

JOINT RESPONSE TO THE DRAFT CEDAW GENERAL RECOMMENDATION ON TWGCGM

INTRODUCTION

This submission is made on behalf of 17 individuals and organizations who have closely engaged in advocacy with the CEDAW Committee through the process of elaboration of the draft General Recommendation on TWGCGM in 2019-2020 [See Annex 1: List of Endorsements]. We appreciate the CEDAW Committee's interest in tackling such a pressing issue. We wish to begin by highlighting some reflections on the premise of the draft General Recommendation and assumptions which are replicated therein.

The mandate of the CEDAW Committee requires it to understandably focus on trafficking in women and girls, rather than trafficking in general. However, the draft general recommendation utilizes phrasing that perpetuates the incorrect notion that trafficking primarily affects women and girls. This serves to obscure the vast numbers of men and boys who fall victim to it, and often goes hand in hand with a presumption that trafficking equals sex trafficking. While drawing attention to the crucial gender dimensions of trafficking, we urge the Committee to guard against the dangers of employing language that contribute to exceptionalizing, sensationalizing and stigmatizing women and girls impacted by trafficking and obscuring the full scope of trafficking in persons.

The General Recommendation will be adopted in a world that has suffered through the COVID-19 crisis and its devastating economic consequences. Even as the CEDAW Committee addressed 'global migration' as the key contextual factor impacting trafficking when the drafting of the general recommendation began, it must respond to the critical women's rights concerns that are arising in the wake of the COVID-19 crisis in order to have its intended gender transformative impact. Due to COVID-19, movement is likely to be restricted for an extended period of time, changing the shape of migration. The devastating economic consequences of COVID-19 and attendant lockdowns are also likely to put more people at risk of rights violations in their search for opportunities. Restrictions on migration across borders deny people, particularly people from the Global South, access to legal routes. As a result, many turn to third parties to facilitate their movement in search of work and/or refuge overseas, which leaves them highly vulnerable to trafficking. Until these structural inequalities are removed from border controls, trafficking will continue, and we are troubled that despite repeated calls to recognise this reality, the draft General Recommendation does not appear to do so, despite its focus on migration. As such, we would suggest that the focus instead be shifted to trafficking in women and girls in the context of in the context of restrictive and discriminatory border regimes.

SUMMARY OF KEY CONCERNS AND REQUESTED CHANGES- Below we set out specific suggestions for amendments to the draft GR. In all places, the text in red indicates insertions and text with strikethroughs indicate deletions.

Section III Legal Framework: Requested change- insertion of new para 9

The Committee notes that the term 'sexual exploitation' as utilized in this General Recommendation does not refer to all sex work [prostitution].¹

Reason

Defining sex work as 'sexual exploitation' exacerbates the vulnerability of sex workers and results in human rights abuses. The conflation of sex work with 'sexual exploitation' and with trafficking is a major factor in perpetuating coercive and precarious working conditions in sex work and leads to harmful

¹ United Nations Office on Drugs & Crime, [Issue Paper: The Concept of 'Exploitation' in the Trafficking in Persons Protocol](#), 2015

legislation that limits sex workers' access to justice and services. UNODC reflected on the concept of 'exploitation' in the Trafficking in Persons Protocol, acknowledging that sex work must not be conflated with human trafficking. It also clarified that 'sexual exploitation' does not refer to all sex work: **"When used in the context of the Protocol, this term could not be applied to prostitution generally as States made clear that was not their intention."**² Further, UNODC explicates the misuse of trafficking law as a result of inadequate definitions, including of the term exploitation, noting that it is poorly defined and highly contested.³

Section IV, a, para 12: Requested change- addition

The Committee notes the limitations of existing data sets on trafficking. Sexual exploitation is the most commonly identified form of trafficking because it is more widely reported in comparison to other forms of exploitation such as forced labour or domestic servitude.⁴ Further, according to the 2017 Global Estimates of Modern Slavery, of the 16 million people in forced labour exploitation, 57.6% were female.⁵

Reason

The GR is based solely on narrow UNODC data and would benefit greatly from a broader, more nuanced, framework that reflects the modern reality of the phenomenon of modern slavery and human trafficking. UNODC also note the serious gaps and weaknesses in trafficking data, noting that the fact that sexual exploitation is the most commonly identified form of human trafficking, may be the result of statistical bias, "By and large the exploitation of women tends to be visible, in city centres, or along highways. Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported: forced or bonded labour; domestic servitude and forced marriage; organ removal; and the exploitation of children in begging, the sex trade, and warfare."⁶ ILO data found 38.2% of all victims of modern slavery are in the category of forced marriage. 11.9% fell into the category of "forced sexual exploitation / CSE of children", while 49.9% of people in modern slavery were enslaved in other forms of forced labour.

