

## **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 Global Alliance Against Traffic in Women**

Human trafficking is a complex crime, and a human rights violation, caused by a number of interconnected structural factors creating vulnerability to trafficking, such as the dominant neoliberal economic model, patriarchy, climate change, political instability and conflict, gender-based violence and discrimination, and personal characteristics such as gender, race, ethnicity, class, and caste. In order to effectively prevent trafficking, states need to address these factors, in line with their existing commitments under CEDAW and the Agenda for Sustainable Development, in particular: the acceptance and normalisation of violence against women and girls (Goals 5, 11 and 16); the vulnerability of women to poverty (Goal 1); the concentration of women in insecure and vulnerable work and their lack of decent work opportunities (Goal 8) and the limited access for women and girls to education, (Goal 4); inequalities within and between countries (Goal 10); and insecurity as a result of conflict (Goal 16) or as a result of climate change and natural disasters (Goals 12, 13, 14 and 15).

### **Before trafficking - Recommendations to remove/ reduce vulnerabilities:**

#### **1. Gender segregated labour markets and human trafficking into the care economy**

The non-recognition, non-valuing and undervaluing of the work that women do (such as care and domestic work) has a direct relationship to the increased risk that women working in those sectors have to human trafficking and exploitation. The lack of value given to this gendered work informs the undervaluing of migrant women's labour in the transnational care economy. The lack of legal protection, social discrimination, non- and underpayment that racialised female migrants doing so-called "women's work" experience create conditions of exploitation<sup>1</sup> that can meet the criteria for human trafficking.

Increase in demand for domestic and care work in some developed countries, linked to the reduction in provisions for child, elder and social care in state budgets has created increased need for domestic work. The risk this creates for exploitation is increased when coupled with policies that put gendered restrictions on the rights of women to migrate for domestic work in some countries of origin.

**Therefore, the General Recommendation should urge states to:**

- Close the gender pay gap.
- Value, reduce, and redistribute unpaid care work (in line with SDG 5.4).
- Institute the principle of equal pay for work of equal value (in line with SDG 8.5).
- Ratify and implement ILO Convention 189 on decent work for domestic workers.
- End gendered migration bans for women migrant workers.

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<sup>1</sup> CEDAW General Recommendation No. 16; See also: Report of the UN Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences on the Gender Dimensions of Contemporary Forms of Slavery, A/73/139, para. 46-47.

## 2. Demand for low cost, controllable and unprotected labour

The demand for low cost, controllable and unprotected labour stems from globalised economic processes demanding increasingly flexible labour, and discrimination that can normalise or justify exploitation. Any focus on “demand” must focus on efforts to reduce the demand for exploitative labour practices. The UN Trafficking Protocol and the Global Compact on Migration call on States to “discourage the demand that fosters all forms of exploitation of persons...that leads to trafficking” and do not make exceptions or focus on any particular sector. The demand for exploitative labour practices can be created by consumers/customers, businesses/employers, and third parties/recruiters, and generally refers to labour that is:

- a. Low cost – including non-payment or underpayment of wages;
- b. Easy to control – including keeping workers from leaving abusive situations; and
- c. Unprotected – characterised by social attitudes that normalise or justify exploitation and discrimination, and unregulated labour.

**Therefore, the General Recommendation should urge states to:**

- Introduce, strengthen, and enforce labour protections regarding minimum wage, overtime, health and safety, and working conditions, in unregulated or unmonitored economic sectors that rely on migrant and women’s labour, such as domestic and care work, sex work, garment, construction, agriculture, food processing, fishing, etc.
- Facilitate the self-organisation and unionisation of women migrant workers in unregulated or unmonitored labour sectors as a way of strengthening their collective power and reducing the risks of exploitation and human trafficking.
- Conduct, and/or fund, awareness campaigns to inform consumers and customers of products and services that may involve trafficked or exploited labour, and where to report suspicions on such.<sup>2</sup>

## 3. Labour migration agreements that are not in line with states’ human rights commitments

International labour law is founded on the principle that labour is not a commodity. However, labour exploitation is embedded in our current economic model in such a way that it has created a system of precarious, low-wage workers. In this sense, human trafficking is often not an aberration but a logical outcome of particular economic policies. In this model, migrant workers are often instrumentalised as an easily available and disposable labour supply that can be controlled by the constant threat of deportation. Migrants face restrictions on their rights at work with labour migration policies sometimes increasing migrant women’s risk of exploitation.<sup>3</sup>

