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**Comments to the Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda: "Integration of the Human Rights of Women and the Gender Perspective"
E/CN.4/2006/62, 20 February 2006**

Submitted on September 14, 2006 by:

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The Sex Workers Project (SWP) is the first project in the United States to focus on the provision of legal services and systemic advocacy on behalf of sex workers. Our mission is to advocate for sex workers, former sex workers, and those who are profiled or at risk for engaging in sex work, including victims of human trafficking, within a context of harm reduction and human rights. We engage in free legal representation to victims of human trafficking, with special focus on those who have been trafficked into sex work. The SWP also conducts outreach to at-risk communities, and trains community-based organizations and law enforcement on legal and other issues related to the problem of trafficking in persons. The SWP is a member of the national Freedom Network, which advocates on behalf of victims of human trafficking, to ensure access to rights and benefits to this vulnerable population. The SWP is on the Steering Committee and Legal Committee of the NY Anti-Trafficking Network.

We are pleased to submit our comments to the Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda: "Integration of the Human Rights of Women and the Gender Perspective" E/CN.4/2006/62, 20 February 2006.

We are concerned about two themes in the report, which we discuss below. First, we are concerned with the excessive focus paid to the inaccurate notion of demand as a driving force in trafficking of persons. Second, we are concerned with the inaccurate conflation of sex work and trafficking in persons.

Inaccurate Notion of Demand as a Driving Force in Trafficking of Persons

"Demand" is a current buzzword among some anti-trafficking activists, in which they argue that demand for sex work drives trafficking in persons, and that arresting clients who patronize sex workers will reduce the problem. However, demand for sex work is not a predominant driving factor for trafficking, which is driven by poverty, race, and gender inequities.

The term “demand” can, in one sense, refer to the legitimate concerns raised by migrants and labor rights advocates who address the issues relating to the need in the global north for exploitable labor and services. However, this new narrow focus of the term represents a dangerous slippage into an anti-sex work, anti-male and homophobic mindset which, under the guise of protecting sex workers, is another way of undermining sex workers’ autonomy and causing more harm to them. To trivialize this issue by sexualizing it in voyeuristic ways by appealing to male shame and female chastity is a travesty.

How can anti-trafficking policy effectively address “demand”?

- Anti-trafficking policies must focus on the full scope of the problem. The Special Rapporteur on Trafficking in Persons, Especially Women and Children (“Special Rapporteur”), *herself has recently affirmed* that “significant numbers of human beings are trafficked for labour exploitation.”¹
- A recent IOM report suggests that “the notion of ‘demand’ for the labour/services of a ‘trafficked’ person . . . can refer to an employer’s need for cheap and docile labour, or to consumer demand for cheap goods and/or services, or for household labour or subsistence labour, or to any or all of these.”²

Proponents addressing “demand” focus on sex workers’ clients as perpetrators of violence against women. However, there are a number of flaws with this approach:

- Sex workers around the world point not to their clients but to the state and its agents as the prime violators of their human rights. Extending the powers of law enforcement into yet another sphere of the lives of sex workers presents a great threat to the human rights of sex workers.
- Sex workers are most vulnerable to violence in situations where sex work is criminalized or stigmatized and they are treated as outsiders or are not encouraged to avail themselves of legal protections.
- The Special Rapporteur has expressed concerns that “trafficking continues to be treated as mainly a ‘law and order’ problem” and expresses her intent to focus on human rights protections.³
- The IOM has pointed out that increased border security exacerbates markets for trafficking and smuggling of migrants.⁴ “Victims of cross-border trafficking are criminalized and prosecuted as illegal aliens, undocumented workers or irregular migrants, rather than as victims of a crime.”⁵

Efforts to address trafficking will be ineffective with a narrow focus on demand for sex work. Instead, anti-trafficking efforts must address effective labor and migration policies that recall the basic principle previously set forth by the Special Rapporteur: “that the human rights of trafficked persons shall be at the centre of all efforts to combat trafficking and to protect, assist and provide redress to those affected by trafficking.”⁶

¹ *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, E/CN.4/2005/71 (22 December 2004) at 2.

