May 15, 2020

Committee on the Elimination of Discrimination against Women

Office of the High Commissioner for Human Rights

By E-mail: cedaw@ohchr.org

**Re: Draft General Recommendation on TWGCGM**

Distinguished Committee Members:

Sanctuary for Families (“Sanctuary”), World Without Exploitation (“WorldWE”), and the New York State Anti-Trafficking Coalition (the “Coalition”) respectfully provide this submission in response to the Committee on the Elimination of Discrimination against Women’s (the “Committee”) call for comments on the draft General Recommendation on trafficking in women and girls in the context of global migration (the “Draft General Recommendation”), as considered within the framework of the Convention on the Elimination of All Forms of Discrimination against Women (the “Convention”).

Sanctuary is the largest non-governmental organization in New York State, dedicated exclusively to addressing the multi-faceted needs of survivors of domestic violence, trafficking, and related forms of gender violence. Sanctuary has served more than 1,000 survivors of human trafficking, the vast majority of whom are immigrants. Sanctuary offers legal, shelter, clinical, and economic empowerment services to survivors, advocates for policies and legislation to advance the rights of survivors and improve the response of systems to gender violence, and conducts extensive community outreach, education, and training.

WorldWE is a national coalition of organizations and individuals committed to creating a world where no person is bought, sold, or exploited. WorldWE aims to create a culture where those who have been trafficked or sexually exploited are treated as victims of a crime not criminals themselves, while those who purchase, sell, or exploit other human beings are held accountable.

The New York State Anti-Trafficking Coalition is a network of more than 140 organizations throughout New York State working to improve the State’s response to all forms of human trafficking and commercial sexual exploitation and to assist and empower victims and survivors.  The Coalition has played a leading role in strengthening New York State laws that hold accountable sex and labor traffickers and their confederates, including sex buyers, extend social services to immigrant victims, and enable victims to vacate prostitution and related convictions.

Our advocacy is deeply informed by the experiences of the survivors we serve.

# INTRODUCTION

Sanctuary, WorldWE and the Coalition provide this submission in response to the call for comments on the Draft General Recommendation. This submission follows the joint statement we submitted to the Committee on February 18, 2019 (the “2019 Statement”), in response to the Committee’s call for submissions regarding trafficking in women and girls in the context of global migration and the release of its Concept Note.[[1]](#footnote-1)

We have reviewed the Draft General Recommendation in detail and appreciate the efforts undertaken by the Committee to set forth clear principles to inform the States parties’ obligations to suppress all forms of trafficking in women and exploitation of the prostitution of women, in accordance with Article 6 of the Convention. In particular, we recognize the progress made since the Concept Note to expressly recognize the exploitation of women in prostitution as a critical component of the phenomenon of global trafficking. In addition, we commend the Committee’s unequivocal assertion that women and girls are disproportionately affected by trafficking and the detailed discussion in the Draft General Recommendation on the particular vulnerability of women and girls to trafficking and sexual exploitation. Finally, although we largely agree with many of the principles reflected in the Draft General Recommendation, in Section II we provide comments on specific sections and paragraphs of the Draft General Recommendation that we believe will further contribute to the realization of the Committee’s objectives.

# COMMENTS ON THE DRAFT GENERAL RECOMMENDATION

In accordance with the Committee’s instructions, below we provide our comments by reference to the relevant sections or paragraphs of the Draft General Recommendation.

### Part I (Introduction) & Part II (Objective and Scope)

We recognize and appreciate that the introductory paragraph of the Draft General Recommendation includes a complete reference to Article 6 of the Convention, which explicitly recognizes the inextricable link between trafficking in women and the exploitation of the prostitution of women. As noted in our 2019 Statement, the connection between trafficking in women and exploitation of the prostitution of women is a foundational principle that has been consistently recognized by the United Nations, and is therefore essential to a comprehensive analysis of the global trafficking phenomenon.

