**Submission to the CEDAW Committee**

**on the Draft General Recommendation on Trafficking in Women and Girls**

**in the Context of Global Migration**

**By the Commonwealth Human Rights Initiative (CHRI)**

**and members of the Commonwealth 8.7 Network**

May 2020

The Commonwealth Human Rights Initiative (CHRI) welcomes the CEDAW Committee’s General Recommendation on Trafficking in Women and Girls in the Context of Global Migration and the opportunity to provide the following input on the recent draft. We appreciate the comprehensive framework and content of the general recommendation which acknowledges the current and growing danger that women and girls face during migration and their especial risk of being trafficked. This submission draws on pertinent international and regional standards, and is also informed by the contribution of members of the Commonwealth 8.7 Network[[1]](#footnote-1), namely:

* Coalition Against Trafficking in Women (Australia)
* WARBE Development Foundation (Bangladesh)
* Ulula (Canada)
* Survivors’ Network (Cameroon)
* Awareness Against Human Trafficking (HAART) (Kenya)
* Pacific WIN (New Zealand)
* Women’s Consortium of Nigeria (Nigeria)
* The Sophie Hayes Foundation (United Kingdom)

8.7 Network member organisations include those working on women’s rights;anti-trafficking initiatives; migrant workers’ rights; indigenous rights; survivor advocacy; vocational training and other support to survivors; supply chain impact assessment; domestic servitude; and direct service providers.

**Observations in relation to specific paragraphs**

**Paragraph 8: Legal framework**

We fully support the acknowledgement that trafficking in persons extends beyond the definition of the Palermo Protocol. In particular, trafficking in persons is not necessarily committed by organized criminal groups, nor is it only transnational in nature[[2]](#footnote-2). Trafficking in persons is often committed by individuals acting alone and can be entirely domestic. We recommend that this be more clearly stated with the following:

**“The Committee emphasises that the realities of trafficking in these situations extend beyond the scope of the Palermo Protocol.”**

**Paragraph 12: Tackling of demand**We welcome the recognition of the gendered nature of trafficking in persons. We suggest the Committee also acknowledge the **role of demand** in enabling sexual and labour exploitation.[[3]](#footnote-3)

**Paragraph 20: Gender-based discrimination and structural inequality**We suggest amending the final sentence so that it reflects also the impact of culture – thus the final sentence should read “…pervasive and persistent gender inequality resulting in an economic, social, **cultural** and legal status that is…”– ie. insert the word **“cultural”**. It is important to capture all aspects of a status which may hold importance in different contexts – the Convention itself emphasises the role of culture.[[4]](#footnote-4)

**Paragraph 21: Women and girls disadvantaged by cultural traditions**
We welcome the text acknowledging the many intersecting factors that impede gender equality and drive trafficking in women and girls. We suggest the addition of “**cultural traditions**”[[5]](#footnote-5) to this paragraph in recognition of cultural traditions which actively enable trafficking, such as child marriage in many countries across Africa and Asia.

We also suggest amending “...vocational training opportunities” to “**vocational and other training activities**”, as training opportunities may come in many different forms, in both formal and informal sectors.

**Paragraph 22: Incentives for traffickers and the role of women**
We suggest omitting the word **“massive”** before “financial gains” – in many contexts, even low financial gains can be enough to incentivise traffickers. In addition, the **increasingly significant role of women as traffickers (who are often themselves victims of trafficking)** should also be recognised. We suggest adding a reference in paragraph 22 to this trend.

**Paragraph 23: Factors contributing to child marriage**It is important to recognise the nuanced factors that contribute to child and forced marriage, which frequently go far beyond financial gains. We therefore suggest replacing “financial gains” with **“for financial, social, or cultural gains”**[[6]](#footnote-6).

**Paragraph 25.c: Collecting and publishing data on trafficking in women and girls
General:** Data collection is key to understanding root causes and trends in trafficking in persons and more is needed, especially on the prevalence and severity of trafficking in persons in **certain under researched regions**, for example, the Pacific[[7]](#footnote-7). Furthermore, we suggest including reference to the following areas of research which are noted in the 2016 annual report of the Special Rapporteur on trafficking in persons, especially women and children.