² International Organization for Migration, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (2003) at 10.

³ *Report of the Special Rapporteur*, E/CN.4/2005/71 at ¶ 56.

⁴ International Organization for Migration, *Is Trafficking in Human Beings Demand Driven?* at 7-8.

⁵ *Report of the Special Rapporteur*, E/CN.4/2005/71 at ¶ 10.

⁶ *Report of the Special Rapporteur*, E/CN.4/2005/71 at ¶ 11.

Inaccurate Conflation of Sex Work and Trafficking in Persons

Generally, political pressure and historical bias have created a conflation of sex work and human trafficking. In many cases, political pressure by the U.S., not concern for trafficked persons, has compelled countries to pass anti-prostitution bills.⁷ This includes countries being placed on watch-lists in the “Trafficking in Persons Report” and placing anti-prostitution stipulations on foreign aid.⁸

Anti-prostitution literature cannot be used constructively to address the issue of trafficking. Research regarding sex work is widely viewed as flawed and inaccurate.⁹ Studies in radical feminist literature consistently violate the canons of objectivity in for conducting social science research.¹⁰ In evaluating anti-prostitution literature, experts find that “[a]necdotes are generalized and presented as conclusive evidence, sampling is selective, and counterevidence is routinely ignored.”¹¹ In light of the poor quality of research, scholars attribute government agencies’ use of anti-prostitution findings to political connections rather than academic integrity.¹² Publishing unreliable and flawed methodology and statistics is irresponsible and disingenuous, especially in government documents, which the public relies upon for accurate information.¹³

There is dubious or little indications that increased criminalization of sex work decreases instances of trafficking into the sex sector¹⁴. Treating human trafficking as the same as sex work ignores the large population of victims trafficked into labor such as manual labor and domestic service. Defining sex work as identical to trafficking into sex work negates sex work as a voluntary choice for profession, further criminalizes sex work, and exaggerates the negative conditions that harm sex workers.

Migrant Sex Workers in New York City

In 2005, the Sex Workers Project released a report, *Behind Closed Doors*, in which we presented data from interviews with 52 sex workers¹⁵ who lived in New York City and worked in various indoor venues. Researchers met sex workers of all genders through direct outreach at a gang clubhouse, through law enforcement officials, at a nightclub, via the internet, through other sex workers and through cooperating organizations. While the sample is not large, it is extremely varied, and many of the experiences described by

⁷ Weitzer, R. (2005). The Growing Moral Panic Over Prostitution and Sex Trafficking. *The Criminologist*, 30(5), p. 4.

⁸ Ibid.

⁹ Weitzer, R. (2006 March-April). Moral crusade against prostitution. *Society*, pp. 27- citing Rubin, 1993; McDonald, 2004; Zatz 1997.

¹⁰ Deozema, J. (1999, February). Loose Women or Lost Women: The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women, Retrieved April 18, 2006, from <http://www.ciaonet.org/isa/doj01/doj01.html>. Deozema writes: The Global Alliance Against Trafficking in Women (GAATW), who undertook a year-and-a-half-long investigation into 'trafficking in women' internationally at the request of the UN Special Rapporteur On Violence Against Women, stated that finding reliable statistics on the extent of trafficking in women was virtually impossible, due to a lack of systematic research, the lack of a 'precise, consistent and unambiguous definition of the phenomena [of trafficking in women]' and the illegality or criminal nature of prostitution and 'trafficking' (Weijers and Lap-Chew 1997: 15).

¹¹ Weitzer, R. (2005). New directions in research on prostitution. *Crime, Law & Social Change* 43, pp. 214.

¹² Shapiro, N. (2004, April 25-31). The new abolitionists. *Seattle Weekly*, p.1-12.

¹³ Weitzer, R. (2005). The Growing Moral Panic Over Prostitution and Sex Trafficking. *The Criminologist*, 30(5), p. 4.

