the quality of these educational measures?
 - Are there trained and professional educators?
 - Are there loans or scholarships available?
 - Are there adequate educational institutions available nationwide, specifically in rural areas that are accessible to sex workers?

5. Are all the diverse women in sex work able to access these measures? What specific barriers do differently situated groups of sex workers face?
6. Have there been any public policy programs or educational campaigns geared towards combating prejudicial stereotypes that may keep sex workers from accessing education?
7. Do educational institutions undertake any discriminatory practices that may impact sex workers?
8. Are there any discriminatory practices against school-going children of sex workers?
9. Do sex workers have access to specific educational information to promote sexual and reproductive health and rights, including information and advice on family planning and contraceptives?

ARTICLE 11: EMPLOYMENT

1. Is sex work recognized as work in your country?
2. Has the State enacted legislation guaranteeing safe working conditions, including access to health care, maternity benefits and social security including insurance benefits and disability payments?
 - Is this provided without discrimination to workers in all professions? If no, what barriers impede the access of sex workers to these conditions and benefits?
 - Is this monitored by the government?
3. Are there regulations prohibiting violence against sex workers in the context of work? What are the avenues for redress?
4. Do sex workers have the right to form or join trade unions, or is it limited to particular employment groups? Do customs or practices interfere with sex workers joining and leading trade unions or other labour associations?

5. Has the State taken steps to provide access to alternative forms of employment for sex workers who wish to leave sex work?
 - Has a national plan of action been developed in consultation with sex workers?
 - Have benchmarks and timeframes been set?
 - Are there specific measures to ensure that women who wish to leave sex work are not employed in precarious or unsafe working conditions once they leave sex work?
 - Has the State implemented vocational programmes aimed at aiding the unemployed? Are these programs targeted toward sex workers? How effective are these programmes in practice?
 - Have measures been implemented which address sex workers facing multiple discriminations in employment?

ARTICLE 12: RIGHT TO HEALTH

Has the State recognized the right to physical and mental health for sex workers in national law and policies?

- What are the structural barriers that sex workers face in accessing health services that may be exacerbated in the case of sex workers?
[Note: Consider the specific barriers relevant to differently situated groups of sex workers.]
- Has the State created a national health plan which specifically addresses the needs of sex workers?
- Does the national health plan take into account any ethnic, regional or community variations or practices based on religion, tradition or culture?
- Do all health services allow for the rights of sex workers to autonomy, privacy, confidentiality, informed consent and choice?
- Are sex workers involved in the planning, implementation and monitoring of

such policies and programmes and in the provision of health services to sex workers?

- Are there monitoring mechanisms for the provision of health services to sex workers by public, non-governmental and private organizations, to ensure equal access and quality of care?
 - o Is HIV/AIDS appropriately integrated i.e. it is one of many health services and care and information based on voluntary condom use etc. and that there is not specific criminalization of HIV status as related to participation in the sex sector?
1. Has the State provided sex-disaggregated data on access to healthcare by sex workers? What are the levels of access to healthcare among sex workers? What are the barriers to accessing healthcare faced by sex workers?
 2. Has the State provided access in urban and rural areas to mental health facilities for sex workers? Are these services affordable and culturally appropriate?
 3. Do the training curricula of health workers include comprehensive, mandatory, gender-sensitive courses on the health and human rights of sex workers, in particular gender-based violence? Is there attention to the diversity of women in sex work and their health needs (i.e. gender identity, age, health status)?
 4. Is access to prescription medicine readily available and economically affordable to sex workers? Has the State taken steps to ensure that trade agreements and national laws on intellectual property and generic drug access do not undermine the right to access medications?
 5. Has the State provided access to HIV/AIDS prevention and treatment services to sex workers without discrimination?
 - What are the HIV/AIDS rates among sex workers?