**(a) The linkage between trafficking in persons and xenophobia, including the vulnerability of minority groups to trafficking;**

**(b) The linkage between gender and trafficking in persons in [the context of] conflicts…;**

**(c) Recruitment modalities employed by extremist groups, especially with respect to children and their use as combatants, sexual slaves, human shields or suicide bombers;**

**(d) The link between organised crime and all forms of trafficking in persons, especially women and children, as a result of weak rule-of-law situations during and following conflicts;**

**(e) Illicit financial flows generated from criminal networks engaged in trafficking in persons**[[8]](#footnote-8)

**Paragraph 25.c.iii:** We suggest amending paragraph 25.c.iii (Collecting and publishing data on…“Its potential link with bonded labour, domestic servitude and child and forced marriage”) to instead be divided into two points as follows:

**(iii) Its potential link with traditional and contemporary bonded labour, and child and forced marriage;**

**(iv) Incidence of domestic and cultural servitude, particularly intergenerational servitude;**

This amendment ensures that the General Recommendation adequately recognises the diverse forms of coercion, duties and obligations, motivated by unspoken understandings that certain practices should continue, leading to traditional practices recurring over generations.

**Paragraph 29.c: Anti-trafficking legislation - Inclusion of domestic servitude**

We urge that ‘**domestic servitude**’ be explicitly named in this list, especially considering that women and girls make up the majority of those held in domestic servitude.[[9]](#footnote-9)

**Paragraph 29.h: Bolstering of criminal courts**

We suggest the need to **bolster existing criminal justice systems before the introduction of specialised tribunals**, especially in under-capacitated States.

**Paragraph 32: Meaningful participation of survivors in trafficking prevention efforts**We strongly support the recognition of the importance of meaningful participation of women and girl victims of trafficking, in anti-trafficking efforts. We agree that survivors and survivor-advocates must be at the core of anti-trafficking strategies and decision-making.[[10]](#footnote-10)

**Paragraph 40: The role of climate change**
We support the recognition of the increased risk of trafficking in humanitarian crises, especially in the context of climate change-related harm and migration. The impact of climate change on trafficking in persons has been well documented.[[11]](#footnote-11) Footnote 103 in paragraph 40 refers to paragraphs 5 and 56 of General recommendation No. 37 (2018) (CEDAW/C/GC/37). We suggest also **adding a reference to paragraph 75 of General Recommendation No. 37**, to ensure all relevant commentary in General Recommendation No. 37 is captured.

**Paragraph 55: Vulnerability of migrant women workers – access to employment opportunities**Access to safe and formal employment opportunities must go hand-in-hand with **access to education** to ensure viable economic alternatives are available to women.[[12]](#footnote-12) These factors are also important to enable sustainable freedom for female survivors.

**Paragraph 56: Awareness-raising**
In recognition of the increasingly important role played by online forums and digital technology to raise awareness and disseminate information, we recommend adding the following sub-paragraph: **“Make full use of online and digital means of communication to raise awareness and disseminate information.”**

**Paragraph 58: Employment and labour framework**We welcome the text on strengthening the rights of migrant workers through legal frameworks. Employment laws must be applicable to all migrant workers regardless of “migration status” to ensure protections are afforded to all. We recommend adding ‘**mining**’ to the list of sectors for monitoring (**paragraph 58.b**). Women play a significant role in artisanal and small-scale mining communities in many parts of Africa and Latin America[[13]](#footnote-13).

**Paragraph 60: Dependency and vulnerability of migrant women workers**We recommend that the provision of accommodation and food in exchange for services be addressed by adding the following sub-paragraph: "**Ensuring that employer-provided accommodation and food are reasonably priced and that costs are not automatically deducted from their pay**”[[14]](#footnote-14).

We strongly support the cross-references to General Recommendation No. 26 throughout this draft, and suggest inserting a reference in paragraph 60 to **paragraph 26(a) of General Recommendation No. 26**, given the focus on measures to address the vulnerability of migrant women.

**Paragraph 62.a: Corporate supply chains**We welcome the inclusion of text that stresses the need for laws governing mandatory due diligence in companies’ supply chains. We suggest ensuring such legislation include **specific measures** to ensure comprehensive mandatory due diligence.[[15]](#footnote-15)

**Paragraph 62.f: Grievance mechanisms**We recommend that migrant workers should have access to safe and **anonymous** grievance mechanisms[[16]](#footnote-16).

