**CEDAW Committee Call for comments: Draft General Recommendation on trafficking in women and girls in the context of global migration**

Dear Madam, dear Sir,

The Plataforma CEDAW Catalunya has the honor to present its contribution to the DRAFT of the General Recommendation on TWGCGM. The Plataforma CEDAW Catalunya is a network of more than a dozen CSO in Catalonia, working to ensure women’s rights, including organizations with more than 20 years of experience in attending women in prostitution and victims/survivors of human trafficking.

We understand and recognize the complexity of the matter and the effort of the CEDAW Committee members and consultants to address the issue and bring all its layers into a single document. We seize this opportunity to thank you for this opportunity.

1. **Introduction**

**General considerations**

The Plataforma CEDAW Catalunya wishes to express its serious concern with the excess of criminal law perspective and the lack of an intersectional approach when conceptualizing the multiplicity of women and girls affected by human trafficking in the document. The CEDAW Committee has emphasized in its GR No. 35 (2017), that because women experience varying and intersecting forms of discrimination, gender-based violence affects some women to different degrees, or in different ways, so appropriate legal and policy responses are needed. This is even more clear in cases of human trafficking, so it is our strong belief that the intersectionality is a central concept in this discussion and should be reflected in the introduction.

We must also stress our concern regarding the use of “failure in discouraging the demand” as part of the justification of the persistence of the phenomenon. The focus on “discouraging the demand” has usually been proposed only in relation to trafficking for sexual exploitation, but not in other forms of trafficking in women, for example, for labor exploitation, in consequence, the focus on the demand reduces the scope of the GR. In practice, this approach applies only to prostitution, not marriage or domestic service or other labor exploitation, where the focus is on their forced character or the conditions of slavery of domestic service. This obviously cannot apply to the buyers of tomatoes in Europe, despite some of them being produced under conditions of exploitation by trafficked workers in Spain. Also, the focus on demand also is not adequate for States parties to the Convention, that have diverse legal frameworks regarding regulation of prostitution/sex work.

But most dramatically, in the Spanish experience, as it has happened in other countries, the focus on demand has led to the adoption of “sex-buyer laws” that have ended up criminalizing women in sex work, being or not victims/survivors of human trafficking.[[1]](#footnote-1) T**he focus on demand is opposed to a victim/survivor-centered approach**, as the needs and circumstances of women are not considered, or are secondary. In human trafficking the focus should be on the exploitative conditions and not in the activities in themselves, in line with the OIT criteria. Also, it has to be highlighted that European legislation places the protection of victims/survivors in the center of the anti-trafficking measures. The phenomenon of trafficking has gender-specific characteristics and women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate, something that is ignored in models that focus on demand.[[2]](#footnote-2)

Considering that the persistence of this phenomenon lays on the ground of gender historic inequality and discrimination, poverty and the cisheteropatriarchal capitalism oppressions, aggravated by restrictive immigration laws, these factors should be mentioned clearly, since they make women and girls vulnerable to migration in dangerous conditions and to trafficking.

About this matter, we could not help to notice that only few references were made throughout the text to the **patriarchal structures and its impacts in the phenomenon**. We believe it is crucial in official documents like the GR to make use of words and concepts such as **patriarchy and capitalism**, in order to connect with civil society organizations and stakeholders, unifying the voices and giving the strength we need to address the problem.

**We suggest the introduction of the expression victim/survivor** in the whole document (as in GR No. 35), in order to emphasize a perspective that empowers women and girls and acknowledges their agency. We also suggest to highlight in the introduction the importance of women’s autonomy as in para. 57 c) of the Draft. It is a central concept that should be underlined from the beginning of the document.

**Para. 1:** We recommend using the concept “GENDER-BASED VIOLENCE” in its plural form when translated into Latin languages – Violencias por razones de género/machistas. The plural is encouraged in this case because it can embrace the variety of the perpetrating behaviors.

**Para. 2**: Our suggestion here is to remove the “failure in discourage the demand” and add expressly the substantive root causes for trafficking in women, in the following terms:

According to the Committee on the Elimination of All Forms of Discrimination Against Women (the Committee), the phenomenon persists due to States parties’ failure to effectively address the root causes of trafficking in women and girls ~~and to discourage the demand that fosters the exploitation of women and girls, which leads to trafficking~~ **including the failure to address the economic and patriarchal structures that have direct connection to the vulnerability of women and girls and the failure to implement effective mechanisms for the protection of the victims, and their access to justice without any revictimization**”.

**Para. 3:** Introduce the intersectional approach in the expression “using a gender transformative **and intersectional** approach”.

REASON: The protection of victims and access to justice constitute a paradigm of prevention, intervention and reparation from a gender perspective. Up to this date, the State Parties efforts to fight the trafficking in persons phenomenon has been focused on the criminal law persecution of the actors, without effective results. This new paradigm can be founded in the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2008) and the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on prevention and fight against trafficking in persons and the protection of victims.

