

**Submission on the Draft GR on trafficking in women and girls in the context of global migration**  
**Sexual Rights Initiative**  
**May 2020**

This submission is prepared by the Sexual Rights Initiative (SRI).<sup>1</sup> 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 suggested changes to the General Recommendation proposed in this document are based on following overarching principles, a) the framework for any legislation, policy or programme including criminal laws to address trafficking should respect, protect and fulfill human rights and fundamental freedoms, b) prevention and elimination of human rights violations including trafficking is achieved by addressing root causes which include patriarchal norms c) any anti-trafficking measures undertaken should be in consultation with and participation of women and persons affected d) upholding women's and girls' autonomy should be the goal of all anti-trafficking measures.

### **Suggested Amendments**

#### SECTION III: Legal Framework

**Para 8 - 4:** Its examination of States parties' reports reveal that the abuse of a position of vulnerability, the abuse of power **[INS: are the most common means used to commit trafficking]** **[DEL: and the culture of impunity are the most common means used to commit the trafficking crime, and that victims are often subjected to multiple forms of exploitation such as in cases where women and girls are trafficked for sham, forced, child/early and/or servile marriage, as well as for sexual exploitation, forced labour and domestic servitude]**

**Para 9:** Rephrase the first two sentences of para 9 from **[DEL: Under international law, the act of trafficking is defined as both a criminal offence and as a human rights violation States parties are required to address the phenomenon not only from a criminal justice framework but also as one that respects, protects and fulfills the human rights of persons who are most vulnerable to trafficking, its victims, as set out in the Universal Declaration of Human Rights and in the core United Nations human rights treaties.]** **[INS: While trafficking is defined as criminal offence in international law, States parties' primary obligation is to address trafficking in way that respects, protects and fulfills human rights of all persons particularly**

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

of marginalised groups as set out in the Universal Declaration of Human Rights and in the core United Nations human rights treaties]

**Rationale:** The suggested amendments in section III is to ensure that the legal framework that this General Recommendation outlines is based on human rights principles and pillars that CEDAW uses. It is also important that a human rights-based approach is used including and especially when criminal legislation is framed and discussed. The suggested amendments re-centers the General Recommendation on human rights while using the definition provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Section IV: [INS: Addressing the] root causes of trafficking [DEL: and discouraging the demand that fosters exploitation through trafficking]

**Rationale:** Root causes and discouraging demand cannot be conflated. It is necessary to address root causes as structural and systemic oppressions rather than particular actions of individuals. Consequently, they cannot be equated with individual actions such as discouraging demand. Further, discouraging demand in a criminalised activity does not help in locating the violation but hides the violation. Reporting violation is possible when persons who need to report are not in fear of criminalisation.

d. Obligation to [INS: to address multiple and intersecting forms of discrimination] [DEL: identify women and girls subjected to multiple forms and compounded discrimination as rights bearers]

INSERT additional para:

The Committee has reiterated that recognising and addressing the nature and consequences of multiple and intersecting forms of discrimination against women and girls is essential to eliminate all forms of discrimination and violence including trafficking. States then should identify the compounded ways multiple oppressions impact on women and girls including racism and patriarchy. For instance, women from racial and ethnic minorities and indigenous women face specific and deeply damaging stereotypes and are disproportionately targeted for control. (A/HRC/41/33 para 27)

**Rationale:** All women are rights holders, discrimination occurs in the operationalizing of these rights. Multiple factors affect the enforcement of these rights. The suggested changes are to ensure that the obligation lies upon the state to eliminate discrimination and not upon women to claim the rights.

e. **Root causes of trafficking in women and girls** [DEL: ~~and discouraging the demand that fosters their exploitation through trafficking~~]

**Rationale:** See above on root causes.

INSERT new para above 19:

Elimination of trafficking first and foremost requires women and girls to be seen as autonomous beings who hold multiple identities and experiences and not as passive victims of circumstances and crime. Women's bodies are instrumentalized for cultural, political and economic purposes rooted in patriarchal traditions and are deeply embedded in multiple forms of social and political control over women. It aims at perpetuating taboos and stigmas concerning women's bodies and their traditional roles in society, especially in relation to their sexuality and to reproduction. (Adapted from A/HRC/32/44<sup>2</sup> para 18). Those stereotypes are transcribed into the law or sanctioned by religious and social norms in several States and, in practice, women who fail to conform to those expectations may be subject to harsh judgments and face confinement aimed at punishing, regulating or changing their behaviour. (A/HRC/41/33<sup>3</sup> para 30) These expectations, based on patriarchal ideas of women's "morality" and associated expectations concerning their public and private behaviour, have detrimental effects for women in the justice system (A/HRC/41/33<sup>4</sup> para 31) and the State assumes the function of protecting women. This protection function reframes state obligations away from respecting, protecting and fulfilling human rights and fundamental freedoms of people to 'protecting people'. In doing so, States redefine women and girls as victims without agency and in need of protection, instead of as autonomous persons.