¹⁴ Weitzer, R. (2006 March -April). Moral crusade against prostitution. *Society*, pp. 27-32.

¹⁵ For those 4 sex workers who had experienced trafficking and slave-like conditions, researchers interviewed their advocates, who acted as intermediaries for information, in order to reduce the trauma to the respondents.

this highly varied group of sex workers are extremely similar. The emergence of significant common themes suggests that the data reflects systemic phenomena and is not merely anecdotal. Additionally, service providers and advocates were able to corroborate much of the information we received and attest to the general reliability of the respondents.

Of these respondents, 40% (21 of 52) were migrant sex workers, representing countries in Asia, Latin America, the Caribbean, and Europe. These sex workers spoke openly of their reasons for entering into sex work.

Immigration Status of Migrant Sex Workers at the Time of Interview

Of those respondents who were born outside the U.S. and Puerto Rico, 62% (13 of 21) had some form of legal immigration status at the time of the interview, although not all were authorized to work in the country. Thirty-eight percent (8 of 21) were completely undocumented and had no legal status.

However, only 43% (9 of 21) had some legal status when they entered into sex work in the U.S., while 57% (12 of 21) had no immigration status when they entered into sex work in the U.S. This is because the trafficked respondents were undocumented when they were involved with sex work, but had temporary legal status for trafficked persons at the time that researchers interviewed their advocates.

Twenty-three percent (5 of 21) of foreign-born¹⁶ respondents were U.S. citizens. Four came to the U.S. as young children (age 8 and under) with their families, while one held dual citizenship with Canada. Louise¹⁷ had been born and raised in Canada, but decided to take advantage of her dual citizenship and came to the U.S. as an adult after she received an offer for a job.

Ten percent (2 of 21) of foreign-born respondents were legal permanent residents (green card holders.) Both arrived in the U.S. on student visas, but Emiko eventually got married, and Yoko obtained her green card through the lottery system.

Ten percent (2 of 21) of foreign-born respondents were in the U.S. on tourist visas. Rita came to the U.S. to escape her abusive husband and hoped to find a way to stay here permanently, while Sean likes to travel back and forth to his native New Zealand and to Australia. However, he would like to obtain more long-term status so that he may stay in the U.S. and go to school here.

Thirty-eight percent (8 of 21) of foreign-born respondents were completely undocumented and had no legal status. Most entered the country legally with tourist or student visas, which they overstayed, while one, Maria, entered the country with no documents at all “by running across the border.”

Nineteen percent (4 of 21) of foreign-born respondents also entered the country with no documents, but they were trafficked into sex work, meaning that they were coerced into working in sex work. These four respondents had cooperated with law enforcement in the criminal investigation of the people who had trafficked them. Therefore, they were all given temporary legal status that is available to trafficked persons, and will have the opportunity to apply for more permanent status in the future if they are interested in doing so.

¹⁶ Researchers used the term “foreign-born” to emphasize the aspect of international migration to the United States, rather than merely internal migration.

¹⁷ All names have been changed to protect the identity of respondents.

Reasons for Leaving Their Country of Origin

Respondents offered a wide variety of answers to the question of why they left their home countries, ranging from a lack of economic opportunities to enjoying greater freedom by avoiding discrimination and stigma based on gender, gender identity, and sexual orientation.

Luciana said, “I had a friend from Brazil in New York City [who] told me to come here, that I could make good money. I was looking for change after my parents' passing.”

Transgender women and gay men reported that their families were ashamed and that they were discriminated against in their home countries. Scarlett came to the U.S. “for a new life” and to be accepted for “the way I was.” Grace said that “people didn't understand that [I am] gay.” She added that her family would kill her and themselves if she had remained in the country as a woman.

Reasons for Moving to the United States

The U.S. remains a destination for immigrants from around the world. When asked why they came to the U.S., Connie and Emiko referred to the “American dream” and Maria said that “everyone in the U.S. . . . people have everything.” Respondents indicated that the “American dream” is inextricably linked to jobs and financial opportunities. Others referred to sexual freedom in the U.S. Emiko came to the U.S. with a student visa—she talked about cultural forces making her want to leave Japan. For example, she felt too old there to be a single woman.

