## General discussion on trafficking in women and girls in the context of global migration

## Submission of the UN Special Rapporteur on violence against women, its causes and consequences Dubravka Šimonović

## 7 February 2019

## The UN Special Rapporteur on violence against women, its causes and consequences (SRVAW) wishes to contribute to the elaboration of the new CEDAW General Recommendation on trafficking of women and children in the context of migration, based on the expertise and knowledge the SRVAW mandate has gained in addressing trafficking of women’s and girls as a human rights violation and form of violence against women.

## The founding resolution establishing the mandate of the UN Special Rapporteur on violence against women, its causes and consequences in 1994, called for its operation under the UN Declaration on Human Rights, along with other UN human rights treaties, and particularly the Convention on the Elimination of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women (DEVAW). Both the CEDAW in article 6 and the DEVAW in article 2 refer to, and prohibit, trafficking of women. The Declaration on the Elimination of Violence against Women, contains a comprehensive definition of violence against women that includes “trafficking in women“[[1]](#footnote-1). This definition should be applied in conjunction with the CEDAW definition of violence against women as outlined in General Recommendations 19 and 35.

## To date the mandate of the SRVAW considers trafficking of women and girls as a form of violence against women and girls and recommends thematic and country specific measures at the national and global level for its prevention and elimination. The SRVAW mandate has produced two reports that focus on trafficking of women, and has included numerous country specific recommendations in its country visit reports where relevant. In 2000 the then SRVAW produced a specific report on trafficking of women in Bangladesh, Nepal and India ([E/CN.4/2001/73/Add.2](http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2001/73/Add.2&Lang=E)). This was complemented by the her annual thematic report on trafficking in women, women’s migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68). The reports included country specific recommendations for combating trafficking of women and girls some of which are reproduced in this submission.

The SRVAW would like to congratulate the CEDAW Committee on selecting the issue of trafficking in women and girls in the context of global migration as the focus for its new general recommendation, particularly as trafficking of women is addressed by both CEDAW (article 6) and DEVAW (article 2) as discrimination and as violence against women and a human rights violation. **Article 6** of the Convention on the Elimination of All Forms of Discrimination against Women provides that: “States Parties shall take all appropriate measures, including legislation, **to suppress all forms of trafficking in women and exploitation of prostitution of women.”** [[2]](#footnote-2)

Furthermore, the outcome document of the World Conference on Human Rights (1993) the Vienna Declaration and Programme of Action, stressed the importance of working towards the elimination of violence against women in public and private life. It addressed the issue of “**international trafficking” as a form of gender-based violence and called for its elimination** **through international cooperation in such fields as economic and social development and through national legislation.**

The 1995 Fourth World Conference on Women and its outcome document the Beijing Declaration and Platform for Action, calls upon Governments to take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages, and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punish the perpetrators, through both criminal and civil remedies.

A human rights-based approach means applying international human rights standards and women’s human rights standards (such as those included in CEDAW, General Recommendations 19 and 35, and DEVAW) **throughout the trafficking cycle,** as well as of States’ obligations under international human rights law. In the case of women it seeks to both identify and redress the discriminatory practices and unjust distribution of power and gender based inequality that underlie trafficking, that maintain impunity for traffickers and that deny justice to their victims.

Core human rights principles established in international human rights law on women’s human rights such as substantive gender equality and non-discrimination of women, should guide all aspects of the response at all stages with respect to women and girls.

This gender specific international women’s human rights framework established by the CEDAW in 1978 and the DEVAW in 1994 (and supported by the BPA and VDP) provides a broader gender specific framework in order to address trafficking of women and girls as a form of ongoing systematic sex/gender based discrimination of women and girls.

The framework has been supplemented by the 2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Palermo Protocol provided a much needed definition of trafficking that is inclusive of all genders, and also addresses trafficking **primarily as a crime within the international criminal justice system and not as a human rights violation.**

In the SRVAW’s view the added value of the new CEDAW GR would be to establish links and synergies between the criminal law framework and women’s human rights framework including through cooperation between the CEDAW and all other relevant monitoring mechanisms (including the SR on trafficking, the SR on Slavery and SRVAW) and to **provide a strong women’s human rights perspective to gender neutral framework of the criminal justice system.** While the criminal justice system predominantly focuses on prosecution of perpetrators the (women’s) human rights system provides for clear due diligence on the part of State’s along with the responsibility to ensure prosecution of perpetrators and an integrated holistic approach to establishing services for victims/ survivors of trafficking including reparation and compensation.

A human rights base approach focuses on the *protection of human rights of women and girls who have been trafficked but also for the application of the due diligence standard (CEDAW GR 19/ GR 35) or understanding* States’ obligations under international human rights law. A human rights-based approach to trafficking requires understanding the ways in which woman’s human rights violations arise before (causes, discrimination, GBVAW), throughout the trafficking cycle, and after when trafficking services are needed.

