

**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. 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.

Introduction and background

1. This submission argues that the concept of trafficking should be debunked to give way to policies that ensure migrant rights and address migrant labour. In doing this, it deals with the definition of trafficking in the Convention and its consequent impact on women and girls, especially in the context of migration. The CEDAW Committee now has an opportunity to reframe the understanding of state obligations and standards on the issue of trafficking from a gender perspective, so that it is grounded in human rights and upholds bodily autonomy of women and girls.
2. 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 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”.
3. The Convention against Transnational Organised Crime was specifically developed to counter a ‘crime’ of a particular kind and legitimise border policing and control. This imperative felt by governments was and is based on a rhetoric where migrants and migration are framed in a continuum of risk that requires security measures.³ 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 prioritises⁴.
4. The development of international law related to migration has resulted in legal and institutional compartmentalization. Anti-trafficking instruments have only exacerbated this divide with at least three problematic consequences. Firstly, it creates segregated institutional apparatuses: “border security”, regulation of migrant work and anti-trafficking usually have specialized agencies that do not usually work in programmatic

¹ <http://www.sexualrightsinitiative.com/>

² See <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

³ Claudia Aradau, *Words: Risk and Pity in the Securitization of Human Trafficking*, Millennium: Journal of International Studies, Vol. 33, No. 2, pp. 251-279. (2004)

⁴ 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> or <http://dx.doi.org/10.2139/ssrn.2315513>

coordination.⁵ Secondly, it reifies “certain categories of persons under international law, setting unrealistic markers of victimhood that exclude wide categories of persons from protection,”⁶ e.g.: refugees and stateless persons cannot be migrant workers and exploited migrants cannot be “trafficked” if they were not transported by a third party for this purpose.⁷ Thirdly, compartmentalization allows states to use contradicting language and policies. States applaud themselves both when framing trafficking and migration as security threats requiring law enforcement in transnational security fora and when talking about their anti-trafficking measures “under a human rights approach”.⁸

5. To a great extent the Trafficking Protocol and its implementation represents the US hegemony and approach on crime control. The US played a prominent role in the development of the Trafficking Protocol and the negotiation of its substantive provisions,⁹ hence trafficking was framed within the framework of US priorities: crime control under the 3P’s (prosecution, protection, and prevention).¹⁰ Simultaneously, the US has enforced the crime control paradigm by creating economic sanctions related to their own evaluation of compliance with it.¹¹

Trafficking v. Labour migration: What are the state obligations?

6. As mentioned above, the definition of “trafficking” used by the Committee in the framework of this Draft General Recommendation is that of the Palermo Protocol, which is centered on crime control rather than human rights. This was regretted by the Special Rapporteur on Violence against Women at the time, who “express[ed] her concern that the first modern international instrument on trafficking is being elaborated in the context of crime control, rather than with a focus on human rights,” which she viewed “as a failure of the international human rights community to fulfil its commitment to protect the human rights of women.”¹²

⁵ Jayne Huckerby, Same, but Different: Assessing the Interaction of the Migrant Workers’ Rights and Anti-Trafficking Regimes under International Law, 47 N.Y.U. J. Int’l L. & Pol. 593 (2015)

⁶ Id. at 663

⁷ Id. at 635

⁸ Id.

⁹ Id., page 15. See also Janie A. Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 Mich. J. Int’l L. 437 (2006). Available at: <http://repository.law.umich.edu/mjil/vol27/iss2/2>

¹⁰ Janie A. Chuang, supra note 4, page 15.

¹¹ Id., pages 14-18.

¹² UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44. E/CN.4/2000/68, 29 February 2000, para. 7.*

7. Before the Palermo Protocol, trafficking was addressed in several international treaties in the first half of the twentieth century,¹³ which culminated in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The 1949 Convention did not define trafficking but focused on eliminating prostitution through a crime control perspective by punishing third-party involvement in it.¹⁴ It viewed women as vulnerable and needing to be protected from the “evils of prostitution,”¹⁵ including through supervision of railway stations, airports, public spaces and employment agencies.¹⁶ 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.¹⁷
8. 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.’¹⁸ 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 girls¹⁹, 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.
9. 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

¹³ Including the 1904 International Agreement for the Suppression of the White Slave Trade, the 1910 International Convention for the Suppression of White Slave Traffic, the 1921 Convention for the Suppression of Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age. For more details, please see the *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women* at paras 18-20 and Global Alliance Against Traffic in Women, *Human Rights and Trafficking in Persons: A Handbook*, pp. 20-21. (2000) available at https://www.gaatw.org/books_pdf/Human%20Rights%20and%20Trafficking%20in%20Person.pdf

¹⁴ Id., para. 24; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by General Assembly resolution 317 (IV) of 2 December 1949, articles 1-4.

