**Submission to the CEDAW Committee for the Elaboration of a General Recommendation on the Trafficking of Women and Girls in the Context of Global Migration** - by La Strada International - European NGO Platform against trafficking in human beings

La Strada International is a European NGO Platform against trafficking in human beings with 29 members in 24 European countries. All these organisations work independently and from a grass root level against trafficking in human beings and support trafficked persons and vulnerable groups, including (female) migrant workers. La Strada International is member of the Global Alliance against trafficking in Women (GAATW).

Trafficking in human beings is recognised as a gross violation of fundamental rights, and is explicitly prohibited under the Charter of Fundamental Rights of the European Union and other European legislation. This political commitment of European countries is reflected in a large number of initiatives, (policy) measures and binding legislation. However trafficking remains a hidden crime as the number of identified victim remains low and many victims of trafficking are not identified and so cannot exercise their rights. Trafficked persons must be formally identified in order to ensure that they receive adequate assistance and support and to ensure that rehabilitation of victims of trafficking can take place. Regardless the obligation for States to identify trafficked persons, the identification of trafficked persons remains a major gap at European level and at global level.

**Identification of vulnerability for human trafficking**

Over the last years, we have noted an increased vulnerability to exploitation and abuse of migrants and refugees. Already long before the increasing migration flows of 2014 - 2016 to Europe, there was evidence of vulnerabilities among migrants and refugees for trafficking in human beings, often closely linked to the restrictive European migration policies. Lack of self-identification of victims and the fact that there is limited time for proper identification and support – also as migrants move on - seem to be major challenges. Persons are reluctant to come forward to be identified as victims of trafficking, fearing that their identification would prevent them from reaching their intended destination or result in their deportation. They often decline support, as frequently has been noticed, by our member organisations. Persons fear to be returned to their countries of origin, or other transit countries.

Even for well-trained stakeholders it remains difficult to identify trafficked persons among larger groups of mixed migration flows, in particular if not all relevant information can be obtained. Moreover it is noticed that asylum procedures are speeded up, leaving very little time for to check persons vulnerabilities and possible identification of trafficked persons. Further there are challenges related to the identification and referral of migrants in an irregular situation and or asylum seekers living outside the official reception centres. In particular those who have been stranded in a transit country, whose asylum claim has been refused, and who have no access to regular residence status, have become very vulnerable in Europe. They lack sufficient income, lack of employment, access to health care and or decent living conditions.

1. **We recommend to highlight the commitment for States to ensure adequate identification of trafficked persons and risks group in need of support.**

**Address root causes of human trafficking including inequality and gender based violence**

Gender Trafficking in human beings is not a gender-neutral phenomenon. Violence against women, stereotypical gender roles and gender discrimination on the labour market are root causes of human trafficking. The social position of women is characterised by unequal power relations between men and women and by the high prevalence of domestic violence. This situation impacts women’s economic position, as the latter is affected by a lack of equal opportunities in the labour market and the corresponding feminisation of poverty, that forces women to migrate. Migrant women often work in the non-regulated labour sectors, facing exploitative situations with low payments and lack of protection.

In Europe and globally, sex workers face many forms of violence. Due to the often criminalised status of sex work and the stigma that sex workers face, violence against sex workers remains nearly always unpunished. We believe that violence against sex workers needs to be addressed by protecting their rights and investigating and prosecuting all violent offences against anyone working in the sex sector. However, this approach to end violence against sex workers is hard to put into practise if sex work itself is considered as violence against women. Equating sex work with violence against women leads to criminalising the industry, clients and sometimes sex workers themselves. As a consequence, sex workers are not recognised as rights holders and are deprived of the tools to protect themselves from violence and seek redress. Criminalisation measures drives the sex industry even more underground, which results in less access to health, social and legal assistance for sex workers, and significantly lower chances to identify individuals who have been trafficked.

Even though trafficking in human beings for the purpose of sexual exploitation is still the most detected and reported form of trafficking in the Europe, there are clear indications, including increases in registration figures, for the occurrence of human trafficking of both men and women in other regulated and unregulated labour sectors. Next to the sex industry, vulnerable sectors in Europe include agriculture, construction, domestic work, transport, textiles and garments, food manufacturing, processing and packaging and the hotel and service industry sector. Vulnerable sectors can differ per country. Frequently we see cases in which persons fall prey to multiple forms of exploitation, e.g. they are trafficked for labour exploitation, but also sexually abused or exploited.

1. **We recommend to pay attention for the vulnerability of female migrants for gender based violence and exploitation, including sexual exploitation and harassment in different economic sectors and to promote equal rights, equal opportunities and empowerment of all migrant women, including those working in vulnerable sectors like the sex industry.   
   A focus on all forms of human trafficking is needed by promoting outreach and control of all identified vulnerable economic sectors.**

**Early and adequate information provision**Only once basic humanitarian needs of people are met, there can be an opportunity to initiate a process of building trust, empowering with information and support and eventually recognize people who might have been trafficking or might be at risk of trafficking. Next to paying specific attention to specific vulnerable groups, including (undocumented) migrants and refugees and those working in irregular situations, increased efforts should be made to provide information in at least the most common languages of countries of origin. This information should be widely disseminated by various stakeholders, including civil society, to ensure that vulnerable (female) migrant workers know their rights and can exercise them effectively.