Moreover, we share the Committee’s view in paragraph 2 that “*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*.”[[2]](#footnote-2) Given the clear inter-relationship between trafficking and exploitation of the prostitution of women, the global trafficking phenomenon cannot be eradicated without eliminating the demand for prostitution which fuels trafficking.[[3]](#footnote-3) In this regard, we recognize the Committee’s effort in the Draft General Recommendation to make clear that demand for sexual exploitation is one of the root causes of trafficking of women and girls.[[4]](#footnote-4)

### Part III (Legal Framework)

We concur with the Committee’s analysis in paragraph 8 regarding the relevance of certain factors (such as the abuse of power and of a position of vulnerability) in understanding how trafficking manifests itself.[[5]](#footnote-5) We also agree with the Committee in that the “culture of impunity” is a significant factor; however, we understand it to be not only a means to committing the trafficking crime but also a key factor that perpetuates the vicious cycle of abuse to which victims are subjected.[[6]](#footnote-6) As expressed in our 2019 Statement, permitting (and even encouraging) the commercial sex industry legitimizes and therefore solidifies the bonds of abuse, domination and control that exist between pimps and women and girls in prostitution, not only legally but in public perceptions about trafficking in women and girls. In this context, traffickers and sex buyers cannot be held accountable if they are allowed to operate with legal impunity.

### Part IV (Root causes and discouraging the demand that fosters exploitation through trafficking)

We affirm the Committee’s unequivocal statements in this Part that “*women and girls are disproportionately affected by human trafficking*”[[7]](#footnote-7) and that “*trafficking in women is rooted in gender-based discrimination, gender-based structural inequality and the feminisation of poverty*.” As the Committee recognized in the Concept Note[[8]](#footnote-8) and has reiterated throughout the Draft General Recommendation, gendered ideological structures place women and girls in a situation of vulnerability that makes them targets of exploiters and traffickers.[[9]](#footnote-9)

As the Committee recognizes, 94% of those trafficked for sexual exploitation in 2016 were women and girls.[[10]](#footnote-10) The commercial sex industry perpetuates the gender discrimination and violence that is at the root of trafficking. The commercial sex industry and its buyers subscribe to a gendered ideological system, complete with stereotypes that support the feeling of male superiority over and ownership of women and the commodification of female bodies.[[11]](#footnote-11) As the Concept Note acknowledged, this system reinforces gender norms and stereotypical thinking regarding “*male domination, sexual entitlement, coercion and control which drive the demand for the gender-stereotyped services*” of those who are trafficked, including those who are exploited in prostitution,[[12]](#footnote-12) and also leads to an “*acceptance and normalization of gender-based violence against women*.”[[13]](#footnote-13)

Therefore, we agree with the Committee’s statement that a “*gender-transformative approach is required to dismantle the structural and systemic conditions that deprive women and girls of their fundamental rights, the consequence of which places them in situations of vulnerability to exploitation by traffickers*.”[[14]](#footnote-14) Such an approach must address gender-based discrimination and violence, as well as the demand that drives the exploitation of the prostitution of women, all of which are perpetuated and promoted by the commercial sex industry. Addressing these pervasive issues is a crucial step in the elimination of the sexual exploitation of women and girls.[[15]](#footnote-15)

In addition, as the Draft General Recommendation makes clear, women and girls who migrate, either forcibly or by choice, are particularly vulnerable to trafficking and exploitation.[[16]](#footnote-16) At a time of unprecedented global and internal migration flows, while the legal frameworks of trafficking and migration may be separate, we highlight the Committee’s role in ensuring that States parties “*address the* [trafficking] *phenomenon not only from a criminal justice framework but also as one that respects, protects and fulfills the human rights of persons who are most vulnerable to trafficking, its victims*”[[17]](#footnote-17) and that migrant women and girls have enhanced “*access to justice mechanisms to resolve complaints of exploitation and abuse*,”[[18]](#footnote-18) as well as protection, legal services, and immigration relief, such as asylum.

Finally, we share the Committee’s recommendation that States parties “*ensure women’s meaningful participation in trafficking prevention efforts.*”[[19]](#footnote-19) We believe that it is crucial to have the experiences of survivors of trafficking inform any measures and efforts aimed at addressing this global phenomenon.

