**Oral Submission to the CEDAW Committee on GR Trafficking**

**Sexual Rights Initiative**

**February 18, 2019**

This submission is made by the Sexual Rights Initiative (SRI)[[1]](#footnote-1). The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Egypt, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

The definition of trafficking used in the concept note by the Committee is from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.[[2]](#footnote-2) As the title of the Convention suggests, this Convention has its roots in organised crime and ‘crime control’. However, crime control legislation is not rooted in human rights and is rather focused on maintaining “law and order”. The deliberately vague definitions, including of the term trafficking, enabled States Parties to use this Convention and protocol to impose stringent and harsh border control measures which the protocol prioritises[[3]](#footnote-3). It has been criticized for restricting women’s freedom of movement and labour rights, and for conflating trafficking and prostitution in ways that are still visible in anti-trafficking efforts today.

The Convention against Transnational Organised Crime and its Trafficking Protocol and their implementation have been criticized for perpetuating this narrative of ‘agency-less victims’ and ‘evil perpetrators.’[[4]](#footnote-4) This narrative takes away any voice and opinion of the “trafficked victims” especially women and girls. While one can have multiple critiques of ‘choice’ exercised by women and girls[[5]](#footnote-5), a complete denial of the same belies the fact that many women and girls decide to migrate for economic, social, cultural and political reasons and the conditions of migration, before, during and post migration are not examined.

The victim and perpetrator binary expressed in much of the trafficking discussion creates an individualistic perspective towards a phenomenon that rather requires State responses to structural and deep-rooted inequalities. It also enables States to discriminate against migrants by having unsafe labour conditions, criminalizing migration, adopting xenophobic and racist discourse and policies, yet perpetuate the fiction of ‘saving’ and/or ‘rescuing’ the trafficked victim. Inevitably, the ‘victims’ are overwhelmingly women even though the definition of trafficking is about *human* trafficking, not just trafficking of women and girls.

This appeal of rescue has led to very many large philanthropic organisations based in the North to wield control and influence on the way trafficking is framed.[[6]](#footnote-6) And at the very heart of it, trafficking is a very convenient rhetoric for states to enforce racist, classist and nationalist policies while casting themselves as “protectors” rather than as violators.

Indeed, the narrative of trafficking then has the consequence of asking the question ‘what are you doing to protect these agency-less victims?’ (when people make the decision to move and migrate for various economic, social and political considerations) instead of asking ‘what have you done that has placed people in situations of often extreme vulnerability’? The material conditions that are necessary to ensure that all persons have their rights are ignored in this narrative of the getting rid of ‘evil’. These questions should necessarily include the questions of border control and the important question of labour. A deeper analysis of trafficking would mean to understand how labour is constructed in States, what is considered “legitimate labour”, the situations that allow for the clandestine employment practices and the impunities allowed for employers, including corporations, for using bad labour practices and exploiting workers.

It is imperative to locate the conflation of sex work and trafficking in the neoliberal paradigm and border control. The logics of profit and class and race determine who is policed, where and if they can bargain their way out. With sex work, this paradigm has served States to use the historically and traditionally entrenched stereotypes on gender and sexuality to attack visible manifestations of ‘deviancy’ and poverty.[[7]](#footnote-7) The moral paroxysm driving the policing of ‘deviant’ migrants materializes in a social cleansing of the undesirables to enforce class, gender and sexuality social mandates. Consequently, states focus on correcting individual ‘deviants’ instead of addressing structures and systems of discrimination and marginalization – the same factors that can be seen to be “push” factors for migration.[[8]](#footnote-8) In many ways conflation of sex work with trafficking/sexual exploitation, etc. is a child of a very successful marriage of patriarchal systems with neoliberal paradigms.

In General Recommendation No. 26, although the Committee recognized that many elements of the migrant labour framework “are also relevant in situations where women migrants have been victims of trafficking”[[9]](#footnote-9), it considered that “[t]he phenomenon of trafficking is complex and needs more focused attention.”[[10]](#footnote-10) Eleven years later, the Committee plays a double-bind by discussing a broad range of measures that will have an impact on sex workers, while asserting “it will not broach a policy discussion on the theme of prostitution.”[[11]](#footnote-11)

One impact of this framing of trafficking is a validation of criminal justice responses to deeper structural imbalances. In this context, at the national and sub national levels, governments recurring to criminal law and penal provisions is the norm. As such, it validates a turn away from redistributive reforms, welfare measures[[12]](#footnote-12) and the reform of the structures to address social and economic inequalities. Further, this reductive understanding of trafficking and migration does not consider the reality of coercion and its operation. This is particularly true of ‘rescue operations’ of migrant sex workers which leads to deportation of sex workers and loss of their home and livelihood.[[13]](#footnote-13)

**Recommendations**

It is necessary for the Committee to expand on the idea of ‘trafficking’, ground it in human rights and move away from a crime control and border control measures. It requires the Committee to lay down core pillars of human rights obligation and address the structural and systemic issues that do not essentialise and reduce the life, experiences and decisions of women and girls.