Based on the afore-mentioned report on trafficking in women, women’s migration and violence against women (E/CN.4/2000/68) the following updated recommendations by the SRVAW suggest that:

* As trafficking of women and girls constitutes both a human rights violation and violence against women and girls and as such requires effective implementation of women’s rights norms as prescribed by the CEDAW and the DEVAW that complement gender neutral measures to criminalize all forms of trafficking within national criminal justice systems;
* This women’s human rights framework should be applied by the CEDAW in cooperation with other relevant UN monitoring mechanisms including the SR on trafficking, the SR on Slavery and SRVAW, as well as relevant regional mechanisms**.**
* Measures to be designed to limit women’s legal entry into countries of destination should be carefully weighed against their disadvantages as they pertain to potential immigrants and women. In particular, measures that are designed to protect women by limiting their access to legal migration or increasing the requirements associated with such migration should be assessed in terms of the potential for discriminatory impact and the potential for increasing the likelihood that women consequently may be subjected to trafficking.
* Government programmes and international efforts relating to trafficking should be developed in cooperation with non-governmental organizations. Further, the Special Rapporteur encourages organizations and international donor institutions to provide financial support to non-governmental organizations working on the issue of trafficking.
* Governmental measures and international efforts to address trafficking must focus on the human rights abuses and labour rights abuses of the women involved, rather than treating trafficking victims as criminals or as illegal migrants.
* Government measures to address trafficking must focus on the promotion of the human rights of the women concerned and must not further marginalize, criminalize, stigmatize or isolate them, thus making them more vulnerable to violence and abuse.
* Relevant governmental bodies must collect and publish data on:

(a) Government efforts to address instances of trafficking into, out of, and within their countries;

(b) The successes or difficulties experienced in promoting inter-agency cooperation, cooperation between local and national authorities, and cooperation with non-governmental organizations;

(c) The treatment and services provided to trafficking victims;

(d)  The disposition of trafficking cases in the criminal justice system;

(e)  The effects of governmental legal and administrative measures on the victims of trafficking and on the reduction of trafficking.

Trafficking victims must be guaranteed: (a)  Freedom from persecution or harassment by those in positions of authority; (b)  Adequate, confidential and affordable medical and psychological care by the State pursuant to article 6.1 of the Palermo Protocol or, if no adequate State agency exists, by a private agency funded by the State;

(c) Strictly confidential HIV testing services should be provided only if requested by the person concerned, and any and all HIV testing must be accompanied by appropriate pre- and post-test counselling;

(d) Access to a competent, qualified translator during all proceedings, and provision of all documents and records pursuant to having been victims of trafficking and/or forced labour or slavery-like practices;

(e)  Free legal assistance;

(f)  Legal possibilities of compensation and redress for economic, physical and psychological damage caused to them by trafficking and related offences.

* The personal history, the alleged “character” or the current or previous occupation of the victim must not be used against the victim, nor serve as a reason to disqualify the victim’s complaint or to decide not to prosecute the offenders. For example, the offenders must be prohibited from using as a defence the fact that the person is, or was at any time, a victim of trafficking for the purpose of sexual exploitation or domestic servitude.
* The victim’s history of being trafficked and/or being subjected to forced labour and slavery-like practices must not be a matter of public or private record and must not be used against the victim, their family or friends in any way whatsoever, particularly with regard to the right to freedom of movement, marriage and seeking gainful employment.
* States under whose jurisdiction the trafficking and/or forced labour and slavery-like practices took place must take all necessary steps to ensure that victims of trafficking are protected unconditionally from the beginning of a judicial proceeding, and they should be recognized as such and provided with adequate assistance and protection regardless of whether they decide to initiate a judicial proceeding /or take civil action for compensation against the perpetrators, if they choose to do so.
* Governments must implement stays of deportation and provide an opportunity to apply for permanent residency, witness protection and relocation assistance for trafficking victims.
* Governments should implement assessed forfeiture from criminal operations that profit from trafficking, setting aside funds to provide compensation due to victims of trafficking.
* In consultation with relevant non-governmental organizations, relevant government bodies must:

(a) Develop curricula and conduct training for relevant government authorities, including officials of immigration and consular affairs offices, customs services, border guard and migration services, and representatives of the Ministry of Foreign Affairs, regarding the prevalence and risks of being trafficked, and the rights of victims. The training of such officials must not result in the creation of “profiles” which prevent women from receiving visas to go abroad;

(b) Develop awareness and education campaigns regarding trafficking to be conducted through the mass media and community education programmes;

(c) Distribute materials describing the potential risks of being trafficked, including: information on the rights of victims in foreign countries, including legal and civil rights in the areas of labour and marriage and for crime victims, and the names of support and advocacy organizations in the countries of origin, destination and transit;

(d) Take measures to ensure that women have viable economic opportunities to support themselves and their dependent families in their home countries;

(e) Abide by the United Nations General Assembly resolution 49/165 on violence against women migrant workers, of 23 December 1994, and should sign, ratify and enforce the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(f) Adopt and implement guidelines recognizing gender-related persecution as a basis for women to claim refugee status, in addition to signing and ratifying the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto, and implement the 1991 UNHCR Guidelines on the Protection of Refugee Women and CEDAW GR 32 on gender-related asylum

(g) Ensure that all anti-trafficking legislation/policy is gender sensitive and provides protection for the human rights of women and against the particular abuses committed against women;

(h) Provide training for diplomats and foreign service employees about trafficking and the human rights abuses committed in the course of trafficking;

(i) Establish labour information centres to provide up-to-date, practical information on all aspects of labour migration.

1. Article 2 : Violence against women shall be understood to encompass, but not

   be limited to, the following

   (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

   (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, **trafficking in women** and forced prostitution; [↑](#footnote-ref-1)
2. According to the travaux préparatoires (the legislative history of the treaty), a debate arose as to whether article 6 should call for States Parties to combat prostitution per se or merely the exploitation of prostitution. A proposal put forward by Morocco for the abolition of prostitution in all its forms was rejected and the emphasis was placed on trafficking and the exploitation of prostitution. [↑](#footnote-ref-2)