**Rationale:** It is essential to highlight that discrimination due patriarchal gender and sexuality stereotypes is one of the root causes. These stereotypes are not only the cause of violations but often render solutions ineffective if the redressal mechanisms do not make a deliberate attempt to address and eliminate these norms.

**Para 19:** [DEL: ~~Identifying, addressing and eliminating the root causes and discouraging the demand that fosters all forms of exploitation of women and girls through trafficking are key to States parties' prevention efforts.~~]

<sup>2</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/32/44](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/44)

<sup>3</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/41/33](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/33)

<sup>4</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/41/33](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/33)

**Rationale:** Refer to above about conflation of root causes and discouraging demand.

**Para 20:** Trafficking in women is rooted in gender-based discrimination, gender-based structural inequality and the feminisation of poverty compounded by growing global inequalities and the demand for cheap and/or forced labour. **[DEL: including the demand for sexual exploitation. Women and girls continue to be the prime targets of traffickers, especially for the purpose of sexual exploitation, due to pervasive and persistent gender inequality resulting in an economic, social, and legal status that is lower in comparison than that which is enjoyed by men and boys.] [INS: The constraints on choices and opportunities are a product of structural inequalities and discriminatory policies and institutions that fail to tackle adequately the injustices produced through globalized macroeconomic and political factors, including the privatization of public goods, deregulated labour markets, the shrinking of the welfare state and austerity measures as part of structural adjustment policies and aid conditionality. Those factors further reinforce, and are perpetuated by, localized and particular discriminatory cultural and social norms that also engender different systems of oppression for different groups of women and gender non-conforming persons]** **[Source:** Adapted from para 57 of A/HRC/41/33<sup>5</sup>, Report of working group on discrimination against women and girls.]

**Rationale:** The paragraph deals with root causes and the demand for cheap and/or forced labour is a result of the structural inequalities, free-market capitalist macroeconomic policies, and discriminatory attitudes. The suggested reformulation adapted from the report of the Working Group on discrimination of women and girls goes to the crux of the problem and the complex interplay of multiple systems that lead to women and girls precarious work conditions in different sectors. The suggested deletion of the mention of sexual exploitation is to ensure that the GR does not employ exceptionalism, which results in creating a hierarchy of violations and contravenes the principles enshrined by the Convention.

**Para 27: DELETE as a whole**

**Rationale:** The recommendation in para 27, has the impact of criminalising all activities and removing the limited labour options for women and girls. It has the further consequence of equating women and girls with goods, and denying them any voice and any agency.

**INSERT** new para:

<sup>5</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/41/33](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/33)

International human rights law instruments have long placed obligations on States to eliminate discrimination, but multiple and intersecting forms of discrimination continues to be faced by women and gender non-confirming persons around the world. In order to combat this, States should re-evaluate and reform laws and practices that tend to disproportionately or differently target, police and criminalize any particular group of women and gender non-confirming persons, and create accountability mechanisms to prevent, mitigate and remedy the discriminatory application of the law. [Source: Adapted from para 83 (a) of A/HRC/41/33<sup>6</sup> Report of working group on discrimination against women and girls.]

**Rationale:** The suggested recommendation is adapted from A/HRC/41/33, Anti-trafficking measures which are based on criminal law and target and penalise women and girls instead of addressing systemic issues, These measures have exacerbating consequences for marginalised women and girls and there is a need to review the criminal measures.

#### SECTION IV. Victims access to Justice

**Para 88:** b. Adopt specific protection measures [INS: and remedies] for victims of trafficking that take into account the needs of women subjected to multiple forms of discrimination, including forcibly displaced and migrant women;

**Rationale:** While the criminal prosecution can serve to punish perpetrators it often provides no remedies for women who have been subjected to violations. Protection measures should include remedies as defined by persons affected and nature, design and implementation of the remedies should be in consultation with persons affected.

**Para 92:** b) Ensure that raids conducted by law enforcement authorities with a view to dismantling trafficking networks do not justify or result in criminal prosecution or other coercive measures, including gender-based violence, abuse and harassment, against any group of women [INS: particularly sex workers and migrant women];

c) Ensure that no [DEL: group-of] woman is targeted for investigation or prosecution, discrimination, stigmatisation, [DEL: suffers from the lack of rights and protections.] [INS: and/or denied human rights protections as part of] or under the guise of combatting trafficking, including violations of their rights to [INS: liberty] movement, assembly, [INS: association] health and safety, to dignity and livelihood;

<sup>6</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/41/33](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/33)

d) Discontinue anti-trafficking measures that involve the apprehension, detention and involuntary rehabilitation of women, which are [DEL: often experienced as antagonistic and traumatic] [INS: a violation of human rights including the right to life, bodily autonomy and integrity, liberty, health, association and the right to live free from violence and can amount to torture or other forms of ill-treatment];

**Rationale:** Measures such as restriction to movement, involuntary detention, violence and harassment cannot be justified or condoned in any fashion. State and government functionaries should be held accountable for all such forms of violence.