1. **Objective and scope**

**Para. 6:** According to our first considerations, we believe here –not in para. 81- is where the intersectional discrimination should be expressly introduced (based on age, class, racial/ethnicity, origin, ability, economic and social status and any other cultural pattern oppression)

**Para. 8:** The fact the States Parties’ reports indicate that "the abuse of a position of vulnerability", "the abuse of power" and "the culture of impunity" are the most common means used to commit the trafficking crime, reveals the urgent need of a review in the indicators used by the countries to evaluate the trafficking phenomenon.

These concepts do not reflect the root reasons that promote and validate the perpetuation of trafficking. On the contrary, by mentioning “culture of impunity” - which can often put the focus on punitive measures (i.e. focusing on individual criminal responsibility) – the GR misses the opportunity to address key concepts such as the continuity of patriarchal structures that create and legitimize multiple oppressions. It is an **exploitative** **social and economic system** that facilitates the abuse of vulnerability and abuse of power that we see in human trafficking, and the focus should not be at the individual level. CEDAW’s GR 35 emphasizes that the understanding of all forms of GBVAW should be as a social -rather than an individual- problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors.

When exemplifying the forms of exploitation, it is our suggestion to add:

* contemporary forms of slavery; and
* violation of human dignity.

**IV. Root causes and discouraging the demand that fosters exploitation through trafficking**

**Title:** Following the abovementioned concerns about this item, we recommend the review of this title, removing the expression “and discouraging the demand”.

**Para. 14 and 15:** In this topic, by commenting on trafficking in women and girls as a form of gender-based violence, the main approach suggested in para. 15 has a direct relation with the enforcement of law and criminal persecution, focusing in perpetrators, and not in the victims. We strongly recommend that the responsibility of the States parties to **repair the harm caused shall be underlined** in here, as part of the obligation of due diligence.

**Para. 19:** In line to our previous comments, we suggest the removal of the sentence “discouraging the demand”. In the following sentence, introduce a victim/survivor-centered approach, in the text: “A **victim/survivor-centered** and gender-transformative approach is required…”.

**Para. 20:** Here, in accordance with our comments above related to the use of the word “demand”, we also believe it is crucial to give some previous context to the interpretation of the GR of “sexual exploitation”, since it can be used as tool to increase the already existing discrimination and vulnerabilities of a certain group of women, in particular, sex workers.

**Para. 21: Suggestion of a new text:**

* In addition to differential treatment in the law, women and girls may be adversely impacted by economic and public policies that may **increase their vulnerabilities and** result in a lack of sustainable livelihood options and basic living standards (…).

**Para. 22:** We believe the concepts are “backwards”. It should be rearranged in these terms:

* Women that are impoverished, uneducated, unemployed and/ or disempowered by political, economic, societal and family structures, subjected to unequal treatment, carrying the burden of household and childcare responsibilities and subject to domestic violence are women at risk of being trafficked.

**Para. 26 (f):** we suggest that the GR should emphasize that the States Parties must **provide new documentation in a quick and effective way, free of charge, as part of the reparation to the victim/survivor**. These documents should be provided in the country where the woman lives, through embassies or consulates.

This is very relevant for various reasons. First, because traffickers usually retain women’s passports as a means to ensure they cannot leave the country. Also, even when women are ‘officially considered’ as victims of human trafficking, some countries deny the issuing of passports abroad or the victims are charged with fees that they cannot afford. For example, in Spain, women from Romania cannot have their passports without going back to Romania and paying 100 USD, placing them at risk of suffering violence or reprisals from traffickers. As a consequence, many of them remain in Spain, without passports.

**Para. 25 (f) iii:** This para. is too focused on criminal law. It should be expanded by saying: “Legislation aimed at preventing and combating human trafficking and enhancing the protection **and reparation** of victims and **the responses** **from the social protection, health and access to** ~~criminal~~justice systems, **including civil, criminal and administrative**, to persistent (…).

**Para. 26 (a):** Add the following, at the end of the sentence: **promoting the victim/survivor’s agency, and considering their diversity**.

**Para. 26 (b):** Although it is a non-exhaustive list, it would be positive to expressly include **housing and psychological and social support**. [[3]](#footnote-3)

**Para. 26 (d):** Add to the text:

* Such measures should not stigmatize or encourage discriminatory behaviors or the direct or indirect persecution of women, or hinder their right to leave any country, including their own, and to return to their country. The State Parties must ensure the correct execution of the commitments assumed in the campaigns promoted.

Reason: Such campaigns have been used in some countries as a form of stigmatizing women who migrate or increase fear in all women. These campaigns should avoid a negative impact in women who decide to migrate.

**Para. 27:** Same as mentioned before. Emphasis should be placed on situations of exploitation within the activity. And further enhance the protection of women over the pursuit of activity. We consider this para. should be removed.

**Para. 29:** In line with GR 35 (2017) the development and evaluation of all legislation, policies and programs should be done in consultation with civil society organizations, in particular women’s organizations, including those that represent women who experience intersecting forms of discrimination. **Para. 29 and 31 should make this participation explicit**.