Fifty-seven percent (12 of 21) of foreign-born participants described having some assistance during the migration process, ranging from consulting firms that arrange for visas to people such as “coyotes” who smuggle people across borders. Keiko said, “I applied to school and they [the consulting firm] issued the F1 Visa. They said they have some residence, so the first month or two you don't have to worry about anything. If you pay this consulting it's very easy.” Rita came to New York to escape from an abusive husband. It was her husband's aunt who helped her arrange her visa and passport. The trafficked women came to the U.S. through arrangements made by the people who trafficked them.

Reasons for Moving to New York City

New York City is a frequent destination of settlement for many immigrants. Keiko put it plainly, saying, “Also, I just wanted to live here! I was interested in New York.” Yoko wanted to pursue a career in the arts in New York City.

Louise, who was eligible for U.S. citizenship but who had never lived in the U.S. before relocating at the age of 22, said, “I would not be in the States if it weren't for New York. I'm very happy to say I'm a New Yorker but not an American.” She continued,

[My] job in Canada ended . . . rather than compete with my colleagues for whatever was left, I took a job in New York. I didn't understand how expensive New York was--the pay would have been a lot of money in Canada. There were like weeks I didn't eat. I was calling friends and asking for food. I was like, I think I'll start working again.

Forty-three percent (9 of 21) of foreign-born respondents had contacts in the New York area before they arrived. This includes one of the trafficked persons. Not all immigrants interviewed came directly to New York City. Maria spent 13 years in California before relocating to the East Coast because she “needed a change.” Yoko had traveled in the U.S. for a month before deciding to relocate here—she had made acquaintances in New York during her visit.

Grace said that her contact helped her learn how to use the subway, register for school, find a place to live, and showed her how to buy things. Maria said that her brother helped her with both monetary and practical support, because he had already been in the U.S. for a year. He paid \$300 for her travel expenses, but then returned to Mexico. Luciana came to New York City with her brother, but he left after six months because “he hated it.” Sean, who is from New Zealand but entered the U.S. through Canada, arrived in the U.S. with the help of a client who became a friend. This client paid for everything upon Sean’s arrival.

Most of the participants who received very practical help getting to the U.S., such as help arranging a visa or help entering the U.S. illegally, paid money for these services. In cases in which help was received from an individual rather than an agency, most respondents reported that they were still in contact and even friendly with the people who helped them in the U.S. The exception to this were the women who were trafficked, who reported having no further contact with those who brought them to New York.

Once they were in New York, most of the immigrants interviewed found their first places to live in New York through a friend or acquaintance. The four trafficked women said that the traffickers had contacts who made all of their living arrangements.

Migrants’ Involvement in Sex Work

It is clear that the decision to enter the sex trade was not always an easy one for the migrants in the sample. For respondents who did not have legal immigration status or proper documentation, the ability to settle, find housing, and support themselves was compounded by fear of deportation and a lack of employment authorization. This led some participants to look at sex work as their best economically viable option. Respondents in this situation discussed the fact that they could work out of their apartments independently without involving an employer. In addition, many escort agencies and brothels do not check for legal immigration status.

Connie spoke of being “afraid to give fake papers” to a potential employer, saying that sex work seemed to be a better option than that kind of fraud. She was essentially weighing one unlawful act against another. This reflects an unexpected ethical decision in opting to enter the sex industry.

In making her decision, Connie also considered that sex work is more lucrative than other jobs available to her. Immigrant and undocumented respondents spoke often of the need for “work papers” and “a green card.” For example, Maria spoke of limited employment options, saying that “with papers, I could go more easily to school and apply for other jobs.” Grace worried that she “can’t find a regular job because [I’m] illegal . . . Can’t have health insurance.” Scarlett has a “B.A., but I can’t get a job because of my [undocumented] status.”