Section IV, e, para 20: Requested change- insertion and deletion

Trafficking in persons is a consequence of globally dominant economic and development policies that have exacerbated large scale economic inequality, between States and between individuals that manifests as labour exploitation. Women are disproportionately impacted by this economic injustice, including in the form of their vulnerability to trafficking. ... Women and girls continue to be the prime targets of traffickers for some forms of exploitation, 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.

Reason

In order for the general recommendation to have its envisaged gender transformative impact, it is important to locate 'trafficking as a manifestation of gender-based discrimination and gender-based structural inequality' within a broader global political and economic context. This is necessary in order to ensure that States address the structural causes of trafficking per se. In the absence of efforts to address the structural causes of trafficking, measures to address its gender-specific dimensions will be rendered meaningless. Further, we suggest rephrasing the sentence "Women and girls continue to be the prime

² NSWP, [Briefing Note: Sex Work is not Sexual Exploitation](#), 2019.

³ United Nations Office on Drugs & Crime, [Issue Paper: The International Legal Definition of Trafficking in Persons](#), 2018

⁴ United Nations Office on Drugs & Crime, [Global Report on Trafficking in Persons](#), 2018

⁵ International Labour Organization & Walk Free Foundation, [Global estimates of modern slavery: Forced labour and forced marriage](#), Geneva, 2017

⁶ United Nations Office on Drugs & Crime, [Global report on Trafficking in Persons](#), 2009.

targets of traffickers” to qualify that women and girls are the prime targets of traffickers for some forms of exploitation. Over-simplified narratives of women and girls as the prime targets of traffickers can undermine gender-sensitive approaches to trafficking in persons, and result in under-identification of men and boys who are victims of trafficking, who are also the prime targets of trafficking for some forms of exploitation.

Section IV, e: Requested change- deletion

“Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking”

Reason

“Demand” is one among a number of root causes of trafficking⁷ (see, for example, Recommended Principles and Guidelines, Guideline 7, p. 9, “Strategies aimed at preventing trafficking should take into account demand as a root cause.”) and should be subsumed within root causes, not placed alongside them.

Section IV, e, para 25 (a): Requested change- addition

Enhancing the collection, analysis and dissemination of comprehensive data and using measurable indicators to assess trends on the situation of women and girls and progress achieved towards the realization by women of substantive equality in all areas covered by the Convention, in particular combating trafficking. **All measures for data collection, storage, sharing or dissemination must be carried out in a legal and ethical manner with due accordance to international standards on privacy and confidentiality.**

Reason

Express consideration should be given to data privacy and confidentiality issues as disclosure of trafficking-related information may jeopardize the life and security of trafficked persons.

Section IV, e, para 27 (b): Requested change- deletion

Where applicable, instituting penal legislation to sanction the users of goods and services that result from trafficking in persons

Reasons

- *This clause is overbroad and liable to be misinterpreted or misapplied to focus solely on buyers of sex work and push for the introduction of the Nordic Model that has immense adverse human rights impacts on sex workers. This position is also incongruous with the CEDAW Committee’s existing body of work on Article 6 that so far, rightly, does not indicate an equivocal espousal of client criminalization strategies as an effective method to ‘discourage demand’. The CEDAW Concluding Observations on Article 6 have included recognizing the adverse human rights impact of client criminalization on sex workers⁸ and recommending implementation of labour frameworks to “prevent and combat other exploitative practices assimilated to trafficking”⁹.*

⁷ Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 7, p. 9, E/2002/68/Add.1, 2002.

⁸ CEDAW/C/NOR/CO/9, para 28

⁹ CEDAW/C/CHE/CO/4-5, para 29

- *This clause may also undermine counter-trafficking efforts by potentially shifting attention away from criminalization of traffickers themselves, while also potentially applying a criminal justice approach to situations that require other types of interventions.*

Section IV, e, para 27 (d): Requested change- deletion

Investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, including those on the demand side.

Reasons

- *The phrase ‘including those on the demand side’ is liable to be misinterpreted and/or misapplied to target sex workers.*
- *This clause may also undermine counter-trafficking efforts by potentially shifting attention away from criminalization of traffickers themselves, while also potentially applying a criminal justice approach to situations that require other kinds of interventions (or ‘non-criminal law interventions’).*

Section IV, g, para 57, e, b: Requested change- substitution

Decriminalization of irregular entry for trafficked women and girls **Non-criminalization / non-punishment of trafficked women and girls for crimes committed in the course of being trafficked, including sex work.**

Reason

The substitution is requested to guard against the abuse of criminal or administrative laws, in addition to laws pertaining to immigration that may be abused resulting in the rights violations of women and girls.