Debunk the term ‘trafficking’. The Committee has the opportunity to reframe trafficking grounded in human rights and moving away from the binary of “traffickers” v. “victims”. This methodology will ensure culpability and responsibility are aligned. States should be transparent and accountable in the ways they handle migration and open borders, and provide safe, accountable labour conditions for all peoples.

Decriminalise sex work. The Committee should use this opportunity to unequivocally recommend full decriminalisation of sex work in its entirety, including decriminalising demand. The effect of all models of criminalising sex work is to deny the rights of sex workers to their bodily autonomy and to their rights as workers. Conversely, the decriminalization of all aspects of sex work helps identify and support people who have been trafficked.[[14]](#footnote-14)

Implement a labour rights approach. A labour rights approach will help address root causes of discrimination and also understand the various lacunae in laws, policies and programmes particularly on the intersection of gender and migration. This approach will also take into consideration the realities of persons affected and ensure meaningful consultation, advancing a state policy-making approach that is holistic, rather than fractured and disjointed.

1. <http://www.sexualrightsinitiative.com/> [↑](#footnote-ref-1)
2. *See* <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [↑](#footnote-ref-2)
3. Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law* (, 2013). American Journal of International Law, volume 108, number 4, p. 609 (2014).; American University, WCL Research Paper No. 2014-49. Available at SSRN: [https://ssrn.com/abstract=2315513](https://ssrn.com/abstract%3D2315513) or [http://dx.doi.org/10.2139/ssrn.2315513](https://dx.doi.org/10.2139/ssrn.2315513) [↑](#footnote-ref-3)
4. See for instance M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’,

*Anti-Trafficking Review*, issue 4, 2015, pp. 56-79. Available at <https://gaatw.org/ATR/AntiTraffickingReview_Issue4.pdf> [↑](#footnote-ref-4)
5. The term choice if often preceded by an understanding that everyone is the same and has the same circumstances. Choice exercised has to be read in the context of multiple and intersecting forms of oppressions that operate in societies and the ways in which these oppressions create conditions of marginalisation. [↑](#footnote-ref-5)
6. Janie A. Chuang, Exploitation Creep and the Unmaking of Human Trafficking Law (August 24, 2013). American Journal of International Law, volume 108, number 4, page 609 (2014).; American University, WCL Research Paper No. 2014-49. Available at SSRN: [https://ssrn.com/abstract=2315513](https://ssrn.com/abstract%3D2315513) or [http://dx.doi.org/10.2139/ssrn.2315513](https://dx.doi.org/10.2139/ssrn.2315513) [↑](#footnote-ref-6)
7. Elizabeth Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex*, Chicago: University of Chicago Press (2007) page 20. [↑](#footnote-ref-7)
8. Id. [↑](#footnote-ref-8)
9. CEDAW Committee, *General Recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R (2008). Pg. 3 at footnote 4. [↑](#footnote-ref-9)
10. Id. [↑](#footnote-ref-10)
11. Concept Note prepared for the Committee on the Elimination of Discrimination Against Women
on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration. (2018) para. 53. [↑](#footnote-ref-11)
12. Prabha Kotiswaran, Beyond Sexual Humanitarianism: A Postcolonial Approach to Anti-Trafficking Law, 4 U.C. Irvine L. Rev. 353 (2014). Available at: http://scholarship.law.uci.edu/ucilr/vol4/iss1/16 [↑](#footnote-ref-12)
13. For examples of the targeting of migrant sex workers under the guise of anti-trafficking, and its impact on the rights of migrant and racialized sex workers, please see the Joint Stakeholder Submission submitted by the Canadian Alliance for Sex work Law Reform and the Sexual Rights Initiative for the Universal Periodic Review of Canada in April/May 2018, available at <http://www.sexualrightsinitiative.com/wp-content/uploads/CASWLR-UPR-FINAL-.pdf>

For such examples in the Swedish context, please *See* Global Network of Sex Work Projects, *The Real Impact of the Swedish Model
on Sex Workers*, available at <https://www.nswp.org/sites/nswp.org/files/4.%20Impacts%20of%20Other%20Legislation%20and%20Policy%20-%20The%20Danger%20of%20Seeing%20the%20Swedish%20Model%20in%20a%20Vacuum%2C%20Swedish%20Model%20Advocacy%20Toolkit%2C%20NSWP%20-%20December%202014.pdf> [↑](#footnote-ref-13)
14. In its Guidance Note on HIV and sex work, UNAIDS recommended engaging sex workers as partners in identifying, preventing and resolving situations of trafficking: “Sex workers themselves are often best placed to know who is being trafficked into commercial sex and by whom, and are particularly motivated to work to stop such odious practices.” Joint United Nations Programme on HIV/AIDS, *Guidance Note on HIV and Sex Work,* 2012, page 16. Available at: <http://files.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf> [↑](#footnote-ref-14)