**Written contribution to the UN Committee on the Elimination of Discrimination Against Women for its half-day general discussion on trafficking in women and girls in the context of global migration**

 **22 February 2019**

We commend the CEDAW Committee for making trafficking in women and girls in the context of global migration the subject of its forthcoming General Recommendation and respectfully submit the following contribution.

This contribution focuses on the following key concerns of the Committee, as stated in the associated Concept Note:[[1]](#footnote-1)

* Trafficking in women and girls is rooted in gender-based discrimination, gender-based structural inequality and the feminisation of poverty
* Irregular and unsafe migration channels increase risks of trafficking in women and girls; and
* Sector-specific migration rules and policies can perpetuate victimisation of women and girls

**1. Trafficking in women and girls is rooted in gender-based discrimination, gender-based structural inequality and the feminisation of poverty[[2]](#footnote-2)**

According to article 6 of CEDAW, States parties have an obligation to take measures to suppress all forms of trafficking in women.[[3]](#footnote-3) This means, in the first place, that States parties have the responsibility to take measures to *prevent* trafficking in women and girls. As part of the prevention framework, States parties should take measures to address the *root causes* of trafficking in women and girls.

Gender-based inequality and discrimination that creates situations of poverty for women and girls is known to be a root cause of trafficking,[[4]](#footnote-4) which States parties have a responsibility to address in line with Sustainable Development Goal No. 1 to end poverty in all its forms everywhere.[[5]](#footnote-5) Poverty is multi-dimensional and reflects the cumulative disadvantage and deprivations people face due to the violations of their socio-economic human rights. This is especially true for women and girls as they are "more likely to be impoverished, uneducated and disempowered by societal and family structures."[[6]](#footnote-6)

As Guideline 1 of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking reads: "Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking."[[7]](#footnote-7) Consequently, as regards poverty, a particular focus needs to be on socio-economic rights.

According to General Comment No. 3 on State obligations under the ICESCR, States parties have an immediate obligation to address minimum core-obligations of the socio-economic rights enshrined in the ICESCR, such as the right to education (article 13 of the ICESCR) or the right to health (article 12 of the ICESCR).[[8]](#footnote-8)

Article 4 of CEDAW allows for temporary measures to achieve substantive equality[[9]](#footnote-9). In light of article 4 and the CEDAW Committee’s General Recommendation No. 25 (2004), article 6 of CEDAW should be read as requiring "immediate, as opposed to progressive, implementation"[[10]](#footnote-10) and therefore necessitating States parties to adopt urgent measures to provide redress in areas in which women and girls are experiencing *extreme poverty*[[11]](#footnote-11) and *severe inequalities,* both resulting in heightened exposure to trafficking.[[12]](#footnote-12)

In the first instance, States parties need to follow through with their commitments and meet their obligations to realise socio-economic human rights as stipulated in CEDAW and other human rights treaties, including IESCR, CRC, and CRPD. Where States parties have not ratified any of these treaties, they are encouraged to do so as a matter of urgency.

Secondly, States parties are invited to apply the Multidimensional Poverty Index (MPI) used by the United Nations Development Programme and adapt it to their national plans and priorities:

"The MPI looks beyond income to understand how people experience poverty in multiple and simultaneous ways. It identifies how people are being left behind across three key dimensions: *health, education and standard of living*, comprising 10 indicators. People who experience deprivation in at least one third of these weighted indicators fall into the category of multidimensionally poor."[[13]](#footnote-13)

Such an approach will contribute significantly to identifying and targeting the dimensions in which women and girls are experiencing extreme poverty and severe inequalities, both leading to heightened vulnerability and exposure to trafficking. Moreover, familiarity with the MPI will help monitor the progress with the preventative approach to human trafficking.

Such a preventative approach is further warranted by, and in line with, article 4 of CEDAW and the CEDAW Committee’s General Recommendation No. 25 (2004) on temporary special measures to achieve substantive equality.[[14]](#footnote-14)

As a result, the adoption of the MPI, adapted to national policies, will be an important tool to develop and adopt such urgent measures where needed to address the related socio-economic rights of women[[15]](#footnote-15) and girls, especially in the areas of education (article 10 of CEDAW)[[16]](#footnote-16) and health (article 12 of CEDAW)[[17]](#footnote-17).

