

**Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú (IDEHPUCP) submission to the CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration[[1]](#footnote-0)**

1. **About IDEHPUCP**

IDEHPUCP is an academic unit of the Pontifical Catholic University of Peru created in 2004. Its aim is to strengthen democracy and the exercise of human rights, through academic training, applied research, generation of spaces for dialogue and debate, and the promotion of public policies in partnership with civil society and the State.

IDEHPUCP has 6 research areas: i) Memory, democracy and post-conflict; ii) Human mobility; iii) Business and human rights ; iv) Indigenous populations; v) Anti-corruption; and, vi) Inter-American Human Rights System. As part of the research on Human Mobility, IDEHPUCP has been working on strengthening the knowledge and dissemination of human rights standards in the area of mobility, promoting spaces for reflection on the situation of mobility in Peru and the region, and accompanying social actors in the development of public policy instruments from a human rights perspective. Those are the reasons why we consider vital to provide a contribution to the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global of the CEDAW. Below are some of our observations.

1. **General observations**

The topic at hand is quite complex, with many intricate factors intersecting. There is thus a need to consider the issue of trafficking in women and girls in the context of global migration with holistic lenses in order to capture the multiple roots of the problem as well as the various consequences. The *Draft of General Recommendation* answers adequately to this requirement. Many relevant topics are presented in a succinct and precise, yet context-sensitive manner. Recommendations are relevant and, in certain cases, innovative.

In general, however, too little visibility is given to the particularly vulnerable situation experienced by indigenous and transgender woman. While it is mentioned that one needs to deal with intersectionality and to be attentive to any form of discrimination, it is critical to emphasize, throughout the document, the States obligation of having specific provisions for indigenous and trans migrants.

Although in paragraph 102 it is mentioned that dissemination campaigns ought to be available in indigenous languages, there are some other actions that could be taken into consideration. For example, there needs to be police, social and judicial personnel who know their language (or, at least, translators) during the process of victim identification, assistance and protection, and victims’ access to justice. Furthermore, it must be ensured that rights, specially economical, social, cultural and environmental rights, are equal accessible for everyone in order to avoid pushing indigenous women to migrate (which in turn makes them more vulnerable to trafficking).

Same attention needs to be brought to trans migrant’s particular situation: a large percentage of them only find work in prostitution, which is a fairly high risk scenario for trafficking. In addition, it is usually a population that the state fails to protect correctly because of structural and institutional discrimination against LGBT.

1. **Specific observations:**
2. **Possible legislation’s downsides**

First, at paragraph 27 b), it is suggested to “where applicable, institute[e] penal legislation to sanction the users of goods and services that result from trafficking in persons”. At paragraph 90, it is recommended “that the sanctions imposed on all convicted perpetrators of trafficking and related crimes are commensurate with the gravity of the crime and the degree of responsibility of the offender […]”. While similar legislation is essential and while criminals committing these offences ought to be punished, one must be attentive regarding the impact such measures may have on actors’ behavior. In Canada, it was found that legislation criminalizing prostitution undermined the security of women, because ‘clients’ were dissuaded from reporting rights violations when witnessed, fearing penal consequences[[2]](#footnote-1). Thus, while it is crucial to punish criminals, one must take into consideration the potential negative repercussions legislation might have in the field. It is relevant to assess such impacts and plan for alternatives or measures to mitigate legislation’s downsides.

1. **Gender-sensitive trained personnel and interdisciplinary teams**

Another issue can be highlighted at paragraph 42 h)-j), which proposes that police be instructed about the specific challenges facing women in precarious situation of migration. Furthermore, paragraph 68 k) advises for gender-sensitive training for law-enforcement personnel. In the long run, it is evident that such measures are necessary, and that peace agents need to be educated about these particular necessities. However, at the moment, one must acknowledge that in certain regions, “the military and police promote a masculinity that normalizes and promotes sexual violence. Not only does this affect women and men directly involved in the sexual violence, but it also encourages harmful masculinities by promoting violence against women as part of being a ‘real man’ ”[[3]](#footnote-2).

Furthermore, trust has been eroded between communities and blue helmets in some cases, when the later were using the power imbalance at their advantage to demand sexual services from women and children or using the prostitution networks while on duty[[4]](#footnote-3). Although these issues have been addressed as well as the UN could, it is possible that some aftereffects be undermining the relationship between migrants and law-enforcement agents. It is thus highly relevant to raise awareness and educate law-enforcement personal, but at this point, women and children might not be able to fully trust peace agents. One needs to find alternative measures to ensure that populations still have access to the relevant resources in the short run. It is essential to put at migrants’ disposition alternate sources of help, such as an interdisciplinary team both for the victim identification process and for the care of the cases. The issue should not only be approached by police or jurisdictional authorities, for the contribution of psychologists, social workers, and gender specialists would be highly complementary and valuable.

