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**Contribution to the elaboration of the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration by the CEDAW Committee**

**Day of general Discussion,**

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Dear members of the CEDAW Committee,

As former member of the CEDAW Committee and of the WG tasked with elaborating the planned General Recommendation (GR), it is my pleasure to submit this contribution. I associate myself **fully** to the submission made by IWRAW-AP following the Global Convening on Trafficking in the Context of Global Migration organized by IWRAW-AP and the Global alliance Against Traffic in Women (GAATW) in January 2019, in which I participated. I share the analysis and the recommendations. In addition to IWRAW-AP’s submission, I wish to address some of the challenges I believe the Committee must meet in the elaboration of the GR.

1. **Lack of proper research and statistics**

The lack of proper research and statistics makes a comprehensive and evidence-based approach to the various forms of trafficking difficult. Indeed, under the lead of the United States of America during the drafting of the Palermo Protocol and since then, (thanks to their role in benchmarking countries[[1]](#footnote-1) according to limited criteria prioritizing criminal prosecution), the focus has been mainly on trafficking in women and girls into forced prostitution and/or other forms of sexual exploitation[[2]](#footnote-2), leading to the near invisibility of other forms of trafficking, in women and girls, men and boys, in industry, agriculture, services such as domestic work and care work. The extent of trafficking in nonsexual labour has only recently started coming to light, including in industrialized countries. The Committee will have to tread very carefully through the maze of often contradictory, insufficient, statistical data and their (sometimes hasty) interpretation, as well as with unsubstantiated assertions regarding the nature and extent of trafficking in women and girls, based on these data. The GR will need to recommend the development of evidence-based statistics and research, responding to scientific methodological quality criteria for data collection and treatment.

1. **Complexity**

The GR will have to deal with the conceptual, legal and policy complexity deriving from the evolution and sometimes conflation of various legal concepts[[3]](#footnote-3) such as trafficking, slavery, forced labour, as well as of the various legal fields dealing with them, - criminal law, labour law, migration law, human rights law, humanitarian law as well as with the complexity of migration regimes and practices themselves. The GR will have to determine which type(s) of legal framework(s) are most effective to ensure respect, protection and promotion of the rights of women and girls at risk of trafficking or trafficked in the context of global migration.

1. **Approaches to trafficking**

The GR should analyse the conceptually restrictive approach chosen by the USA, focussed on forced prostitution and sexual exploitation and their victims (including the view that prostitution is victimization in all cases[[4]](#footnote-4) and that NGO’ s wanting to receive financing need to take the “anti-prostitution pledge”) and the negative effects of this approach[[5]](#footnote-5).

The GR should instead recommend a labour and social law approach addressing the **structural** causes of exploitation in **all** fields of labour, with a strong accent on primary prevention, rather than on secondary and/or tertiary prevention, in particular using the ILO framework. This means recommending the right of all women workers, migrants or not, irrelevant of their field of work, to freedom of expression, association and assembly, to unionize and to collective bargaining, and their inclusion under the protection of labour and social laws, including occupational health and safety laws and social security laws. It may also mean a better regime of protection, rehabilitation and compensation for actual victims than under only criminal law.

1. **Conflation of trafficking with sex work and reduction of demand approach**

The GR should avoid any conflation of trafficking with sex work, acknowledge the agency of sex workers[[6]](#footnote-6) and recognize sex work as work, fully benefitting from labour and social laws, to be exercised respecting the decent work criteria set by the ILO[[7]](#footnote-7).

The GR should not recommend reducing demand for sexual services offered by non- trafficked women. Indeed, the call for reduction of demand, often linked to criminalization of clients, brings harm – unintended but nether less huge, to the very women this approach wants to protect[[8]](#footnote-8). By conflating trafficking with sex work and considering that prostitution is inherently exploitative even when exercised freely[[9]](#footnote-9), this approach deprives sex workers of their agency and exposes them to police, social services, and courts interventions – not to say abuses – that for migrant sex workers often mean immediate deportation, and that for all sex workers means exposure to higher risks in the exercise of their work but also in their private lives, for instance being deprived of custody of their children or losing their housing, as documented in a recent analysis of the intended and non-intended effects of the Swedish Sex Purchase Act, inspirer of the “Nordic model”[[10]](#footnote-10).

A recommendation in favour of the reduction of demand for sex work would have to deal with the contradiction of not asking for reduction of demand and/or criminalization of the end purchaser in other fields of labour particularly where forced labour/trafficking is frequent. Although one knows that domestic and/or care work is at high risk of forced labour, there are no calls for a reduction of the demand for domestic or care work and/or criminalizing the employers of domestic or care workers. The buyers of cheap clothing, the amateurs of shrimps or tomatoes as end buyers know or should know that production of cheap goods often occurs under conditions of forced labour/trafficking in which women are often the majority of victims. Yet, there is no call for reduction of demand for these goods and/or criminalizing the end buyers. If there is a call, it is to improve the working conditions of the persons employed in those domains, at all stages of the process, and by all the actors involved. The GR should therefore recommend respect for the human rights of all women, irrespective of the type of work they are involved in, without asking to reduce their employment opportunities in any field but to ensure decent working conditions.