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<sup>2</sup> For more information on the design and evaluation of demand-side campaigns, see N Cyprus and D Vogel, *Learning from Demand-Side Campaigns against Trafficking in Human Beings: Evaluation as Knowledge-Generator and Project-Improver*, DemandAT, Vienna, 2017, [http://demandat.eu/sites/default/files/DemandAT\\_WP9\\_Cyrus-Vogel\\_Campaigns\\_June%202017.pdf](http://demandat.eu/sites/default/files/DemandAT_WP9_Cyprus-Vogel_Campaigns_June%202017.pdf).

<sup>3</sup> See, Committee on Economic, Social and Cultural Rights, General comment No. 23, para.78; Report of the UN Secretary General on Trafficking in Women and Girls, A/73/263, para. 24,

Reducing the risks of trafficking and exploitation require that States and other actors ensure that migrant workers, regardless of status, labour sector or perceived skill level enjoy the right to decent work, a living wage, and the right to freedom of association and collective bargaining.

### *Temporary and circular migration*

The focus on regular migration pathways can obscure the fact that many of these labour migration schemes facilitate abuse, restrict labour rights, and reinforce gender, racial, class, caste, and other discriminations in workplaces and communities.<sup>4</sup> Regular channels of migration do not necessarily constitute safe migration and may create conditions for forced labour or trafficking of women migrant workers in sectors that are not covered by labour laws.<sup>5</sup> The work available to women migrant workers through regular migration channels typically replicates gendered divisions of labour and is often only temporary. Temporary, guest-worker, or circular migration programmes often contain inherent risk factors for exploitation, such as worker-paid recruitment fees, substandard living and working conditions allowed under such schemes, and sponsorship schemes tying visas to a specific employer.<sup>6</sup> Where migrant workers are reliant on employers for their visa – as sponsors or for repeated annual seasonal work, for example – this serves as a strong disincentive to reporting labour and other human rights abuses, denying migrants access to assistance, justice and redress. The obligatory live-in policy for domestic workers in some countries and favoured by some employers puts migrant women at a higher risk of violence while also severely restricting their access to justice. The immunity afforded diplomatic households denies justice for migrant domestic workers who cannot sue their employer for unpaid wages or seek justice for other abuses including labour exploitation or violence.<sup>7</sup>

**Therefore, the General Recommendation should urge states to:**

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<sup>4</sup> P Müller and S Prandi, *Rape in the Fields*, Correctiv, 30 April 2018, <https://correctiv.org/en/top-stories-en/2018/04/30/rape-in-the-fields/>.

<sup>5</sup> Protocol to the Forced Labour Convention, 1930, Article 2(c)(i); CEDAW General Recommendation No. 26, para.5. See also, S Molland, 'Safe Migration, Dilettante Brokers and the Appropriation of Legality: Lao-Thai "Trafficking" in the Context of Regulating Labour Migration', *Pacific Affairs*, 85(1), 117–136 (2012); HOME and Transient Workers Count Too (TWC2), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Shadow Report for Singapore, October 2017, available

at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SGP/INT\\_CEDAW\\_NGO\\_SGP\\_29089\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SGP/INT_CEDAW_NGO_SGP_29089_E.pdf).

<sup>6</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/71/385, paras. 29-33; Report of the Special Rapporteur on the human rights of migrants 'Labour Exploitation of Migrants', A/HRC/26/35, para. 49; SDG indicator 10.7.1 addresses recruitment costs, which the World Bank has found can be exorbitant: World Bank Group, *Migration and Development Brief 28*, October 2017; Global Alliance Against Traffic in Women, *Beyond Borders: Exploring Links between Trafficking and Labour*, GAATW Working Papers Series, 2010; Amnesty International, *Abusive Labour Migration Policies: Submission to the UN Committee on Migrant Workers' Day of General Discussion on Workplace Exploitation and Workplace Protection*, 7 April 2014, AI Index: IOR 42/002/2014; D. Demetriou, 'Tied Visas' and Inadequate Labour Protections: A formula for abuse and exploitation of migrant domestic workers in the United Kingdom, *Anti-Trafficking Review*, 5: 69-88, 2015; L. Palumbo and A. Sciarba, Vulnerability to Forced Labour and Trafficking: The case of Romanian women in the agricultural sector in Sicily, *Anti-Trafficking Review*, 5: 89-108, 2015; HOME and TWC2, CEDAW Shadow Report for Singapore.