1. **Victim identification process**

Thirdly, it would be pertinent to stress that identification and protection measures need not to be used only in cases where the harm has already been done. Sections 42 i)-j) address this issue, but it could be made clearer that it is essential to identify potential victims *before* any harm happens. For the identification of the victim, an evidential standard at the level of certainties is not necessary, but reasonable indications are sufficient. Likewise, identification processes should not only be led by police and immigration authorities, and rather be carried out by interdisciplinary teams.

1. **Latin America specificities**

Fourthly, while it is true that this global issue needs to be tackled considering the interrelation between the different countries, it is also crucial to examine issues specific to certain regions. For example, cultural parameters specific to certain areas of Latin America normalize criminal practices on populations in situations of vulnerability. As a result, women and indigenous people, for example, are more at risk of slavery and human trafficking in those regions, because it is socially accepted. It is thus particularly challenging to identify trafficking issues and initiate adequate investigation and punishment procedures[[5]](#footnote-4).

Another example of regional specificities is informal economy. The *Draft of General Recommendation* puts a lot of emphasis on scrutinizing recruitment agencies and corporations. However, it is crucial to acknowledge that in Latin America informal and illegal economies compose a huge proportion of the economy[[6]](#footnote-5). This allows for methods of recruitment and retention of victims to flourish, while exposing the population to illegal activities linked to human trafficking[[7]](#footnote-6). One specific example of this situation is related to extractive activities, like illegal mining, which usually favorises the trafficking of women, trans people and adolescents for the purpose of sexual exploitation[[8]](#footnote-7). Thus, at paragraph 27, it is crucial to enjoin the states to put an end to these illegal activities and reduce the spaces of informal economy which, at least in Peru, are mostly occupied by women.

Finally, while it is highlighted in the *Draft* that corrupted government officials have to be held accountable for their actions, it would be worth enlightening the underlying institutional factors at the root of this type of behavior. For instance, public institutions in regions of Latin America are characterized by high levels of corruption and informality. These are particularly notable in the regulation of labor or transportation, which facilitates the exploitation and transfer of victims throughout the region. In some cases, local authorities issue regulations that allow fraudulent behaviors through the establishment of "nightlife" centers, euphemistic names to hide the true nature of these sites of sexual exploitation. These local powers have a serious effect on the application of legislative reforms and this specific issue needs to be addressed in the efforts to prevent human exploitative activities.

1. **New scenarios for COVID-19**

Few other points could also be tackled. For example, the impact of technology on trafficking was pointed at, but not very detailed. If it is an influential factor in the issue at hand, it would be relevant to assess how it could be used at the advantage of the victims of human trafficking. Furthermore, the restrictions adopted by many countries facing COVID-19 might impact migrants. It would be relevant to study the possible effects of these new developments. Also, in the wake of the pandemic, new trafficking dynamics and scenarios must be observed. For instance, increased poverty among women is likely to result in increased recruitment situations. There may also be an increase in virtual recruitment, or greater risks for victims of trafficking who are exploited in public spaces.

In conclusion, the Draft is quite complete and touches upon many crucial issues, but it could be more nuanced and address specific regional problematic characteristics.

1. Document prepared by Sandrine Royer and Gabriela Ramos, members of IDEHPUCP’s academic research area, under the supervision of Cécile Blouin, senior investigator at IDEHPUCP. [↑](#footnote-ref-0)
2. Canada (PG) c. Bedford, [2013] 3 RCS 1101. [↑](#footnote-ref-1)
3. Haslam, P., J. Shafer, and P. Beaudet. 2012. Introduction to International Development, Second edition, Oxford University Press, p. 89. [↑](#footnote-ref-2)
4. Allred, K. J. 2006. Peacekeepers and prostitutes: How deployed forces fuel the demand for trafficked women and new hope for stopping it. *Armed Forces & Society*, *33*(1), 5-23; See also eschamps, M., Jallow, H. B., & Sooka, Y. 2015, December 17. *Taking Action on Sexual Exploitation and Abuse by Peacekeepers - Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic(Rep.)*. Retrieved March 03, 2019, from: <http://www.un.org/News/dh/infocus/centafricrepub/Independent-Review-Report.pdf> [↑](#footnote-ref-3)
5. IDEHPUCP and Konrad Adenauer Stiftung. 2019. III Conversatorio en Jurisprudencia Interamericana Sobre Trata de Personas y Formas Contemporáneas de Esclavitud, , p. 33. Retrieved from: <https://idehpucp.pucp.edu.pe/lista_publicaciones/iii-conversatorio-en-jurisprudencia-interamericana-sobre-trata-de-personas-y-formas-contemporaneas-de-esclavitud/> [↑](#footnote-ref-4)
6. IDEHPUCP y Observa La Trata. 2017. Informe – Trata de Personas en América Latina y el Caribe 165 Período de Sesiones Comisión Interamericana de Derechos Humanos, p. 10. Retrieved from <https://idehpucp.pucp.edu.pe/lista_publicaciones/informe-trata-personas-america-latina-caribe-165-periodo-sesiones-comision-interamericana-derechos-humanos/> [↑](#footnote-ref-5)
7. Ibid. [↑](#footnote-ref-6)
8. Ibid, p. 11 [↑](#footnote-ref-7)