1. **Failure of the mainstream metrics of performance for combatting trafficking**

The Committee should analyse metrics of success in the fight against trafficking in women and girls in the context of global migration, away from the US led concentration on criminal prosecutions and benchmarking on this basis of countries in the TIP reports. For instance, the GR could recommend critically looking into the classification of countries under Tier 1 that have a kafala system or are known to have huge gaps in the identification of victims, the support they receive, the conditions of their deportation and/or the creation of a hostile environment towards victims of trafficking[[11]](#footnote-11). According to Professor Chuang, the concentration on criminal law and prosecutions has failed to reach the aim of eradicating trafficking. The very low number of cases shows this failure, in particular regarding trafficking for exploitation in nonsexual labour. In addition, victims are exposed to pressures and risks during criminal proceedings, they often lack sufficient protection, social, financial and legal aid, and compensation to victims is often not obtained through this way -especially if victims have already been deported. Lastly, the criminal approach is flawed by its “failure to address how the structure of labour relations and labour markers renders workers vulnerable to forced labour and trafficking”[[12]](#footnote-12), including in guest workers programmes, or in relation to recruiting agencies’ exorbitant fees.

**New metrics of success**

The GR could therefore suggest new criteria to measure fight against trafficking focussed first on effective primary prevention and then on protection and treatment of victims. Addressing education and the labour market and focussing on the actions of corporations and employers to prevent slavery, forced labour, and trafficking would be more effective than trying to find isolated victims.

The new metrics of success for prevention could therefore be the way in which States reduce the root causes of forced labour/trafficking by: lifting their population away from poverty, providing proper education to all, with no gender-based discrimination either in access of choice of studies, ensure health care services ; improve the market conditions through labor and social laws, unionizing, collective bargaining and all other legislative or practical conditions determining decent work opportunities for all, in particular tackling the structural gender discrimination in the world of work, formal and informal.

The GR could recommend proper access to justice as an important element for evaluation of secondary and tertiary prevention of forced labour/trafficking. The GR should put the accent on the services at disposal of victims, health, social and legal services, the financial support they receive, proper housing, protection against retaliation by the employers/traffickers, the delinking of these services from migration services so victims wouldn’t fear deportation, and as a rule, renouncing deportation of victims[[13]](#footnote-13). The GR could also recommend creation of funds for compensation, delinked from the willingness of the person to testify in criminal proceedings; being identified as victim should open a right to compensation.

**Effects of migration laws**

The GR must carefully analyse, under a gender perspective, the operation of migration laws in creating flows of illegal migrants and exposing them to risks to their lives, health, bodily and mental integrity and freedom during their attempt to reach the country of their choice or once there. It should deconstruct how States themselves create higher risks for women by insufficiently tackling poverty and gender-based discrimination, by setting bans or criteria limiting the migration of women that are never set for men’s migration and that limit women’s choices of a profession, freedom to move from their country and by excluding less qualified jobs from legal avenues of migration[[14]](#footnote-14), in national laws and regional agreements.

The GR should recommend that States stop forcing women with few/low qualifications to resort to smugglers and endure the risk that smuggling may result in forced labour and/or trafficking during their travel or in the country of destination. The GR should also recommend that industrialised States cease to produce vulnerability to trafficking and/or forced labour for women and girls and acknowledge their need for the less qualified work predominantly ensured by women, such as domestic and/or care work.

The GR should also contain a strong message on the need to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which would give women migrants workers a stronger protection than the the Global Compact on Migration will afford them.

The GR should recommend addressing the failures of national and/or regional agreements that created a migration “crisis”, such as with the European Union Dublin Agreement[[15]](#footnote-15) and the ensuing, discourses on migration as a “problem”, “a crisis”, used to fan hatred of migrants and create an anti-migrant reaction. The GR should also recommend measures to counteract this evolution.

**Coherence with the Social Development Goals**

To be coherent with the linkage the Committee systematically makes between the Sustainable Development Goals and the CEDAW Convention, the GR should put the main accent on an anti-discrimination, gender-equality, labour, social, health and education law approach, granting the best protection possible under these legal frameworks[[16]](#footnote-16) and objectives, enabling primary prevention, and not relying mainly on secondary or tertiary prevention of forced labour/trafficking. This means recommending the right of all women at risk of trafficking or trafficked, migrant or not, *irrelevant of their field of work*, to freedom of expression, association and assembly, to unionize and to collective bargaining, and their inclusion under the protection of labour and social laws, including occupational health and safety laws and social security laws. And thus the GR will help implement the main principle of the SDG’s, “leave no one behind and reach the furthest behind first”.