¹⁵ *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women*, para. 22. U.N. Doc. E/CN.4/2000/68 (2000)

¹⁶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, articles 17(2) and 20.

¹⁷ Global Alliance Against Traffic in Women, *Human Rights and Trafficking in Persons: A Handbook*, pp. 18, 20, (2000) available at https://www.gaatw.org/books_pdf/Human%20Rights%20and%20Trafficking%20in%20Person.pdf

¹⁸ 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

¹⁹ The term choice is 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.

overwhelmingly women even though the definition of trafficking is about *human* trafficking, not just trafficking of women and girls. In the context of migration, adult men tend to be considered “authors of their own destinies”, whereas women and children’s grip on their own wills is understood to be already fragile and tenuous.²⁰ However, this imposed victimhood should be understood within multiple oppressive structures including, race, class, migration status, and nationality.

10. Trafficking evokes the image of ‘evil’. There are various commercial and pop culture manifestations of its impact, and this demands a rescue of the victim from the wrongdoer. This evocation has tremendous appeal to everyone, absolving States from their responsibilities to create good labour migration structures. “Identifying and separating ‘victims of trafficking’ from ‘criminals’—the undocumented migrants considered guilty of violating immigration laws—is a complex daily practice in anti-trafficking work.”²¹ 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.²² 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.
11. Any and all measures to address ‘trafficking’ are often motivated by a race and class bias disguised as the rescue of disempowered victims of circumstances. “The masculinist institutions of big business, the state, and the police are reconfigured as allies and saviors, rather than enemies, of unskilled migrant workers, and the responsibility for slavery is shifted from structural factors and dominant institutions onto individual, deviant men: foreign brown men (as in the White Slave trade of centuries past) or even more remarkably, African American men.”²³ In this way, the Protocol and its parent Organized Crime Convention establish an elaborate framework of international mechanisms that nurture structural violence on migrant workers.
12. 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

²⁰ Julia O’Connell Davidson, (2015) *Gender, Migration, ‘Trafficking’ and the Troublesome Relationship between Agency and Force*. Available at: <http://bordercriminologies.law.ox.ac.uk/gender-migration-trafficking/> (Accessed 29 December 2018, 12.52 pm)

²¹ Sine Plambech, *Violence in the safety of home: life in Nigeria after selling sex*, in *Europe Beyond Trafficking and Slavery*, Short Course, Vol 8, *Gender* (eds by Sam Okyere and Prabha Kotiswaran), 2015, at <https://drive.google.com/file/d/0B2IN4rGTopsaQUh2T1NOVFhEREE/view> accessed on 28 December 2018, 13:00

²² 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> or <http://dx.doi.org/10.2139/ssrn.2315513>

²³ Elizabeth Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex*, Chicago: University of Chicago Press (2007) page 20.

that allow for the clandestine employment practices and the impunities allowed for employers, including corporations, for using bad labour practices and exploiting workers.

13. It is within this construction of what constitutes “legitimate labour” that one can locate “sex work” and the predominance of anti-sex work voices within trafficking discourses, narratives often developed and perpetuated without consultation with sex workers.

Effects of the conflation of Sex Work and Trafficking

14. Globally, significant evidence shows how the rhetoric of saving the “trafficked women and girls” is used indiscriminately to curtail human rights of women and girls and deny them any agency. This can be seen most clearly in the way conflation of sex work and trafficking has impacted sex workers’ access to justice and deprived them of their liberty in the forced rehabilitation process.²⁴
15. The way the Committee has historically addressed these issues has also reinforced compartmentalization and conflation. 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”²⁵, it considered that “[t]he phenomenon of trafficking is complex and needs more focused attention.”²⁶ 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.”²⁷
16. In the meantime, activists’ time and resources are lost in damage-control strategies. The lack of a comprehensive approach is an obstacle in facilitating the resolution of tensions around trafficking. “Human, migrant, and labor rights actors [are often] occupied with mitigating the impact of the neo-abolitionists[. This takes] attention away from addressing the broader human rights challenge inherent in the Protocol’s border-control and State sovereignty focus.”²⁸
17. 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

²⁴ SRI & NSWP, Submission to the Working Group on the issue of Discrimination Against Women in Law and Practice on Deprivation of Liberty of Women and Girls Sexual Rights Initiative and Global Network of Sex Work Projects. (2018) [hereinafter SRI & NSWP, Submission to WGDaw].

²⁵ CEDAW Committee, *General Recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R (2008). Pg. 3 at footnote 4.

²⁶ *Id.*

²⁷ 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.

²⁸ Jayne Huckerby, Same, but Different: Assessing the Interaction of the Migrant Workers’ Rights and Anti-Trafficking Regimes under International Law, 47 N.Y.U. J. Int’l L. & Pol. 593 (2015), at 631.

gender and sexuality to attack visible manifestations of ‘deviancy’ and poverty.²⁹ 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.³⁰ 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.