Some also explored fraudulent marriages as options for attaining legal status. In this context, they were also weighing one unlawful act against another. Connie said, “There’s a guy who wants to marry me, but with this arrest, I don’t know.” Maria, who is transgender, said that she wanted to “get a sex change and maybe get married. I want to fall in love with a man.” Luciana discussed this issue, saying, “It’s not easy. I want to get

married for love and papers. Maybe [I'll] get married to a gay friend." She spoke of her ambivalence about engaging in sex work to support herself:

[I started] when I met Regina. I was a dog walker at the time. I was afraid at first and took a month to decide. I'd stripped before and worked in a restaurant/bar. I was a sex worker for a month, then didn't do full service and started stripping again, but [it was] not enough money and too much talking/objectification, so I returned to sex work. I don't do full service, only touching and blow jobs, everything but penetration and intercourse. I made a lot, \$200 from no full service, so I wouldn't go back to full service because I didn't make more money doing it. I'm not comfortable with full service and I think guys prefer non-full service because it's safer.

Perhaps one of the most significant findings among the immigrant respondents in the sample relate to the relationship between their motivation to engage in sex work and the remittances that they send home to their families in their countries of origin. Thirty-eight percent (8 of 21) of foreign-born respondents reported sending money home to their families. Having immigrated to the U.S. for economic reasons and often having the pressure of supporting family members at home, a number of participants mentioned that sex work was the only work that would both support their daily needs in the U.S. while allowing them to save enough money to send home. Because legal work was unavailable or did not pay enough to allow for this, a number of respondents turned to sex work for employment.

Desire to Return to One's Country of Origin

Most respondents who came to New York did not want to return to their homes permanently, giving reasons like the lack of opportunities at home; greater freedom in terms of gender, gender identity, or sexual orientation; or the excitement of a new place in a large city.

One person referred to a turbulent political situation in Latin America as a deterrent to returning. The trafficked women mentioned their fears that they would face retribution from the traffickers if they went back to their home countries. Others referred to limited opportunities and the fact that they'd made new lives in the U.S. and in New York. Yoko said, "I think it's related to age also . . . our culture is very sad. It's not a good idea, it's hard. I'm comfortable here already. There it's uncomfortable for me, it's always the same."

Desire for Permanent Legal Status in the U.S.

All (14 of 14) of the respondents who were not U.S. citizens or legal permanent residents reported that they wanted permanent legal status to remain and work in the U.S. One reason for this is that it would allow them to travel freely between the U.S. and their native countries. Kristina, who was trafficked into sex work, missed her family back home, but would miss the U.S. and feels safe here, while she would not feel safe at home because her traffickers know where her family lives. She would like to be able to go visit her family and come back. Keiko said, "I don't think I'm going to stay in U.S. forever, but I don't know about my future. I want to see my family but it's a kind of difficult situation about my visa."

Those who cited other reasons for wanting to normalize their legal status in the U.S. described the fear of deportation; fear of arrest; fear of being held in immigration detention; a lack of stability related to tenuous social networks and the informal economy; the desire to have a better job; and notably, to belong in the U.S. and feel like an accepted member of the country's society.

When asked if proper legal status would improve their chances of finding legal employment, respondents reported that this was their greatest obstacle to finding other work. One person mentioned that it is impossible to get a license as an aesthetician or hair stylist without a social security number. Another mentioned the difficulty of getting health insurance as an undocumented person. However, participants also reported other obstacles. Most people also referred to language skills as a tremendous obstacle, pushing some respondents into ethnic markets catering to Spanish- or Japanese-speaking communities. Eighty-six percent (12 of 14) of the respondents who were not U.S. citizens or legal permanent residents believed that their work situation would be different, and that they might be in a different business sector, if they had appropriate legal status in the U.S. Potential occupations mentioned included other informal work such as bartending; going to school; and also working in more formal businesses and even entrepreneurship.

In response to a question about how they would go about getting legal status, several participants mentioned asylum applications, visas for trafficked persons, and marriage to an American citizen or legal permanent resident. Others stated that they did not know how to do this and expressed a desire to know more about immigration law.