1. **We recommend the call for better information provision to vulnerable migrant workers.**

**Unconditional access, and adequate complaint mechanisms**

Providing unconditional access to assistance, support and protection to victims remains a challenge for most European Member States. Currently Member States provide unconditional access during the reflection and recovery period only and those not able or willing to cooperate with the authorities, often out of fear for this risk this entails, are left without any continued support. Moreover practice shows that victims who do cooperate, have limited access to protection, support and assistance if the criminal procedure has not started or is discontinued. This seriously hampers the human rights based approach. The absence of adequate assistance and support may prevent trafficked persons from reporting to the authorities and may subject them to further trauma and re-victimisation.

Undocumented migrants are very vulnerable to exploitation and trafficking practices. This is partly because they have limited avenues to seek redress in case exploitation occurs. Facing risks of arrest, detention or deportation makes them extremely unlikely to complain or seek support of relevant authorities or other stakeholders. Safe reporting and effective complaints mechanisms for undocumented workers are lacking in most countries. Workers should have an opportunity to report exploitation and access justice, including unpaid wages, without fear of arrest and deportation. A clear firewall and adequate complaint mechanism should not only protect trafficked and exploited workers against deportation but also against prosecution and punishment for migration offences and prostitution.

1. **We recommend to promote effective labour complaints mechanisms for undocumented migrants, as well as the need for unconditional support; recognition and protection of the rights of trafficked persons act as an important incentive to report the crime to the authorities and give testimony.**

**Safe return**

Many difficulties are currently faced to ensure adequate support to clients who have to return to other European countries or other countries of transit or origin, when they have not been able or willing to cooperate with the authorities or not identified as trafficked persons and therefore not provided a residence permit. Many difficulties in ensuring adequate and safe referral remain. This is caused due to lack of cooperation, inadequate funding of support structures and NGO support services and other structural gaps. Often no specialized referral support can be offered after return, either it remains unclear who will take further responsibility for the victim’s protection and needs.

1. **We recommend to call for safe migration and safe return measures and adequate cross border cooperation.**

**Access to legal support**

Access to justice is about having the means and legal protection to exercise one’s right to seek remedy before a court of law or tribunal for wrongdoing suffered. Although European legislation requests EU Member States to ensure that victims of trafficking ‘have access without delay to legal counselling and to legal representation’ and that ‘legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources’, we still note that victims are very limited in accessing legal aid, due to existing financial barriers in place.

1. **We recommend to take note of the need for free legal assistance to be available and accessible to all presumed trafficked persons to guarantee access to justice and remedies.**

**Access to remedies**

Compensation has a restorative and preventive function and is a crucial tool in combating human trafficking. Trafficked persons should have access to existing schemes of compensation available to victims of violent crimes. Although this established right and various compensation mechanisms in place in most European and non-European countries, in practice the actual receipt of a compensation payment by a trafficked person is extremely rare. A range of barriers obstruct the consistent translation of the right to compensation into practice. Consequently, many trafficked persons are left without justice.

1. **We recommend to highlight the need for more awareness and training of relevant stakeholders, such as support workers, police, solicitors and judges, to enhance access to compensation and remedies.**
2. **Effective investigations including financial investigations and assets recovery of perpetrators should be enhanced; money claimed should be used to compensate victims directly or used for funds supporting victims.**

**Ensure prosecution of exploitation, including by making corporations more accountable**

So far there have been only few cases where legal representatives of the private sector or companies have been directly prosecuted for trafficking in human beings in Europe. Labour standards and decent working conditions should be in place and monitored by Member States to protect (migrant) workers including sex workers. Informal and unregulated work should be brought within the protection of labour laws and it should be ensured that labour rights are applied to all workers irrespective of their migration and residence status.

Clearly traffickers use loopholes in enforcement or control of legislation on work permits, visas, labour rights and working conditions. Legitimate business structures and regulations are abused to conceal illicit activities. Via subcontracting, the misuse of the posted workers directive and or the establishment of letter box companies, national legislation and control is avoided, as well as liability for exploitation and abuse. Regardless the recognition that investigation and prosecution of human trafficking is a key priority and needs to be further enhanced, the level of prosecutions and convictions remains worryingly low. The excessive burden which is currently placed on victims before and during criminal proceedings should change.

1. **We recommend to make a reference to the need to make corporations more accountable for complicity for trafficking in human beings and to promote the establishment of (binding) control mechanisms. Businesses compliance with labour standards and human rights should be promoted and sanctions for businesses that do not respect human rights and the law should be enacted.**
2. **Awareness should be raised and information provided about the origins of products and services, enabling customers to make informed decisions about their purchases. Products and services made without labour exploitation, forced labour and human trafficking should be promoted.**

We hope the CEDAW Committee will take these recommendations into account when elaborating a General Recommendation on the Trafficking of Women and Girls in the Context of Global Migration.

La Strada International, Amsterdam, February 16, 2019