18. The morality that emphasizes controlling sexuality as ‘deviancy’ was brought to the colonial territories and incorporates as whole to control the people in the territories. The project of colonialism codified this “morality” of colonial powers in their “territories”. The subsequent nationhood project used these very same laws as the bedrock to formulate the norms and values on dealing with marginalised subjects of the nation particularly while dealing with issues of sexuality and gender.³¹
19. Policing and control also take the form of protectionism, i.e. vulnerable women and girl victims need protection - from themselves and/or from real and perceived dangers. This protection function reframes state obligations away from respecting, protecting and fulfilling human rights and fundamental freedoms of people to ‘protecting people’. This distinction dislocates the bodies of women and girls as autonomous people to being victims without agency and in need of protection. And most often the protection takes the form of deprivation of liberty. Highly protectionist legislation has even justified measures like protective detention that reinforces gender and cultural stereotypes and punishes women.³² This paternalistic formulation of women and girls essentialises the experiences of women and girls, denying them their human rights. It often leads to victim blaming in cases of violence and places the burden of preventing violence on women and girls, absolving the state and perpetrators of all responsibility.³³
20. However, protectionism does not manifest in isolation. Protectionist discourses are used extensively in all countries and are opportunistically used to deny women and girls their autonomy when multiple oppressions are in operation. An example of this is the surveillance and detention of migrant sex workers, women sex workers belonging to racial or ethnic minorities as described in this submission below. An intersectional understanding of discrimination highlights the exacerbated impact based on multiple and intersecting forms of discrimination. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, stated that “the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status,

²⁹ Elizabeth Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex*, Chicago: University of Chicago Press (2007) page 20.

³⁰ Id.

³¹ SRI & NSWP, Submission to WGDAW.

³² Ratna Kapur, *Human Rights in the 21st Century: Take a Walk on the Dark Side* in “Wronging Rights?: Philosophical Challenges for Human Rights” (eds. Aakash Singh Rathore & Alex Cistelegan), Routledge (2011) page 42.

³³ SRI & NSWP, Submission to WGDAW.

age, class, caste and sexual orientation and gender identity. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”³⁴ As the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions highlights, “for the vast majority of women and girls, their human rights journey entails confronting a system of State actions and inactions, feeding and fed by systemic discrimination, resulting in violation of their rights to basic necessities and ultimately in a violation of their right to life.”³⁵

Impact of anti-trafficking laws in the world

21. 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 measures³⁶ and the reform of the structures to address social and economic inequalities. Hence, the material conditions that necessitate the choice to migrate from countries to the material conditions that make migration a dangerous proposition to women and girls. It also precludes investigating into the way gender and labour are constructed. Women’s unpaid care work is a case in point, where migrant workers are treated in host countries, the way employers operate with impunity and ways in which border control is enforced using “victims” of trafficking.
22. In addition, the appropriation of terms such as “anti-slavery” and “abolitionism” by campaigners calling for the criminalization of sex work is not without problems. As Robin Maynard points out, “by hijacking the terminology of slavery, even widely referring to themselves as ‘abolitionists’, anti-sex work campaigners have not only (successfully) campaigned for funding and legal reform; but they do so without any tangible connections to historical or current Black political movements against state violence. Indeed in pushing for criminalization, they are often undermining those most harmed by the legacy of slavery. As Blacks persons across the Americas are literally fighting for our lives, it is urgent to examine the actions and goals of any mostly white and conservative movement who deign to be the rightful inheritors of an ‘anti-slavery’ mission which deigns to abolish prostitution but both ignores and indirectly facilitates brutalities waged against Black communities.”³⁷
23. The abolitionist framing of trafficking as involving women and girls forced into sexual slavery by social deviants deflects attention from real migration patterns of low-income women and men who undertake risky migration for work in exploitative

³⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28, para. 18.

³⁵ Agnes Callamard, Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions on gender sensitive approach to arbitrary killings, U.N. Doc. A/HRC/35/23 (2017); SRI & NSWP, Submission to WGDAW.