Sex Work in Countries of Origin

Thirty-eight percent (8 of 21) of foreign-born respondents had been involved in sex work before coming to the U.S. Two of the trafficked women had worked as prostitutes in their native countries and knew that they were to continue as sex workers in the U.S. However, they did not realize that they would be beaten or threatened, and have their money taken from them.

Sex workers interviewed for this report generally became involved in the sex industry for monetary reasons. Some turned to the sex industry out of desperation, such as Keiko, who said, "I didn't know anything about how to make money but I knew I needed to find out how to make money." Others made a decision to utilize the sex industry rather than struggle in employment that did not pay them a living wage. Yoko said, "I was already working as a hostess in Japan, so I just started looking for it naturally in the U.S."

In describing their concerns about their participation in the sex trade, 81% (13 of 16) of foreign-born participants who were not U.S. citizens reported worrying about immigration policies and agents. This fear reflects a greater stress on sex workers who lack citizenship because they worry not only about police interference but also about the immigration consequences related to their work. In addition, Louise, who is a U.S. citizen, makes an important point, saying that "I worry [about immigration authorities] when I'm working, but it's not my biggest concern. Safety is always my biggest concern." She was very worried about the consequences of arrest on her pending applications before she received her U.S. passport and social security number.

Violence and Coercion from Traffickers

Of these 21 migrant sex workers, 19% (4 of 21) spoke, through their advocates, of experiencing coercion and slave-like conditions. Two of the trafficked women thought that they would be involved in other types of work and did not know that they were going to be involved in sex work. The other two had worked as prostitutes in their native countries and knew that they were to continue as sex workers in the U.S. However, they did not realize that they would be beaten or threatened, and have their money taken from them. For the women who did not know that they were going to be prostitutes, the act of engaging in sex work itself was a violent one because they were being forced into having sex with customers against their will.

Whereas non-trafficked respondents were very concerned about violence from customers, the violent experiences that affected the trafficked women more deeply were the threats and assaults from the traffickers themselves. The women told of being threatened, beaten, raped, and having their money withheld by the traffickers as a means of keeping them in line. Belinda did report that occasionally johns “would get a little rough,” a sentiment echoed by Raquel—however, they were predominantly concerned with violence from the traffickers.

Conclusion and Recommendations

It is clear that while trafficking in persons is a serious problem, it is not one driven by demand for sex work, or which afflicts all migrant sex workers. Many migrant sex workers speak of economic need and the desire to support their families, often in a world which offers them few options for financial freedom.

Where migrant sex workers have been trafficked, we recommend:

- It is critical to examine root causes for entry into sex work, which is a result of lack of available options for financial freedom and economic security. In addition, pathways for safe migration must be made available to those who will migrate, but may do so in an unsafe manner when they are denied other options.
- Police must be trained and willing to identify trafficked and other sex workers who are in coercive or violent situations, and to refer them to agencies that can assist them. Sex workers must be made to feel that they can step forward, that there will be a proper response to their victimization, and that they can seek justice on their own behalf.
- Trafficked sex workers should not be arrested or held in detention. Instead, they should be directly referred to safe housing, service providers, and attorneys who can assist them.
- Trafficked persons should not be compelled to cooperate with law enforcement in order to access services and legal immigration status. Many trafficked persons are willing to cooperate in investigations and prosecutions. However, they should not be expected to do so until they are emotionally and financially stable, physically well, and safe. Even those trafficked persons who never feel able to cooperate with law enforcement deserve necessary services and legal protections.
- Funding streams for anti-trafficking efforts should not restrict recipients’ advocacy on behalf of people in the sex industry. Sex workers and other personalities should be recognized as potential allies in the ongoing struggle against trafficking in persons. Workers and clients in the sex industry have assisted trafficked sex workers in escaping coercive situations, and some trafficked persons return to the sex industry for economic reasons. Therefore, organizations should be able to continue to assist them.
- Create transitional shelters that are similar to domestic violence shelters, but which specifically serve trafficked persons.