*We respectfully close this part with the following recommendations:*

1. *Article 6 of CEDAW requires States parties to meet the minimum core-obligations of the socio-economic rights stipulated in CEDAW in order to address the root causes of trafficking in women and girls, namely gender-based discrimination and inequality leading to poverty.*
2. *Article 6 of CEDAW further requires States parties to adopt urgent temporary measures in accordance with article 4 of CEDAW to provide redress in areas in which women and girls are experiencing extreme poverty and severe inequalities, both resulting in heightened exposure to trafficking.*
3. *The Committee may recommend that States parties use the UNDP's Multi-dimensional Poverty Index (MPI) and adapt it to their national policies in order to comply with the socio-economic human rights obligations, to develop special temporary measures and to meet their SDGs, in particular SDG 1 (no poverty) and SDG 5 (gender equality).*

**2. Irregular and unsafe migration channels greatly increase the risks of trafficking in women and girls**

Further, it is our submission that an inhospitable State response to those without regular migration status creates conditions in which women are forced into exploitative relationships with third parties (including smugglers and employers) that benefit from unsafe and irregular migration routes in which the trafficking of women and girls prospers.[[18]](#footnote-18)

Agricultural, domestic work and the garment industry all demonstrate a high percentage of irregular women migrants in circumstances that are characterised by a lack of oversight, poor implementation of labour laws, and regular human rights abuses.[[19]](#footnote-19) In such sectors, women and girls are deprived of protection of labour laws and inspection mechanisms, and are unable to seek access to basic services or justice owing to fears of their irregular migration status being discovered by authorities.[[20]](#footnote-20)

It is well understood that women and girl migrants are at particular risk of trafficking. The UN Declaration for Refugees and Migrants, adopted by the UN GA on 19 September 2016 (A/RES/71/1) draws attention to the special situation and vulnerability of women and girls to trafficking. The final draft of the Global Compact for safe, orderly and regular migration also requires States to pay particular attention to women and children who have become victims of trafficking, ensuring identification, protection and assistance.[[21]](#footnote-21)

In response to the increased numbers of irregular migrants arriving at their shores, States have escalated their attempts to deter and reject new arrivals. Measures have typically included the criminalisation of immigration offences (such as irregular border crossing or overstaying) and detention. Various reports demonstrate that the lack of adequate reception and detention facilities, and the mandatory or indefinite detention of migrants for administrative purposes have led to a number of human rights violations and does not respect international human rights.[[22]](#footnote-22)

Migration-related detention in unsuitable facilities, particularly those designed for criminal punishment, is *per se* punitive, and as such, unlawful. Prolonged or indefinite detention of migrants based solely on their immigration status does not have due regard to the requirements of necessity and proportionality and is therefore also unlawful. Where such migration detention is used for reasons of deterrence or punishment, the UN Special Rapporteur on torture has argued that it may amount to torture.[[23]](#footnote-23)

The Global Compact on Migration adopted in December 2018 addresses concerns to ensure international cooperation towards the establishment of regular pathways for regular migration (objective 5) and prohibit human trafficking (objective 10).

The Concept Note further recognises the wider international legal framework that supports and strengthens the scope of CEDAW article 6 to combat trafficking, and it is our submission that due regard must be given to recognising the link between duties of States to prevent torture and trafficking, to better protect women and girls from violence, including non-State violence.

Women and girl victims of trafficking experience multiple severe forms of intentional gendered abuse.[[24]](#footnote-24) The trafficking of women and girls, and particularly trans-national trafficking, often involves not only smugglers and traffickers, but also cooperation or consent from border officials, law enforcement and other State officials. As such, the trafficking of women and girls will often likely violate the absolute prohibition against torture and other forms of ill-treatment.[[25]](#footnote-25)

The CEDAW Committee may also recognise that trafficking is a form of gender-related persecution and should serve as a strong basis for an international protection claim of asylum. Even in circumstances where an asylum claim is unsuccessful, the use of removal procedures without adequate screening and identification of victims of trafficking to a country where they face a risk of exploitation, re-trafficking or reprisals from traffickers engages *non-refoulement* obligations under the Convention against Torture and the Convention Relating to the Status of Refugees, notwithstanding the fact that the risk of abuse is from a non-State actor.