<sup>7</sup> CEDAW, General Recommendation No. 26, para.21; Ban Ying et al., Joint NGO Submission to the CEDAW Committee prior to the General Discussion on "Access to Justice" on the Situation of Domestic Workers who Work for Diplomats, February 2013, Ban Ying (Berlin), BliNN (Amsterdam), CCEM (Paris) Kalayaan (London), Lefö (Vienna) Migrants Rights Centre Ireland (Dublin) and PAG-ASA (Brussels).

- Make available more regular, long-term or permanent pathways to all migrants without discrimination, for migration for decent work across sectors and skills/pay-levels.
- Recognise that regular pathways are not necessarily safe for migrants and ensure that those available to migrants are in full compliance with human and labour rights including the principle of non-discrimination.

*Gender discriminations including gendered migration bans:*

Discriminatory immigration and emigration laws and policies which restrict the ability of women, or particular groups of women, to freely leave or enter a country or district can also make women more vulnerable to exploitation such as trafficking or forced labour, including by limiting their ability to receive assistance in countries of destination by criminalising their migration and work.<sup>8</sup>

Immigration or employment laws and policies which restrict the ability of migrant women, or particular groups of migrant women, to freely seek or change their employment, or make the right to remain in the country dependent on the sponsorship of an employer, can increase women's vulnerability to trafficking and labour exploitation. Such laws and policies give extraordinary power to employers, leaving workers with little leverage to negotiate the conditions of their work.

**Therefore, the General Recommendation should urge states to:**

- Eliminate any gender discriminatory restrictions on migration in law, policy or practice that limit opportunities for women's labour migration and ensure gender equity and respect for women's autonomy in relevant policies including those regarding access to visas, residence permits, work permits and other documentation for migration.
- End discriminatory conditionalities in recruitment, including the practice of making the migration status of migrant workers conditional on the sponsorship or guardianship of a specific employer. Allow migrant workers to change employers and sectors of employment.

*Recruitment*

Labour law requires states to eliminate the charging of recruitment fees to workers, recognising this as a risk factor for forced labour and trafficking.<sup>9</sup>

Protecting women migrant workers from possible abusive and fraudulent practices during the **recruitment and placement process** is essential to preventing labour abuses including forced labour and trafficking.<sup>10</sup> There is increasing attention to fair or ethical recruitment from international organisations and migrant rights organisations, transnational corporations, and large recruitment and

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<sup>8</sup> CEDAW General Recommendation 26, para. 10; Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, GAATW 2007, in particular the chapters on India and Nigeria; ILO and GAATW, *No easy exit: Migration bans affecting women from Nepal*, ILO, Geneva, 2015; R. Napier-Moore, *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries*, International Labour Organization and UN Women, Bangkok, 2017.

<sup>9</sup> ILO Private Employment Agencies Convention, 1997 (No. 181), Article 7; Protocol to the Forced Labour Convention, Article 8(a).

<sup>10</sup> Protocol to the Forced Labour Convention, Article 2(d).

employment agencies.<sup>11</sup> However, much recruitment, like the labour sectors in which migrants work, is informal and such good practices are not easily applied or monitored there. Addressing poor recruitment practices requires regulatory incentives that involve worker representatives, including representatives of women migrant workers, in the design, implementation, and monitoring of recruitment practices. Special measures are necessary to ensure that recruitment practices are not only accountable to employers, labour recruiters and regulators, but also importantly to women workers.

**Therefore, the General Recommendation should urge states to:**

- Regulate, license and monitor labour recruiters and employment agencies and commit to moving to ethical recruitment measures.
- Eliminate in law and practice the charging of recruitment fees to workers and other forms of economic coercion.