Section IV, g, para 58: Requested changes- restructuring and additions

- Move para 58 ‘Employment and labour framework’ in its entirety to make it new para 27, so that it is applicable to the overarching State obligation to address the root causes of trafficking
- Clause a): Introduce, strengthen, and enforce employment legislation designed to protect all migrant workers, **including women migrant workers**, irrespective of **documentation status**, level of skill or the sector in which they work, **or whether they are in the formal or informal economy**, the duration of their employment, and to minimize the opportunities for exploitation by providing very clear protections, including minimum wage, overtime pay, health and safety, and decent working conditions, particularly in unregulated or unmonitored economic sectors that rely on migrant women’s labour.
- Clause f): Facilitate the self-organisation and unionisation of migrant **women workers, including in particular women migrant workers** in unregulated or unmonitored labour sectors.

Reason

We acknowledge and appreciate the Committee’s responsiveness to addressing the structural links between labour exploitation and trafficking. The Committee’s recommendations in this respect are progressive and far-reaching and should be made applicable to women workers in general, not just women migrant workers, in order for their gender transformative impact to be realized.

Section IV, g, para 62: Requested changes- additions

- Insert new clause (b) **Establish laws providing a civil cause of action for workers in global supply chains who suffer harm due to non-fulfilment of mandatory due diligence laws.**

- Clause (d): “Ensure that a dedicated audit organization **regulatory body has the power** to suspend suppliers who fail to bring their operations into compliance with the code **and resources to proactively investigate and monitor compliance with mandatory due diligence laws and sanction non-compliant entities**”.

Reason

We acknowledge and appreciate the Committee’s responsiveness to issues of corporate transparency and accountability. Whilst the mandatory due diligence laws are essential to create greater transparency and a better understanding of risk and the management of risk, accountability is essential. In order for mandatory due diligence laws to be effective, there must be effective monitoring and compliance complete with sanctions meted out as appropriate. There must also be accountability to the group of beneficiaries harmed by non-compliance hence the suggestion for a cause of action that would also those aggrieved to access remedy. The suggestion of a regulatory body and a cause of action both bolster the accountability dimensions of the guidance put forward by the Committee. We do not believe that the term “audit organisation” is precise enough or has the requisite gravitas to perform the suggested function.

Section V, para 68 (j):

Empower communities through support and consultation to build strong allies for anti-trafficking efforts, including faith-based actors **including sex worker-led organizations**, who could provide critical information about trafficked women. These community-led systems should be established at locations and among groups where there may be trafficked women; including sites where forcibly displaced women and migrants are accommodated, registered or detained.

Reason

In line with CEDAW Article 7, States must ensure that women, including those significantly affected by anti-trafficking responses are able to meaningfully participate in policy formulation and implementation.

Section VI, a, “Tracking Proceeds of Crime”, 97: Requested changes- additions

- a) Build and **adequately resource** investigative and **enforcement teams** capable of tracking the financial flows that trafficking in women and girls generates, striking with sequestrations and confiscation of all the capital **proceeds** attributable to such criminal conduct, also tracing and revealing the channels of recycling and cleaning money
- b) **Encourage cross-agency collaboration to ensure that criminal investigations in trafficking cases are run alongside financial investigations with the different investigative and enforcement teams working in close partnership.**

Reason

*We acknowledge and commend the progressive nature of the Committee’s recommendations in this area. We suggest using the term “**proceeds**” rather than “capital” as the interpretation of capital is likely to be limited to funds and cash. On the other hand, “proceeds” encompasses funds, real estate, luxury goods and any other asset that might be linked to the criminal activity. Traffickers often launder illicit gains through the purchase or investment in various assets and it is important that investigative and enforcement capabilities are not limited to funds only. All too often criminal investigations do not run in tandem with financial investigations which results in perpetrators moving their assets out of the reach of enforcement agencies. This has an adverse impact on tracking of proceeds of crime, seizure of assets and the possibilities of compensation for victims. Insertion of new clause (c) above highlights the importance of a cross-agency approach that complements the measures highlighted by the Committee in this paragraph.*

ANNEX: List of individuals and organizations endorsing this response

1. CREA, India
2. Cynthia Navarrete Gil, APROASE, A.C., Mexico
3. Dutch CEDAW Network, The Netherlands
4. Empower Foundation, Thailand
5. FIDA, Uganda
6. GAATW-IS, Thailand
7. International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific), Malaysia
8. Kenya Sex Workers Alliance (Kenya), Kenya
9. Liberty Shared, Hong Kong
10. Marika McAdam
11. Migrant CARE, Indonesia
12. National Workers Welfare Trust, India
13. Ruchira Gunasekera, Attorney-at-Law - Lawyers' Beyond Borders - Sri Lanka Chapter
14. Shristi Kolakshyapati
15. Srijan Foundation, India
16. Women's Rehabilitation Centre (WOREC), Nepal
17. Women for Women's Human Rights – New Ways, Turkey