Cognisance of the wider international legal framework enables States parties to take account of multiple positive duties of CEDAW States parties to provide protection for women and girls against trafficking and gender-based violence from private individuals,[[26]](#footnote-26) and to effectively recognise women and girls as victims of trafficking when given an opportunity to do so.

*We respectfully close this part with the following recommendations:*

1. *Due regard may be given to the Global Compact on Migration and the commitment that States have made to ensure that pathways for regular migration are opened to reduce the need for women and girls to take unsafe irregular routes that makes them vulnerable to trafficking.*
2. *Inhospitable State policies and practices which make the situation of undocumented and irregular migrants increasingly vulnerable serve to encourage trafficking of women and girls, as migrants must rely on dangerous and exploitative relationships in order to survive.*
3. *States parties should recognise the close relationship between trafficking and torture, which requires a responsibility in appreciating a wider range of international duties to prevent trafficking and gender-based violence.*

**3. Sector-specific migration rules and policies can perpetuate victimisation of women and girls**

Finally, we draw attention to the role of domestic immigration rules in enabling trafficking in gendered sectors (e.g. domestic work, entertainment) by creating precarious employment/migration status.[[27]](#footnote-27)

In *Rantsev v. Cyprus and Russia,*[[28]](#footnote-28) the European Court of Human Rights acknowledged the role that the Cypriot artiste visa scheme had played in encouraging the trafficking of women for exploitation in the entertainment sector in Cyprus. After highlighting the weaknesses of Cypriot immigration policy,[[29]](#footnote-29) the Court concluded that the artiste visa regime in Cyprus had not afforded to the victim “practical and effective protection against trafficking and exploitation.”[[30]](#footnote-30)

The Court’s scrutiny of Cypriot immigration rules revealed one of the mechanisms encouraging/facilitating trafficking of women in Cyprus: strong *dependency* of female artistes on their employers and excessive *controlling* powers of the latter over the former. The Court said: “Measures which encourage cabaret owners and managers to track down missing artistes or in some other way to take personal responsibility for the conduct of artistes are unacceptable in the broader context of trafficking concerns regarding artistes in Cyprus.”[[31]](#footnote-31)

In the *Rantsev* reasoning, the Court recognises that immigration law and policy may contribute to creating conditions for trafficking of migrant women and girls, including into gendered sectors. Consequently, “the spectrum of safeguards set out in national legislation must be *adequate* to ensure the *practical* and *effective protection* of the rights of victims or potential victims of trafficking”.[[32]](#footnote-32) Adequate national frameworks entail going beyond criminal laws to punish traffickers and ensuring that “a State’s immigration rules […] address[es] relevant concerns relating to encouragement, facilitation or tolerance of trafficking.”[[33]](#footnote-33)

Feminist legal scholars have since uncovered the gender stereotype implicit in the Cypriot artiste visa regime: female artistes as “the (sexual) property of their employers.”[[34]](#footnote-34) The immigration requirement that the agent obtained the visa for the artiste – coupled with the Cypriot police action to call the cabaret manager to collect the artiste because he was “responsible for her” – suggests that “the agents in this system are the (male) cabaret owners and not the women themselves.”[[35]](#footnote-35) The effect is that “women are made dependant on their exploiters.”[[36]](#footnote-36)

From the feminist analysis of *Rantsev*, the following points are key for present purposes: State immigration law and policy may be informed by harmful gender stereotypes; and appropriate measures to combat trafficking of women and girls should require non-gender-discriminatory immigration rules, including immigration rules free from harmful gender stereotypes.

We respectfully suggest that Article 6 obligation to “take all appropriate measures, including legislation, to suppress all forms of traffic in women” should go beyond putting in place criminal law measures to punish individual traffickers.

In interpreting state obligations under Article 6, the CEDAW Committee may draw inspiration from the Strasbourg Court’s principle in *Rantsev*: “a State’s immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking.” [[37]](#footnote-37) This obligation may be particularly relevant where States are aware of the effects of their immigration rules (i.e. that these rules are enabling trafficking). However, as States may not always be aware of the effects of their immigration norms (or may deny the effects they have in reality), States may provide for a self-monitoring mechanism so as to ensure that these norms are not in practice (sometimes unintendedly) contributing to creating trafficking conditions in gendered sectors.