³⁶ 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>

³⁷ Robin Maynard, (2015). *#Blacksexworkerslivesmatter: White-Washed 'Anti-Slavery' and the Appropriation of Black Suffering*. The Feminist Wire. Available at: <https://www.thefeministwire.com/2015/09/blacksexworkerslivesmatter-white-washed-anti-slavery-and-the-appropriation-of-black-suffering/> [Accessed 4 Feb. 2019].

informal employment. Consequently, the implementation of anti-trafficking law by many countries has been both overinclusive and underinclusive. It is over inclusive because it targets women engaged in voluntary sex work. It is under inclusive because trafficking for purposes other than sex work is effectively ignored and rendered less worthy of our attention.³⁸

24. What is and what is not worthy of attention in the context of trafficking also responds to a social hierarchy of labour. Race, ethnicity, socio-economic background and nationality also affect what kind of labour is perceived as valuable in ways that are often gendered. ‘Intellectual’ labour is privileged over care work, sex work and other forms of labour traditionally deemed to be “low-skilled.” Portrayals of people from the Global North as convenient or good to have, whereas people from the South are a threat for the North, fuel nationalist and racist ideologies that affect how labour is valued. For example, the portrayals of migrants being the threat to changing of “European societies” not only affect the hierarchy of labour, but also legitimises border control measures mentioned before.³⁹
25. Further, this reductive understanding of trafficking and migration does not consider the reality of coercion and its operation. Coercion in the case of migration and trafficking would need to take into account the relative power of all the actors and not reducing it to ‘one person’ who forces another, particularly women and girls, including ways in which corporate interests and state machinery (host and destination countries) operate to deny rights of people.⁴⁰ 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.⁴¹ In the case of Canada, “not only are distinctions between sex work and human trafficking not made in the language used by law

³⁸ 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>

³⁹ “There is a large body of academic literature on the portrayal of (irregular) immigration as a security threat to European societies (Weaver 1993, Guiraudon 2000; Lohrmann 2000; Huysmans 2000; Collyer 2006; Van Munster and Sterkx 2006; Carling 2011). Some of these scholars (such as Huysmans and Zettel) discuss the underlying aim of the process of legitimization and state that the portrayal of immigration as a security threat justifies a wide range of technologies of border management that would otherwise not have been considered legitimate.” Marit Prater, *A never-ending journey at the external borders of the European Union: Studying the use and the legitimization of surveillance technology to manage EU’s external borders and flows of (irregular) immigrants to Europe*, Thesis submitted in partial fulfilment of the requirements of the degree of Master of Arts in Conflict Studies & Human Rights of Utrecht University (2014) page 17.

⁴⁰ 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> or <http://dx.doi.org/10.2139/ssrn.2315513>

⁴¹ 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%20NSWP%20-%20December%202014.pdf>

enforcement, but it is evident in much of the police response to sex work that anti-trafficking initiatives are driving the repression of sex work.”⁴²

26. States embed their approach to trafficking into domestic criminal law according to their social and political contexts.⁴³ For example, in Switzerland “all migrant sex workers are considered vulnerable to trafficking even if they have entered this form of work voluntarily. Even the UN Office on Drugs and Crime, which is the guardian of the protocol, has recently admitted its lack of data on the phenomenon of trafficking, the magnitude of the problem, and the uneven nature of domestic law reform undertaken to align states’ obligations with the protocol.”⁴⁴
27. Anti-trafficking laws can also endanger migrant workers and simultaneously fail to stop exploitation. For example, in West Africa, “people known as ‘landlords’ have traditionally helped both adults and children migrate to towns and find jobs, it is clear that denouncing such people as traffickers has contributed to reducing the protection they can give to their clients, rather than helping stop cases of exploitation. [...] Identifying traffickers therefore requires a more sophisticated process than denouncing the informal mechanisms that people around the world have put in place to help them migrate.”⁴⁵

Recommendations

28. Establish human rights-based State obligations. The human rights framework mandates state obligations on three core areas - respect, protect and fulfill the rights of everyone. In the context of trafficking and migration, states have selectively chosen the obligation to protect - but to protect some people and not to protect rights of persons. This is not simply rhetorical but rather has grave implications for people’s ability to exercise and enjoy their rights. The CEDAW Committee, with its jurisprudence on temporary special measures and due diligence, has provided states with tools for implementation. It is hence 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.
29. 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. Currently, culpability has been selectively and conveniently diverted to the individual, yet responsibility lies with the state. The human rights framing will necessarily move away from criminalising migration and border control. States should be transparent

⁴² SRI & NSWP, Submission to WGDAW., para. 7.

⁴³ Prabha Kotiswaran, Law’s mediations: the shifting definitions of trafficking in Beyond Trafficking and Slavery, Short Course, Vol 3, State and Law ed by Sam Okyere and Prabha Kotiswaran, 2015, at <https://drive.google.com/file/d/0B2IN4rGTopsaRWF3eFdXOXdYNNVE/view>

⁴⁴ Id.

⁴⁵ Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, 2007.

and accountable in the ways they handle migration and open borders, and provide safe, accountable labour conditions for all peoples.

30. 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.⁴⁶
31. 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. It will also centre the conversation and policy formulation in human rights and not control of populations. This approach will also take into consideration the realities of persons affected and ensure meaningful consultation. Further, this approach will help advance a state policy-making approach that is holistic, rather than fractured and disjointed.

⁴⁶ 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