



ECPAT'S SUBMISSION

CALL FOR COMMENTS ON CEDAW'S DRAFT GENERAL RECOMMENDATION ON TRAFFICKING IN WOMEN AND GIRLS

Introduction

This submission by [ECPAT International \(EI\)](#)¹ is in response to the call for comments issued by the CEDAW Committee on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration. This submission incorporates contributions made by members of the ECPAT Network for the purpose of this call.²

Paragraph 6

Children are inherently vulnerable and in needs of special and specific protection as outlined in the UN Convention on the Rights of the Child. Girls have additional vulnerabilities due to the intersecting characteristics of gender and status as children. This change is required to ensure child-specific and child-centred responses that fulfil States' obligations under international standards. Therefore, there needs to be a specific consideration in regional approaches for trafficking of girls that acknowledges the rights of children at each stage of the anti-trafficking interventions.

Paragraphs 7 and 8

The legal definition of trafficking in persons provided should be expanded to include also subsection c) of Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter 'Trafficking Protocol'), which contains special considerations for children.

ECPAT acknowledges the position of the Committee that there is a special consideration to be put on women who are victims of intersectional discrimination. However, although it is mentioned throughout the document, an interesting measure that could be taken is to include the aforementioned specificity into the definition of the person in the « position of vulnerability » targeted by Art.3(a) of the 'Trafficking Protocol. It is important that the international community sets out definitions that can be widely accepted and incorporated in the state's legislation. A narrower and more detailed definition of what constitutes vulnerability would be particularly helpful in terms of harmonisation of national legislations at the international and regional level (e.g. Council of Europe Convention against Trafficking in Human Beings and Directive 2011/36/EU).

The Draft General Recommendation acknowledges some shortenings in the internationally accepted definition of trafficking. Unfortunately, it does not point out that "recruitment, transportation, transfer, harboring and receipt", which are the terms referred to in Paragraph 7, fail to cover the scope of trafficking. In many countries, parents or family members are often complicit in the trafficking of their children. The term recruitment does not engage the parents who 'sell' or 'trade' their children for economic advantages. Although the document underlines the prevalence of forced and early marriages as a part of trafficking schemes it does not specifically ask that family members involvement in such schemes be added to the definition. This will lead to more impunity for parents and lack of recognition

1 ECPAT International is a global network of civil society organisations, working to eradicate all forms of sexual exploitation of children. Over the past 30 years, ECPAT has become the forefront international NGO network dedicated to end this severe form of violence against children, advocating for State accountability and more robust measures across sectors to enhance the protection of victims. ECPAT currently has 118 member organizations operating in 102 countries around the world.

2 [CHS Alternativo](#), [Defence for Children - ECPAT Netherlands](#), [ECPAT Belgium](#), [ECPAT Guatemala](#), [ECPAT UK](#), [ONG Ensemble pour la défense et la protection des droits de l'enfant](#), [Tacteen Naeil/ECPAT Korea](#), [WOCON](#).



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for victims. Therefore, ECPAT suggests that a bigger emphasis be put on the issue as it is a significant enough part of trafficking of young women and girls.

In addition, special consideration needs to be given to cyber-trafficking and new and emerging trends that are not covered by the definition of trafficking in persons. Online sexual coercion and extortion are one of the emerging exploitation methods faced by trafficking victims online and should be added to the broaden definition of human trafficking.

Paragraph 11

The paragraph should also mention the need for consistent international and regional legal frameworks for the protection of victims across countries. Many States are still detaining trafficked victims for criminality and/or illegal entry. Children who are victims of trafficking should be offered protection and access to education and psycho-social services regardless of their immigration status or the status of the criminal investigation into their trafficking situation. Victims of trafficking should also be offered equal protection and access to legal remedies, regardless of whether the State is a destination or a transit point.

Paragraph 18

ECPAT agrees that “women are not a homogenous group and their experiences as trafficking victims are diverse.” However, girls should be considered as a unique group in the trafficking victims. Children are heavily dependent on the system or adults in society thus the treatment of girl victims of trafficking needs to be addressed separately.

Paragraph 21

The paragraph (last sentence) should also mention religious and cultural practices as one of the factors limiting women’s access to key resources and include female genital mutilation as part of the factors contributing to the unequal treatment of women and girls.

Paragraph 22

In addition to the push factors listed in this paragraph, ECPAT members have observed a clear trend of child victims of trafficking running away from abuse and neglect in their family environment or care institutions or fleeing from child, early and forced marriage, which made them vulnerable or led directly to their trafficking.

Paragraph 25

The data on victims of trafficking should capture and analyse the multiple forms of exploitation faced by individual victims. It is well established that many victims are also subjected to secondary or even tertiary forms of exploitation, in addition to the form of exploitation formally identified. Data collected should not only be comprehensive but also uniform (point a). Suggestion to also include information on crimes committed by acts or omission of an organisation or an enterprise as well as data on perpetrators (traffickers and ‘clients’) including sex, age, ethnicity, nationality and number of times they have been detained or investigated in order to establish strategies for prevention but also investigation and prosecution (point b). Rates of re-trafficking, long-term outcomes for child victims as they transition into adulthood which include quantitative indicators of immigration status, access to education, mental health services, training and employment should also be included among the collected data (point c).



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Paragraph 26

The Draft General Recommendation addresses the issue of child, early and forced marriage without hinging on the fact that it should be criminalised. Although family law largely remains under the sovereign prerogative of States, it is the Committee's responsibility to push forward an international definition of child, early and forced marriage especially in the context of trafficking³ and to reiterate the fact that consent from anyone who is below the legal age of marriage is to be considered null and void (point e).

