**Concept note response
CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration
18 February 2019**

**Summary**

PROUD, the Dutch sex worker union, requests the Committee on the Elimination of Discrimination Against Women to consider the following when elaborating a General Recommendation on CEDAW art. 6:

* The General Recommendation should not infringe upon the human rights and labour rights of women and girls, particularly trafficked or smuggled (migrant) sex workers.
* The General Recommendation should uphold a gender-sensitive, rights-based, and evidence-based approach.
* We call upon the Committee to remove all references to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as this would be a setback for respecting the rights of sex workers.
* We urge the Committee to distinguish more clearly between trafficking and smuggling, and coercion and consent.

**Introduction**PROUD appreciates the efforts of the Committee to create a General Recommendation on article 6 of the CEDAW. We are concerned for the human rights and labour rights of trafficked and smuggled persons working in the sex industry. The following response will briefly address this issue.

**Sex work is work**Even when done under unsafe, unhealthy, or exploitative conditions, sex work is work. Labour does not become something else when this labour is deeply exploitative or done under unacceptable conditions[[1]](#footnote-1). States must respect, protect and fulfil labour rights for all, including trafficked and smuggled persons.

Sexual exploitation within the sex industry is a form of forced labour. The human rights of sex workers are in grave danger when we do not pay attention to situations of exploitation that can arise whilst working in the sex industry, but merely on how one gets involved in the sex industry. This falsely suggests that forced labour cannot exist in the sex industry, or that by consenting to opt for this line of work, it is considered ‘part of the deal’.[[2]](#footnote-2)

‘*The struggle for the recognition of sex work as work is closely tied to the struggle for decriminalisation. Central to the demand for decriminalisation is the argument that sex workers should be afforded the civil and labour rights and social protections that are the entitlement of all workers, regardless of occupation’.*

* NSWP Sex Work as Work policy brief p. 1 -

We remind States of the possibility of and urge them to respect the trafficked or smuggled person’s choice and consent to work in the sex industry, for whatever reason or necessity, as well as respect, protect and fulfil the human rights and labour rights of all people in this industry. This includes respecting and acknowledging the diversity of people involved in the sex industry. Gender-sensitive in this case means more than women and girls. Although fewer in number, adequate attention is needed for trafficked or smuggled men and trans people. Next to this, an approach of harm reduction must always be chosen over the harsh effects of criminalisation, which includes not arresting or penalizing sex workers when seeking assistance for a situation of exploitation, in a context where their work is criminalized.

PROUD strongly advises to use the term ‘trafficked persons’ above the term ‘victims’ in all documents of international (soft)law. ‘The term ‘victim’ tends to reduce the identity of, in particular, women and girls to that of a passive victim rather than recognising them as persons with agency, decision-making abilities and rights.’[[3]](#footnote-3)

**Eliminating discrimination against trafficked and smuggled women and girls**A step forward in eliminating discrimination against women and girls who are deeply exploited, starts by States respecting their labour rights. Anti-trafficking measures should never adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked and of migrants, internally displaced persons, refugees and asylum seekers.[[4]](#footnote-4)The health and safety for the trafficked person must be prioritized over criminal investigations.

Trafficked persons who are deeply exploited, should not be discriminated against by law or practise when seeking help or assistance.[[5]](#footnote-5) Conditions of coercion, abuse and deceit should be addressed when protecting human rights, no matter in what industry, or prior choices of the trafficked or smuggled person.[[6]](#footnote-6) Therefore PROUD advocates for a broad and inclusive definition of trafficking. Trafficking is constituted in the cases of forced labour, slavery and servitude, irrespective of the nature of the work, the services provided or the gender of the trafficked person.

**Removing harmful references and ambiguity**We call upon the Committee to remove all references to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as this would be a setback for respecting the rights of sex workers. The rules laid down in this convention are discriminatory toward sex workers, irrespective of their choice and consent to a certain situation, and do not in any way contribute to protecting the human rights of trafficked and smuggled persons.

Next to this, we urge the Committee to distinguish more clearly between trafficking and smuggling, and coercion and consent.

‘Although the problem of needing to prove innocence is particularly visible and began in relation to the sex industry, it has spread in relevance to all trafficked undocumented migrants who may be perceived to lack the necessary ‘innocent victim’ status, as they may have consented to illegal border crossing, smuggling or working in exploitative conditions.’[[7]](#footnote-7)

‘A person can consent to be smuggled, to migrate or to work as a domestic worker, sex worker or any other work, but this does not imply that the person consented to the exploitation.’[[8]](#footnote-8)

1. NSWP Sex work as work policy brief, 2017 via: <https://www.nswp.org/sites/nswp.org/files/policy_brief_sex_work_as_work_nswp_-_2017.pdf> [↑](#footnote-ref-1)
2. M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, Anti-Trafficking Review, issue 4, 2015, pp.56—79, www.antitraffickingreview.org, page 7-8. [↑](#footnote-ref-2)
3. M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, Anti-Trafficking Review, issue 4, 2015, pp.56—79, www.antitraffickingreview.org, page 7. [↑](#footnote-ref-3)
4. M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, Anti-Trafficking Review, issue 4, 2015, pp.56—79, www.antitraffickingreview.org, P. 12 [↑](#footnote-ref-4)
5. M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, Anti-Trafficking Review, issue 4, 2015, pp.56—79, www.antitraffickingreview.org, page 3-4. [↑](#footnote-ref-5)
6. M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, Anti-Trafficking Review, issue 4, 2015, pp.56—79, www.antitraffickingreview.org, page 2-3. [↑](#footnote-ref-6)
7. Experts Group on Trafficking in Human Beings, p. 51. [↑](#footnote-ref-7)
8. M Wijers, ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’, Anti-Trafficking Review, issue 4, 2015, pp.56—79, www.antitraffickingreview.org, page 10. On the issue of consent also see: UNODC, ‘The Role of Consent in the Trafficking in Persons Protocol’, Issue Paper, UNODC, 2014. [↑](#footnote-ref-8)