**Paragraph 63: Labour inspectors**

Auditors rarely speak migrant workers’ languages and therefore cannot interview them during site visits. We therefore suggest adding to this paragraph the following: “ **including the provision of** **interpretation and any other necessary provisions to engage with migrant workers, if needed**”[[17]](#footnote-17).

**Paragraph 84: Access to justice**

We highlight the need to acknowledge that many States operate pluralistic legal systems which may not be subject to the same scrutiny and which may be a barrier to achieving adequate protection of trafficking victims. In recognition of this, we recommend inserting the following sub-paragraph:

**“Ensure that any religious or customary legal system operating alongside the civil law system also provides adequate protection for victims.”**

**Paragraph 88.b: Prosecutions**

We must recognise the serious threats that victims may face in participating in criminal proceedings against perpetrators. To reflect this, we suggest amending paragraph 88.b as follows:

**“Adopt specific protection measures for victims of trafficking which ensure safeguards against threats and retaliation that many victims face when seeking justice. These measures should take into account the needs of women subjected to multiple forms of discrimination, including forcibly displaced and migrant women.”**

**About the Commonwealth Human Rights Initiative**

CHRI is an independent international, non-governmental organisation working for the practical realization of human rights. Through research, advocacy and mobilization it works to address human rights issues in the areas of access to justice, access to information, media freedoms, contemporary forms of slavery and human trafficking. Headquartered in New Delhi, CHRI has offices in Accra and in London.

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1. An international member-driven network with over 60 national and local civil society organisation members across all regions who share a common vision to eradicate contemporary forms of slavery and human trafficking. Founded by the Commonwealth Human Rights Initiative, the 8.7 Network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and works collaboratively to raise awareness, build capacity, provide support to survivors, and advocate for change to laws and policies. [↑](#footnote-ref-1)
2. Article 4. Council of Europe Convention on Action against Trafficking in Human Beings [↑](#footnote-ref-2)
3. Inter-Agency Coordination Group against Trafficking in Persons. Preventing Trafficking in Persons by Addressing Demand. September 2014. [↑](#footnote-ref-3)
4. Convention on the Elimination of all forms of Discrimination Against Women, Articles 1,3 and 5. [↑](#footnote-ref-4)
5. Chapter III - Prevention. Article 12 - General Obligations (1). Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention) [↑](#footnote-ref-5)
6. Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, paras 23-24. [↑](#footnote-ref-6)
7. Australian Government, Australian Institute of Criminology. (April 2011). The Trafficking of Children in the Asia-Pacific. *Trends & issues in crime and criminal justice No. 415.* [↑](#footnote-ref-7)
8. United Nations General Assembly 71st Session. (5 August 2016). Report of the Special Rapporteur on trafficking in persons, especially women and children: Trafficking in persons in conflict and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children. (V.F.77-79.) [↑](#footnote-ref-8)
9. 8.7 Alliance. (2017). Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. *The International Labour Office and the Walk Free Foundation.* [↑](#footnote-ref-9)
10. OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 3, paragraph 6. [↑](#footnote-ref-10)
11. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (2019, 42nd session, Human Rights Council), and Climate Change - Human Trafficking Nexus, International Organisation for Migration. [↑](#footnote-ref-11)
12. General recommendation No. 26 on women migrant workers, paragraph 10 [↑](#footnote-ref-12)
13. Mylène Coderre-Proulx, Bonnie Campbell and Issiaka Mande (2016). International Migrant Workers in the Mining Sector. International Labour Office: Geneva [↑](#footnote-ref-13)
14. R115 - Workers' Housing Recommendation, 1961 (No. 115). Sections IV and V. [↑](#footnote-ref-14)
15. For example, building on legislation such as the French law on the corporate duty of vigilance - Loi no.[2017-399 du 27 mars 2017](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id). See also Coopération Internationale pour le Développement et la Solidarité (CIDSE). Human Rights Due Diligence: Policy measures for effective implementation. September 2013. [↑](#footnote-ref-15)
16. Business for Social Responsibility (BSR). Good Practice Guide: Global Migration. September 2010. [↑](#footnote-ref-16)
17. To enable Article 12 (1.c.i). C081 - Labour Inspection Convention, 1947 (No. 81). International Labour Organization. [↑](#footnote-ref-17)