When referring to the root causes of trafficking in persons, "the growing risks on the Internet, especially for girls and adolescents" should be included.

Paragraph 29

Anti-trafficking legislation should not only be gender-sensitive but also should reflect the best interest of girl children.

The list of purposes of trafficking should include trafficking for organs, forced criminality and trafficking for adoption (point c).

Suggestion to add another subsection establishing that victims of human trafficking have the right to restitution of their rights violated from the beginning of the criminal process and regardless of the result of the process; a dignified and transformative repair is guaranteed through an effective inclusion in the labour market, assistance in basic services and access to shelters and special care.

Paragraph 31

It should be clarified that the establishment of permanent bodies should be at different levels of government (point 2) and that national budgets must also have a results-oriented approach (point g).

Paragraph 32

Include access to legal remedies to address power dynamics and financially compensate victims for their time in order for victim participation to be meaningful, ethical and non-exploitative.

Paragraph 33

Include that women and girls victims of rape in the contexts of war face additional discrimination and stigma, which often lead to rejection by their communities of origin. In some instances, this could lead to exploitation in prostitution as a survival strategy.

Paragraph 39

Special consideration for children must be included in this paragraph. Girls must have access to durable solutions, which are sustainable and secure in the long-term, and their best interests are a primary consideration in reaching this solution.

Paragraph 45

Include re-trafficking, forced detention, forced repatriation and other forms of harm in this paragraph (point e).

³ See e.g. ECPAT International and Plan International.(2015).[Unrecognised sexual abuse and exploitation of children in child, early and forced marriage.](#)



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Paragraph 46

In the case of children, a long-term protection/support system might be needed (often also after children turn 18). If State Parties are obligated to protect victims, and cannot forcibly return them to their country, there should be detailed guidelines for State Parties on how to guarantee the protection of children. ECPAT believes that asylum should be granted to the victims of human trafficking. It is often denied to them as the persecution does not come directly from the State and that they have not necessarily sought redress in their country of origin due to the fact that they were displaced without their full knowledge and consent. It is therefore common that in countries of abode they are refused refugee status and sent home whether or not they might be at risk of being trafficked again. ECPAT suggests that a greater emphasis be put on the fundamental junction between refugee law and human trafficking related issues.

Paragraph 57

The safe migration framework should also be child-friendly and inclusive of the rights of children. Unaccompanied children should be considered as especially vulnerable and given additional protection.

Paragraph 62

Include other forms of reporting mechanisms alongside hotlines such as helplines or other online reporting mechanisms; also ensure that the existing ones have adequate resources and function effectively (point g).

Paragraph 67

Expand the list of barriers for migrant victims of trafficking to include 'economic' as the cost of healthcare is often a fundamental barrier which prevents them from accessing medical help. Include child-friendly access to health services to ensure children receive adequate and developmentally appropriate healthcare.

Paragraph 68

For the efficient implementation of measures indicated in this paragraph, special consideration should be made to the pluralist nature of some States' legal systems. For example, in the African continent many countries have pluralistic legal systems wherein religious law, customary law and state law are interwoven, which would require additional efforts to achieve harmonisation of the human rights protection systems in the various courts that they harbor.

Paragraph 72

The paragraph should include special considerations for children such as the right to education in their own language, right to victim advocates and/or guardians to guide them through the process, right to developmentally appropriate and age appropriate services, the inclusion of child specific language with regards to individualised support and all other considerations that place children's rights at the center of the protection experience for girls victims of trafficking.

In addition, the policy and procedures manual for the protection of trafficked victims should not only be gender-sensitive but also focused on the victims and their trauma (point c).

Paragraph 76

Girls victims of trafficking should be granted access to foster care or appropriate accommodation, access to education and vocational training, medical care and counselling, to enable them to begin a process of



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recovery and reintegration and provide children with a durable solutions based on their best interests as a primary consideration.

Paragraph 83

Children victims of trafficking should have access to child-friendly justice and developmentally and age appropriate experience while going through the criminal justice system. Children should be appointed victim advocates or social workers to ensure that they understand the legal process and can make informed decisions in regards to their future. Children have the right to special protection in court and receive trauma informed, child-centered justice responses.

Paragraph 84

Policies, strategies and programmes aimed at facilitating trafficking victims' access to justice should not only be gender-sensitive but also take into account the best interests of child victims (point d).

Additional emphasis should be put on an equal access to justice for victims, both from the standpoint of the various discriminations they may face due to intersectionality but also with regards to the different court systems wherein they might seek redress.

Paragraph 85

The investigation and the prosecution process should be child-friendly, developmentally and age appropriate and in the best interest of the victim. The investigation and the prosecution process should be culturally sensitive and make special consideration for the specific cultural, religion and linguistic needs of the victims.

Paragraph 89

The paragraph should also mention ending the complicity of the private sector such as hotels, travel agencies and all businesses that are directly involved in recruiting and facilitating trafficking and who profit from trafficking and sexual exploitation of girls and women.

Paragraph 91

All children should be exempted from being criminalised for crimes that they have committed as a direct result of their trafficking experience.

Paragraph 96

Children should have access to compensation and legal remedies regardless of their country of nationality. Children are entitled to receive remedies that will allow them to rebuild their future and live free from exploitation. Special inclusion needs to be made for children whose parents are complicit with trafficking and assign a government body or a financial trust to ensure that children are entitled to receive their compensation without their guardians.

Protection and redress provided to victims of trafficking should be effective and comprehensive.

Moreover, compensation as a victim of crime should have no impact on social assistance received by victims (point e).