- o What are the different prevalence's among differently situated groups of persons in sex work?
 - Does peer-based education about HIV risks reach all sex workers? If not by who and how is information conveyed?
 - Are sex workers living with HIV/AIDS covered under a State health policy or social security/benefit system?
 - Are sex workers living with HIV/AIDS protected by law against discrimination and provided with sufficient access to healthcare?
[Note see above for specific penal laws adding penalties for HIV status for persons in the sex sector]
 - Are there any programs geared towards eliminating misconceptions that may lead towards discrimination against sex workers living with HIV/AIDS?
6. Are sexual and reproductive health facilities available and accessible to sex workers? Are there any public policy programs or educational campaigns geared towards raising awareness about sexual and reproductive health?
 7. Do sex workers have universal access to family planning services, including access to the full range of elective, effective birth control and emergency contraception? Is there access to Pre- and Post-exposure prophylaxis (PEP and PREP)?
 8. Is abortion legal, available and accessible in general, and what are specific barriers in law and in practice to sex workers?
 - What is the incidence of abortion? Who keeps this data?
 - What is the number of women who die as a result of unsafe abortions?
 9. Has the State undertaken to combat violence against women, including transwomen in sex work as serious hazards to women's physical and mental health?

10. Do sex workers face institutional violence in the context of health services, e.g. forced sterilization or forced testing for HIV AIDS?

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

1. Is social security available to all sex workers? What measures are put in place to ensure availability and access? What specific barriers do differently situated groups of sex workers face?
2. Have any legislative or policy programs been implemented to provide an adequate standard of living for those in the informal economy, particularly sex workers?
3. Are there any allocations made for lost work time as a result of child bearing and child rearing?
4. Has the State instituted a national action plan to improve access to adequate, food, housing, water and sanitation for sex workers?
 - How effective are the measures under this plan? Is the implementation monitored by the state?
 - Are there adequate and accessible forms of redress and remedies for violations of the right to housing, food and water?
 - Are there any specific barriers faced by sex workers in accessing these amenities?
5. What measures are being taken to ensure that all sex workers can take part in sports and other recreational activities?

ARTICLE 15: EQUALITY BEFORE THE LAWS

1. Do sex workers have full equality in all civil and business matters?
 - Are they able to enter into contracts, receive loans, own/buy/sell and administer their and their children's property, travel freely, apply for a passport. etc., on their own, without

the consent of their husbands, fathers, or other male guardians?

- Are there specific barriers they face in enjoying these legal rights? How are differently situated groups of sex workers placed?
2. Are sex workers treated as equal at all stages of procedure in courts and tribunals? Are sex workers able to use the laws and remedies available without any discrimination? How do the laws regarding rights of defendants and criminally accused generally affect persons accused of selling sex? How are differently situated groups of sex workers affected?
 - Is there a defense bar or other legal services that specifically addresses the rights of persons charged under prostitution law?
 - Are general rules of evidence, due process, protection against torture and abuse while in police custody and detention applied effectively to persons arrested for sex work offenses? Why or why not?
 - Is data collected on women, including transwomen in detention for sex offenses? Is their data on the conditions of their detention and their rights on release?
 3. Does the sexual assault law fairly address persons in sex work as victims of rape and other forms of assault? How does national status, gender identity and other aspects affect the application of general criminal laws?
 4. Are persons known or suspected of sex work able to sign contracts and other legal documents? What are the barriers?
 5. Are there alternative and/or informal justice mechanisms that are available and accessible to sex workers? How effective are these mechanisms? Do they contribute to denial of equal access to justice for sex workers?

ARTICLE 16: MARRIAGE AND FAMILY LIFE

1. Do sex workers experience any discrimination with regards to entry into marriage and dissolution of marriages?
 - Is there a minimum age of marriage?
 - Are sex workers able to register their marriage?
 - Are their general laws regarding criminal records that affect entry into marriage? Are their specific laws on moral character?
 - Are common law marriages/cohabitation recognised for sex workers?
 - Are sex workers discriminated under grounds for divorce/dissolution of marriage?
 - Are sex workers discriminated in the context of adoption, custody, maintenance/alimony and division of property in the event of divorce/dissolution of marriage?
2. What measures has the state implemented to combat practices of forced and early marriages among sex workers?
3. Has the State implemented legislation ensuring equal rights to sex workers in marriage, such as right to own property, and to pass nationality onto the children?
4. Are there differences in the rights afforded to married and non-married sex workers who are parents?
5. Are there adequate legal redress and remedies available and accessible to sex workers as a result of violation of their rights in marriage and dissolution?

⁹ In this context it is relevant to note complaints procedures of the UN human rights bodies including of the CEDAW Committee that may be accessed by rights holders to seek redress for rights violations at the international level. For more information see: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

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