In line with CEDAW Article 5, the Committee may further outline a State obligation to ensure that immigration rules do not reinforce gender stereotypes conducive to trafficking of women and girls, including the stereotypes of male sexual entitlement, control, and ownership.[[38]](#footnote-38)

*We respectfully close this part with the following recommendations:*

1. *In combating trafficking of women and girls it is fundamental to illuminate the role the state may play in enabling exploitation by private actors or state agents through its immigration law and policy.[[39]](#footnote-39)*
2. *The obligation to take “appropriate measures, including legislation” should apply in the immigration sphere and include an obligation to ensure that immigration rules do not encourage/facilitate trafficking and are not based on discriminatory gender stereotypes.*

We wish to express our thanks to the CEDAW Committee for the opportunity to make a submission and look forward to further discussions in the elaboration of the General Recommendation on trafficking in women and girls in the context of global migration.

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1. 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 [Concept Note], [↑](#footnote-ref-1)
2. For a discussion of "feminisation of poverty", see Amy M. Russell (2014), “Victims of Trafficking”: The Feminisation of Poverty and Migration in the Gendered Narratives of Human Trafficking, *Societies*, 4, 532–548; <http://dx.doi.org/10.3390/soc404053>; see also Saskia Sassen (2002), Women's Burden: Counter-Geographies of Globalization and the Feminization of Survival, Nordic Journal of International Law, 71 (2):255, <https://doi.org/10.1163/157181002761931378>. [↑](#footnote-ref-2)
3. Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 (CEDAW), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [↑](#footnote-ref-3)
4. John R. Barner et al. (2014), Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade, *Societies,* 4, 148–160, <http://dx.doi.org/10.3390/soc4020148>; Kevin Bales (2007), What Predicts Human Trafficking?, *International Journal of Comparative and Applied Criminal Justice*, 31:2, 269-279, <http://dx.doi.org/10.1080/01924036.2007.9678771> . [↑](#footnote-ref-4)
5. A/RES/70/1 (21 October 2015) - Transforming our world: the 2030 Agenda for Sustainable Development <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> [↑](#footnote-ref-5)
6. Concept Note, para. 25. "In addition to differential treatment in the law, women and girls may be adversely impacted by economic and public policies that result in a lack of sustainable livelihood options and basic living standards. Social structures limit women’s autonomy and access to key resources, including economic, land, information and knowledge. These effects are compounded by gender-based violence against women, gender-based discrimination and marginalization." Ibid. See also Selim Jahan, *Violence against women, a cause and consequence of inequality*, 19 November 2018, <http://hdr.undp.org/en/content/violence-against-women-cause-and-consequence-inequality>; Naila Kabeer (2015) Gender, poverty, and inequality: a brief history of feminist contributions in the field of international development, *Gender & Development*, 23:2, 189-205, <https://doi.org/10.1080/13552074.2015.1062300> [↑](#footnote-ref-6)
7. United Nations, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1. [↑](#footnote-ref-7)
8. "[T]he Committee is of the view that a *minimum core obligation* to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant" [emphasis added]. ICESCR General Comment No. 3, The nature of States parties’ obligations (art. 2, para. 1, of the ICESCR) (1990), para. 10. [↑](#footnote-ref-8)
9. See also CEDAW General Recommendation No. 25 (2004), on article 4, paragraph 1, <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>. [↑](#footnote-ref-9)
10. Concept Note, para. 39. [↑](#footnote-ref-10)