1. Janie A. Chuang , *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, Michigan Journal of International Law, 2006, Volume 27 | Issue 2, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1188&context=mjil [↑](#footnote-ref-1)
2. Janie A. Chuang, The American Journal of International Law, Vol. 108, No. 4 (October 2014) pp. 609-649, *Exploitation creep and the unmaking of human trafficking law* [https://www.jstor.org/stable/10.5305/amerjintelaw.108.4.0609?seq=1 - metadata\_info\_tab\_contents](https://www.jstor.org/stable/10.5305/amerjintelaw.108.4.0609?seq=1%20-%20metadata_info_tab_contents) [↑](#footnote-ref-2)
3. Janie A. Chuang, see note 2 *Exploitation creep and the unmaking of human trafficking law* ; The Business of sex, ed. By Laxmi Murthy and Meena Saraswathi Seshu, 2013, Zuban [↑](#footnote-ref-3)
4. The Business of sex, ed. By Laxmi Murthy and Meena Saraswathi Seshu, 2013, Zuban [↑](#footnote-ref-4)
5. Joanne Csete, *Victimhood and Vulnerability, sex work and the Rhetoric and Reality of the Global Response to HIV/AIDS*, in The Business of Sex, see note 1 [↑](#footnote-ref-5)
6. Meena Saraswathi Seshu and Laxmi Murthy, *The Feminist and the sex worker* in The Business of sex, pp 16-44

   *;* Sandhya Rao and Cath Sluggett*, Sex work, Trafficking and Human Rights* in The Business of sex, pp 148-174 [↑](#footnote-ref-6)
7. For an application of these criteria to sex work, see the publication by the Empower Foundation based in Thailand, Moving Towards Decent Sex Work, Sex worker community research decent work and exploitation in Thailand, 2016 [↑](#footnote-ref-7)
8. Global Network of Sex Work Projects, *Consensus Statement on Sex Work, Human Rights and the Law*, 2013, and *Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers*, 2015; Amnesty International Policy On State Obligations To Respect, Protect And Fulfil The Human Rights Of Sex Workers, 2016, https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF, International Commission of Jurists, 2019, Call for submissions, “Developing principles to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV”, https://www.icj.org/icj-call-for-submissions-on-the-misuse-of-criminal-law-in-the-areas-of-sexuality-reproduction-drug-use-and-hiv/ [↑](#footnote-ref-8)
9. Joanne Csete, *Victimhood and Vulnerability, sex work and the Rhetoric and Reality of the Global Response to HIV/AIDS*, in The Business of Sex, see note 3 [↑](#footnote-ref-9)
10. Charlotta Holmström, May-Len Skillbrei, Oslo Law Review 2017/2, *The Swedish Sex Purchase Act: Where Does it Stand?*

    <https://www.idunn.no/oslo_law_review/2017/02/the_swedish_sex_purchase_act_where_does_it_stand> [↑](#footnote-ref-10)
11. See the present discussion in the United Kingdom <https://www.independent.co.uk/news/uk/home-news/human-trafficking-women-uk-victims-prisons-jail-modern-slavery-prison-reform-trust-hibiscus-a8534726.html> ; <https://www.independent.co.uk/news/uk/home-news/modern-slavery-victims-human-trafficking-uk-home-office-support-report-a8668451.html>; <https://www.independent.co.uk/news/uk/home-news/modern-slavery-government-failing-bid-tackle-report-a8111431.html> [↑](#footnote-ref-11)
12. See Chuang, note 2, quoting James Pope and Hila Shamir, p. 639-640 [↑](#footnote-ref-12)
13. See <https://www.independent.co.uk/news/uk/home-news/uk-modern-slavery-trafficking-deportation-vietnam-home-office-duc-kien-nguyen-a8394261.html> [↑](#footnote-ref-13)
14. Protected or put in harm’s way? Bans and restrictions on women’s labour migration in ASEAN countries, ILO-UN Women, 2017, Rebecca Napier Moore, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\_555974.pdf [↑](#footnote-ref-14)
15. Parcours et politiques d’accueil des demandeurs et demandeuses d’asile dans l’Union européenne, Avis du Conseil Économique, Social et Environnemental, Paris juin 2018, Paul Fourier et Emelyn Weber, rapporteurs [↑](#footnote-ref-15)
16. <http://icat.network/sites/default/files/publications/documents/ICAT_Issue_Brief_SDGs%202018.pdf> [↑](#footnote-ref-16)