## **During and after trafficking – identification, assistance, social inclusion and access to justice**

### *Identification and assistance*

States should accord trafficked persons all human rights, including those to which they are entitled as victims of crime and victims of human rights violations. These include the rights to receive protection from further harm including special consideration and care to avoid re-traumatisation in the course of any legal and administrative procedures, be treated with compassion and respect for their dignity and human rights, be provided with access to justice and prompt and effective remedies including reparation, regardless of the individual's immigration status, presence in the country of jurisdiction, criminal case against or identification of the trafficker.<sup>12</sup> To realise this, states need to ensure they develop a proactive and systematic approach to the identification of victims of trafficking and the provision of assistance.<sup>13</sup> The frequent conflation of trafficking with smuggling in the context of global migration and mixed migration flows necessitates an individualised identification process.

Trafficking in persons is distinguished from smuggling of migrants by the use of force, coercion and/or deception throughout or at some stage of the process, for the purpose of exploitation. That final element of the definition makes it difficult to identify or prove trafficking during the movement phase of migration and it is important not to rely on profiling which can be discriminatory. Relevant state actors need clear guidelines, procedures and training in the identification of trafficked persons.<sup>14</sup> This

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<sup>11</sup> International Labour Conference, Resolution concerning fair and effective labour migration governance, 106th Session, para.9; ILO, *General principles and operational guidelines for fair recruitment*, Geneva: ILO, 2016; Verité, *Fair Hiring Toolkit*, 2011.

<sup>12</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 4; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; see also Basic principles on the right to an effective remedy for victims of trafficking in persons, in A/HRC/26/18; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, Principles 8 and 17.

<sup>13</sup> CTOC/COP/WG.4/2011/8, para. 24

<sup>14</sup> OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, 20 May 2002, Guideline 2; CTOC/COP/WG.4/2010/7, Annex, paras.(h),(i)

includes border guards, immigration officials and others dealing with the reception and processing of migrants, including in large movements, or who work in immigration detention, and actors such as police and labour inspectors who may encounter trafficking situations. Civil society organisations are critical partners in developing and implementing activities to prevent and end trafficking in persons and, in particular, to protect and assist trafficked persons.<sup>15</sup>

Trafficking is not determined by an individual's migratory or residency status but like any migrants, where trafficked persons are in irregular status, they should not be prosecuted for violations of immigration laws.<sup>16</sup> Furthermore, trafficked persons should not be prosecuted for the activities they are involved in as a direct consequence of their being in a situation of trafficking.<sup>17</sup>

Responses to trafficking should be centred on the needs and human rights of trafficked persons.<sup>18</sup> State authorities should offer trafficked persons temporary residence permits at least for an adequate time to allow for the start of their recovery (reflection period) and during any legal proceedings.<sup>19</sup> Although states are obligated to facilitate safe returns to trafficked persons' countries of origin or residency and not insist that they remain in the country in which the exploitation took place, for example, for what are often lengthy criminal proceedings, this needs to be understood in the context of creating a safe environment for trafficked persons to support their recovery.<sup>20</sup> As such, this must not be a summary return and trafficked persons should be offered legal alternatives to repatriation, such as the option of residency in the country of destination or third-country resettlement, if returns would pose a serious risk to their safety or that of their families.<sup>21</sup> However, given the principle of *non-refoulement*, and in the case of inability to guarantee a safe return, or where there is a risk of re-trafficking, states should provide permanent residency. Any returns of trafficked persons should be voluntary, and carried out with due regard for the rights, safety and dignity of the individual, following an individualised pre-return risk assessment.<sup>22</sup>

**Therefore, the General Recommendation should urge states to:**

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<sup>15</sup> Trafficking in Persons Protocol Articles 6.3, 9.3, 10.2; CTOC/COP/WG.4/2013/5, para.5.

<sup>16</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, Principle 7 and Guideline 2(5).

<sup>17</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Article 26; EU directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU), Article 8; ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No.29), Article 4(2); Trafficking in Persons Protocol Article 7; OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, Guideline 2(5).

<sup>18</sup> UNODC, *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World* (2010), para.36; Report of the UN Secretary General on trafficking in women and girls, 2018, A/73/263, para. 70.