11. "*Extreme poverty* involves a lack of income, a lack of access to basic services and social exclusion (A/HRC/7/15, para. 13, emphasis added).  This accords closely with the United Nations Development Programme’s (UNDP) ‘Multidimensional Poverty Index’, which seeks to reflect multiple deprivations at the household level, including in health, schooling and living conditions. Using a multidimensional approach to poverty, the incidence of extreme poverty around the world is staggering. According to UNDP’s Human Development Report 2014, over 2.2 billion people, more than 15 per cent of the world’s population, “are either near or living in multidimensional poverty”. UN Special Rapporteur on extreme poverty and human rights, <https://www.ohchr.org/en/issues/poverty/pages/srextremepovertyindex.aspx>. See also UNDP (2014), *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, <http://hdr.undp.org/en/content/human-development-report-2014> [↑](#footnote-ref-11)
12. Compare Concept Note, para. 39. [↑](#footnote-ref-12)
13. <http://hdr.undp.org/en/2018-MPI>; see also Sabina Alkire and Selim Jahan (2018), *‘The New Global MPI 2018: Aligning with the Sustainable Development Goals’*, <http://hdr.undp.org/en/content/new-global-mpi-2018-aligning-sustainable-development-goals>, emphasis added. [↑](#footnote-ref-13)
14. CEDAW General Recommendation No. 25 (2004), on article 4, paragraph 1, <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx> [↑](#footnote-ref-14)
15. Including the particular concerns of rural women and the roles they play in the economic survival of their families, see article 14 of CEDAW. See also General Recommendation No. 34 (2006). [↑](#footnote-ref-15)
16. See also ICESCR article 13; CRC article 28; and CRPD Article 24. [↑](#footnote-ref-16)
17. See also ICESCR article 12; CRC article 24; and CRPD Article 25. [↑](#footnote-ref-17)
18. Global Alliance against Traffic in women, The Gender Dimension of Human Trafficking. [↑](#footnote-ref-18)
19. Report of the Special rapporteur on contemporary forms of slavery, A/73/139, 10 July 2018. [↑](#footnote-ref-19)
20. Global Alliance against Traffic in women, The Gender Dimension of Human Trafficking. [↑](#footnote-ref-20)
21. Global Compact for safe, orderly and regular migration, per final draft, 11 July 2018, Objective 10. [↑](#footnote-ref-21)
22. See, for instance, Report of the Special Rapporteur on torture, 26 February 2018, A/HRC/37/50, at 19. [↑](#footnote-ref-22)
23. *Ibid*. [↑](#footnote-ref-23)
24. Report of the UN Special Rapporteur on torture, A/HRC/7/3, 15 January 2008, paras. 56-58. [↑](#footnote-ref-24)
25. Report of the Special Rapporteur on torture, 26 February 2018, A/HRC/37/50, at 34. See also, OSCE, Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment (2013), pp.20-27, [↑](#footnote-ref-25)
26. ECHR, *Siliadin v. France*, Application no. 73316/01, 26 October 2005. [↑](#footnote-ref-26)
27. See generally Vladislava Stoyanova, Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law (CUP 2017) and Siobhan Mullally, “Migration, Gender, and the Limits of Rights” in Ruth Rubio-Marin (ed), Human Rights and Immigration (OUP 2014). See also Lourdes Peroni, “The Borders that Disadvantage Migrant Women in Enjoying Human Rights,” 36 (2) *Netherlands Quarterly of Human Rights* (2018) 1-18. [↑](#footnote-ref-27)
28. ECtHR, *Rantsev v. Cyprus and Russia*, 7 January 2010, Application No. 25965/04. [↑](#footnote-ref-28)
29. The Court critiqued the artiste visa regime for requiring cabaret managers to apply for entry permits on behalf of artistes and for requiring cabaret owners/managers to deposit a bank guarantee to cover potential repatriation costs. Ibid. paras 291-2. [↑](#footnote-ref-29)
30. Ibid. para 293. The Court accordingly found a violation of Article 4 ECHR. [↑](#footnote-ref-30)
31. Ibid. para 292. [↑](#footnote-ref-31)
32. Ibid. para 284. Emphasis added. [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. Alexandra Timmer, “Toward an Anti-Stereotyping Approach for the European Court of Human Rights” (2011) 11 *Human Rights Law Review* 732. [↑](#footnote-ref-34)
35. Ibid. [↑](#footnote-ref-35)
36. Ibid. [↑](#footnote-ref-36)
37. *Rantsev* para 284. [↑](#footnote-ref-37)
38. In line with Concept Note, para 40. [↑](#footnote-ref-38)
39. For a fuller analysis of how the state may create “structural conditions of vulnerability to exploitation through law,” in particular through its labor law, see Virginia Mantouvalou, “Legal Construction of Structures of Exploitation,” in Hugh Collins, Gillian Lester and Virginia Mantouvalou (eds) Philosophical Foundations of Labour Law (OUP 2018). [↑](#footnote-ref-39)