**Para. 29 (f):** Again, the focus should be placed on the rights of women and their protection. We suggest the following redaction: “Addresses any legal, policy and implementation gaps that impede the **fully enjoyment of women’s rights in all areas, including civil and administrative law, or the** investigation, prosecution and conviction of traffickers under national criminal law”

**Para. 29 (g):** To ensure women’s rights in the broadest sense, we propose the following redaction:

“Establishes, on an equal basis for women migrants, including irregular migrants, facilitated access to justice mechanisms to resolve complaints of exploitation and abuse, and to **have access to reparation, including in civil and administrative matters**;

**Para. 32:** The participation of women should not be limited to prevention. The initial sentence should be expanded: “Ensure women’s meaningful participation **in all anti-trafficking efforts** (…)”.

**Para. 40 and 42:** Take account of the COVID-19 pandemic crisis and any other similar outbreaks and their consequences in these topics.

**Para. 50:** It is important to highlight that migrant women engage not only in informal employment, but also precarious. Accordingly, the second sentence could introduce this aspect: “A disproportionate number of migrant women are engaged in informal **and precarious** employment (…)”.

**Para. 51:** The first sentence does not include all axes of discrimination, and this could be emphasized with the expression “**among others**” at the end of the sentence.

**Para. 57 (c):** The respect for women’s autonomy in relevant policies should also be in the general introductory text, as we have already mentioned.

**V. Victim identification, assistance and protection**

**Para. 68 (b) iii.** About the gender-sensitivity of relevant professionals, including front-line ones, we believe it’s important to emphasize that the training for these professionals should comply with the requirement in GR 35 (2017) –para. 38- and in particular, including the impact of gender-based stereotypes and bias, considering the multiple and intersecting forms of discrimination affecting women and girls victims/survivors of trafficking in persons.

**Para. 68 (j):**  We may share our concern in the addition of “faith-based actors” in the text of this paragraph. If the text intends to widen the scope to diverse social groups, we suggest the inclusion of sex workers and ally organizations, in order to ensure the participation of all voices of the civil society organizations.

**Para. 69:** The implementation of rights of victims/survivors is not only limited by national law definition, but also how those legal definitions are applied in practice. Accordingly, we suggest to include, at the final sentence, the following: “(...) and the scope of how human trafficking is defined in national law **and its application in practice**”.

**Para. 72 (c):** We consider that the concept rehabilitation reinforces stereotypes on women victims/survivors and their stigmatization. We suggest the removal of the concept of rehabilitation, and its replacement with the concept “**recovery**”.

**Para. 79:** The first sentence is a clear example of the excessive reliance on the criminal justice system in the Draft. Criminal law is not fundamental for women’s human rights nor for their right to access to justice. The use of criminal law for women victims/survivors of any form of GBV is an option, as GR 35 (2017) expresses clearly when stating that the fact that women initiate or not legal actions should not be a precondition for accessing services in cases of GBV.

**Para. 80**: We suggest to add, at the end of the para., that women victims/survivors are subjected “to prosecution for acts they were forced to commit as part of their exploitation **or committed to improve their own exploitation conditions**”.

**Para. 84 (b)**: We suggest the following redaction, to ensure a wide response:

“Establish accessible **and free** legal aid systems and legal information sharing systems for victims; i**ncluding information regarding all possible legal procedures arising from human trafficking, including criminal, civil, family and administrative procedures**. **Victims/survivors should understand their entitlements to support and the continuity of their rights and entitlements when there is a change in their residence or legal status of the victim**.”

**Para. 85:** As we have underlined in the document, success in the investigation and prosecution of allegations of trafficking in women and girls also requires adequate conditions for protecting the rights of the ones who have suffered from it. An excessive criminal law emphasis tends not to be a victim/survivor-centered approach, nor a gender- sensitive one.

**Para. 86**: We suggest the addition of a final sentence: **All adequate measures should be taken to ensure that anti-trafficking actions by law enforcement, prosecution and the judiciary are not disproportionality affecting women and, in particular, women facing multiple and intersecting forms of discrimination**.

**Para. 96:** As mentioned above, we suggest the substitution of the title to “Reparation and redress”, avoiding the term rehabilitation.

**Plataforma CEDAW Catalunya**

Almena Cooperativa Feminista; Àmbit Prevenció; Associació de Dones Periodistes; Associació Dones Juristes; Creación Positiva; Dones amb Empenta; Entrepobles; Fundació Aroa; Grup de Recerca Antígona; Hèlia Dones; L’Associació Drets Sexuals i Reproductius; Laia Rosich Solé; Secretaria de la Dona de Comissions Obreres de Catalunya; Tamaia; Xarxa de Dones per la Salut; Xarxa Feminista Ca la Dona.

Barcelona, May 15, 2020

1. See, for example: <http://antigona.uab.cat/index.php/2018/11/28/articulos-sobre-la-prostitucion-y-el-derecho-ordenanzas-municipales-y-sancion-de-la-prostitucion/> [↑](#footnote-ref-1)
2. Directive 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. More rigorous prevention, prosecution and protection of victims’ rights, are major objectives of this Directive. [↑](#footnote-ref-2)
3. According to EU Directive 2011/36/UE, “Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.” (Art. 11 Directive 2011/36/UE) [↑](#footnote-ref-3)