<sup>19</sup> Trafficking in Persons Protocol, Article 7; OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, Principle 9; Report of the UN Secretary General, A/73/263, para. 72.

<sup>20</sup> Trafficking in Persons Protocol, Article 8(2); CTOC/COP/WG.4/2011/8, para.28.

<sup>21</sup> OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, Principle 11 and Guidelines 4.6, 6.7; Report of the UN Secretary General, A/73/263, para. 72.

<sup>22</sup> See UNODC, *The Travaux Préparatoires of the negotiations for the elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto*, UN 2006, pp.387-389; Council of Europe Convention on Action against Trafficking in Human Beings, Article 16; OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, Guideline 6.7; OHCHR, *Recommended Principles and Guidelines: Commentary*, 2010, HR/PUB/10/2, pp. 177-178; Report of the UN Secretary General, A/73/263, para. 72.

- Improve processes to ensure the rapid and accurate identification of trafficked persons by actors with appropriate training involved in the reception, processing and detention of migrants.<sup>23</sup>
- Commit to providing individualised support and assistance to trafficked persons, that is not contingent on their cooperation with the criminal justice system, in the country in which they are identified and if they return to their country of origin or to a third country, for as long as they need it, and ensure that trafficked persons have an enforceable right to fair and adequate remedies, including the means for as full a recovery as possible.<sup>24</sup>
- Adopt legislative or other appropriate measures that permit trafficked persons to remain in the territory, temporarily or permanently, considering humanitarian and compassionate factors.<sup>25</sup>
- Ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody and will not be detained, charged or prosecuted for irregular entry or stay in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.<sup>26</sup>

### *Social inclusion*

Social inclusion is a slow and effort-intensive process that requires work with the trafficked person and their environment (family, community, and the state). It involves psychological support, economic independence, housing, and social relationships, among others. As such, its success is difficult to measure and donors, governments, and international organisations are less willing to fund it.<sup>27</sup> GAATW members in all regions report insufficient funds for long-term social inclusion of trafficked persons.

In destination countries, the assistance to trafficked persons may be conditional on their cooperation with the investigation (see above), and/or only temporary, for example, for the duration of the investigation. In countries of origin, trafficked persons often return to the same socio-economic and political conditions that prompted their migration in the first place.<sup>28</sup> In many cases, they face discrimination and stigma from their family and local communities because of perceived or actual engagement in sex work abroad or because of “failed migration”.

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<sup>23</sup> OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, Guidelines 2(1), (2).

<sup>24</sup> OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, Guidelines 6(7), 9(1); R Surtees, *After Trafficking: Experiences and Challenges in the (Re)integration of Trafficked Persons in the Greater Mekong Sub-region*. Bangkok: UNIAP/NEXUS Institute, 2013; Report of the UN Secretary General, A/73/263, para. 72; CEDAW General Recommendation 33 on women’s access to justice, para. 51 (f).

<sup>25</sup> Trafficking in Persons Protocol Article 7.

<sup>26</sup> OHCHR, *Recommended Principles and Guidelines*, E/2002/68/Add.1, based on Principle 7, see also Guidelines 2(5),(6); CTOC/COP/WG.4/2009/2, para.12; Council of Europe Convention on Action against Trafficking in Human Beings, Article 26.

<sup>27</sup> GAATW submission to the UN Special Rapporteur on Trafficking for a thematic report on social inclusion, November 2018; See also: M Dottridge, ‘Editorial: How is the money to combat human trafficking spent?’, *Anti-Trafficking Review*, issue 3, 2014, <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/62/60>

<sup>28</sup> R Surtees, *Beyond trafficking The re/integration of trafficking victims in the Balkans, 2007 to 2014*, Kind Baudouin Foundation, Brussels, 2015; A Lisborg and S Plambech, *Going Back–Moving on: A synthesis report of the trends and experiences of returned trafficking victims in Thailand and the Philippines*, ILO, Bangkok, 2009; D Brennan, *Life Interrupted: Trafficking into forced labor in the United States*, Duke University Press, Durham, 2014.

The accommodation of trafficked women in “rehabilitation” shelters, as practised in some countries, can lead to grave rights violations, with women being locked up and held against their will, abused by shelter staff, and trying to escape, sometimes at the cost of their lives.<sup>29</sup>

Within and outside shelters, women survivors of trafficking are often taught “feminine” skills as part of reintegration/skills training programmes, such as sewing, knitting, cooking, hairdressing, etc. These skills are not always relevant to the local labour market, and practically condemn women to a lifetime of intensive, low-wage labour. Skills such as computer literacy, or a foreign language, are much more useful nowadays, but require more investment and time.<sup>30</sup>

**Therefore, the General Recommendation should urge states to:**

- Ensure that all short- and long-term assistance services for trafficked women are provided on a voluntary basis and women are not forced into shelters or “rehabilitation” programmes against their will, including by courts. Ideally, shelters for trafficked women should open, placing few, if any, limitations on women’s freedom of movement.
- Ensure that the services provided to trafficked women are regularly evaluated, with women actively contributing to this evaluation.
- Ensure that the skills trainings that trafficked women receive correspond to the local market needs and women’s own ambitions, and can guarantee living wage. Where these skills specifically offer women a path out of the sex industry, women should be allowed to combine sex work with other work, until they themselves decide to leave it.
- Consider supporting community-based programmes for social inclusion, for example, through self-organised groups of trafficked women, as an alternative to “rehabilitation” programmes and shelters.
- Provide long-term, sustainable funding for social inclusion.

*Access to justice*

Migrant and trafficked women face numerous barriers to accessing justice. Some of these include: lack of faith in the national justice system due to deficiencies in democracy and rule of law and perceptions of corruption and impunity; social stigma on “failed migration” and trafficking; lack of knowledge of

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<sup>29</sup> GAATW, *Collateral Damage*, esp. chapters on India and Thailand; K Walters and N Howard, ‘Interview: forced rescue and humanitarian trafficking’, *Open Democracy*, 25 November 2017; R Srivastava, ‘Protect Indian sex workers’ right to reject rehab, say campaigners after reports of abuse’, *Thomson Reuters Foundation*, 26 November 2018; G Soderlund, ‘Running from the Rescuers: New U.S. Crusades against Sex Trafficking and the Rhetoric of Abolition’, *NWSA Journal*, vol. 17, no. 3, 2005; ‘Uzbek woman ends life in rehab centre at Amangal’, *Times of India*, 15 April 2018, <http://timesofindia.indiatimes.com/articleshow/63767998.cms>.

<sup>30</sup> GAATW submission to UN Special Rapporteur on trafficking. See also: Report of the UN Special Rapporteur on Contemporary Forms of Slavery, A/73/139, para. 50; D Bose, “‘There are no Victims Here’: Ethnography of a reintegration shelter for survivors of trafficking in Bangladesh’, *Anti-Trafficking Review*, issue 10, 2018, pp. 139–154, <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/326/272>; D Rousseau, ‘From Passive Victims to Partners in Their Own Reintegration: Civil society’s role in empowering returned Thai fishermen’, *Anti-Trafficking Review*, issue 10, 2018, pp. 88–104.

rights and legislation on behalf of both victims and authorities; lack of (accessible) legal aid; lengthy, costly and inefficient criminal proceedings; criminalisation of trafficked women who are undocumented migrants and/or sex workers; inability to file a complaint and participate in legal proceedings without risking immigration enforcement if undocumented; diplomatic immunity of diplomats employing domestic workers; centralisation of the justice system in the capital, making travel from remote areas burdensome.<sup>31</sup>

**Therefore, the General Recommendation should urge states to:**

- Ensure that trafficked persons are provided with timely and comprehensive information about their right to access legal aid, compensation, and remedies in a language they can understand, regardless of their residence status in the country. Commit funding for the appropriate training of magistrates and social service providers to inform trafficked persons about these rights. Ensure, through legislative and other means, that trafficked persons can access the right to remedy and compensation through different avenues, such as criminal cases, civil cases, and labour courts.
- Establish state compensation funds for victims of trafficking (or, in general, victims of crime) and allocate sufficient funds for them. Ensure that the conditions to access funding from the compensation fund are reasonable and do not place undue burden on trafficked persons.
- Consider decentralisation of the justice system, whereby trafficked women can participate in legal proceedings in their district.
- Establish firewalls between immigration enforcement and labour inspections, and public services, to allow access to justice for all trafficked women without fear of being reported, detained and deported.<sup>32</sup>
- Establish bilateral agreements to ensure that migrant and trafficked women who return to their country of origin have access to justice in the country of employment, in particular to report abuse and claim unpaid wages and benefits.<sup>33</sup>

**Overarching principles:**

**Human rights:** In the implementation of the Convention and all efforts to eliminate trafficking in persons, States should protect and promote the human rights of all migrants, regardless of status, including the enjoyment of all economic, social and cultural rights.

**Gender Equality and the Agency of Women, in line with States obligations under CEDAW, SDG 5, and the Beijing Platform for Action:**

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<sup>31</sup> See: Submission by GAATW to the UN Special Rapporteur on the Human Rights of Migrants for a thematic report on access to justice, [http://gaatw.org/advocacy/Access\\_to\\_justice\\_for\\_migrants-Submission\\_to\\_UN\\_SR.pdf](http://gaatw.org/advocacy/Access_to_justice_for_migrants-Submission_to_UN_SR.pdf); Report of the UN Special Rapporteur on the Human Rights of Migrants on access to justice for migrants, A/73/178/Rev.1, para. 43-57 and para. 65-70; Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences on access to justice for victims of contemporary forms of slavery, A/HRC/36/43, para. 19-40; CEDAW General Recommendation 33 on women's access to justice.

<sup>32</sup> UN Special Rapporteur on the human rights of migrants, A/73/178/Rev.1, para. 75 (h)(i)

<sup>33</sup> *Ibid.*, para. 75 (j).

Migration is often described in gendered terms and through the lens of male experiences, while migration policies often ignore women's migration and rights. Men who migrate are understood to be exercising agency and acting on economic imperatives in their migration, which is usually conceived as labour migration. Conversely, the understanding of women's migration is often limited to a simplistic view of family migration as a largely feminised flow bringing dependents to the private sphere. The language used about women migrants often suggests a lack of choice, capacity or autonomy, assuming an inherent vulnerability and positioning women only as victims in need of protection. Far from supporting women migrants, this framing is often the basis of restricting women's rights and mobility in law or in practice, often under the guise of anti-trafficking efforts.

We urge the CEDAW Committee to avoid, to the extent possible, the language of "women and girls" or "women and children". Women are adults and as such have the right, and the legal capacity, to make independent decisions about their lives. Clubbing women and girls together infantilises women, takes away their agency, and perpetuates women's inferior position to men. Trafficking in women and trafficking in girls, in the context of global migration or otherwise, are caused by different factors, experienced differently by the victims, and require different approaches. We therefore urge the Committee to make the distinction between women and girls very clear in the General Recommendation. Failing to do so will result in more of the same disempowering and protectionist approaches that have plagued states' responses to human trafficking and women's migration for decades.

The **Global Alliance Against Traffic in Women (GAATW)** is an Alliance of more than 80 non-governmental organisations from Africa, Asia, Europe, and the Americas. Member organisations include migrant rights, women's rights and anti-trafficking organisations; self-organised groups of migrant workers, domestic workers, survivors of trafficking, and sex workers; and direct service providers. The GAATW International Secretariat is based in Bangkok, Thailand and co-ordinates the activities of the Alliance, collects and distributes information, and advocates on behalf of the Alliance at regional and international levels.

GAATW sees the phenomenon of human trafficking intrinsically embedded in the context of migration for the purpose of labour. GAATW therefore promotes and defends the human rights of all migrants and their families against the threat of an increasingly globalised labour market and calls for safety standards for migrant workers in the process of migration and in the formal and informal work sectors - garment and food processing, agriculture and farming, domestic work, sex work - where slavery-like conditions and practices exist.

This submission is made on behalf of the Alliance. It has also been endorsed/co-signed by the following organisations non-members of GAATW: Klagsverband, Austria, Hope Now, Denmark, Telangana Domestic Workers Union, India, Peregrina, Austria, VAMP (Veshya Anyay Mukti Parishad), India, SANGRAM Sanstha, India, the National Network of Sex Workers, India, and the Platform for International Cooperation on Undocumented Migrants, Belgium/Europe.