### Part V (Victim identification, assistance and protection), Part VI (Victims’ access to justice) & Part VII (Dissemination and reporting)

We appreciate the Committee’s recognition of the challenges in identifying the victims of sexual exploitation and trafficking,[[20]](#footnote-20) as well as the barriers victims, particularly migrant victims, face in accessing health care.[[21]](#footnote-21)

Moreover, victims often face uphill battles regarding access to justice and necessary services to escape violence and build stable lives free from exploitation. We commend the Committee’s call for the elimination of “*gender stereotyping in the justice system* [as] *a crucial step in ensuring equality and justice for victims of trafficking.*”[[22]](#footnote-22) While we agree with the Committee’s view that stereotyping “*compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice preventing women from claiming their rights and access to effective remedies*,”[[23]](#footnote-23) we also note that systemic stereotyping discourages women from coming forward before judicial and quasi-judicial mechanisms to tell their stories, thus perpetuating the vicious trafficking cycle.

As explained in our 2019 Statement, women and girls exploited in prostitution deserve the same protection, respect, and services accorded to other survivors of gender violence, shifting the stigma to those who exploit women and girls for profit or pleasure.[[24]](#footnote-24) Therefore, we appreciate the Committee’s clear call to have victims of trafficking and exploitation be exempt from criminal liability in accordance with paragraph 91.

### Additional Considerations In Light of COVID-19

The worldwide spread of the COVID-19 virus has caused significant and unprecedented global disruption. This global pandemic has caused many governments around the world to declare states of emergency and/or to take extreme steps to stem the spread of the virus. It is likely that this pandemic, and the global economic recession that may follow, will exacerbate the vulnerability of many women and girls, making them even more susceptible to trafficking and exploitation. To the extent possible, we believe the final General Recommendation should acknowledge explicitly this increased risk in times of global pandemics and recessions, and provide recommendations to address such circumstances.

# CONCLUSION

Again, we appreciate and commend the Committee’s efforts in putting forth the comprehensive Draft General Recommendation that takes into account the real-life experiences of victims and survivors like those we represent on a daily basis. We thank you in advance for your consideration of the comments included in this submission.

Sincerely,

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| Dorchen A. Leidholdt  Director, Center for Battered  Women’s Legal Services  Sanctuary for Families | Lauren Sig  Lauren Hersh  National Director  World Without Exploitation | Dorchen A. Leidholdt  Co-Chair  New York State Anti-Trafficking  Coalition |  |

1. *Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration*, <https://www.ohchr.org/Documents/HRBodies/CEDAW/Trafficking/ConceptNote.docx> (the “Concept Note”). [↑](#footnote-ref-1)
2. Draft General Recommendation, ¶ 2 (emphasis added). [↑](#footnote-ref-2)
3. The direct correlation between increased demand for commercial sex and increased demand for sex trafficking is well documented. *See* 2019 Statement, n. 21. [↑](#footnote-ref-3)
4. *See, e.g.*, Draft General Recommendation, ¶ 20. [↑](#footnote-ref-4)
5. Draft General Recommendation, ¶ 8. [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. According to the information in paragraph 12, in 2016, 72% of all detected trafficking victims worldwide were women and girls, who also made up a staggering 94% of those trafficked for sexual exploitation. Draft General Recommendation, ¶ 12. [↑](#footnote-ref-7)
8. Concept Note, ¶¶ 25, 26, 27, 31. [↑](#footnote-ref-8)
9. Paragraph 22 of the Draft General Recommendation generally refers to these vulnerabilities as “*impoverished circumstances*”; however, we would suggest replacing such term with a more generic concept (such as “*disadvantages*” or “*vulnerabilities*”) to better account for the multiplicity of circumstances which may make a woman or girl more susceptible to being trafficked. [↑](#footnote-ref-9)
10. Draft General Recommendation, ¶ 12. [↑](#footnote-ref-10)
11. *See* Kathleen Barry, *Prostitution of Sexuality: Global Exploitation of Women* (NYU Press, 1995) 33 (“[w]*hen it is treated as a thing to be taken, the human being is rendered into a thing, an objectification that not only violates human rights but also destroys human dignity, which is a fundamental precondition to human rights*.”); *see also* Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, Vol. 2, Issue 3-4 J. of Trauma Practice 33, 34 (2004), (“*Prostitution dehumanizes, commodifies and fetishes women*.”). [↑](#footnote-ref-11)
12. Concept Note, ¶ 25. [↑](#footnote-ref-12)
13. Draft General Recommendation, ¶ 28. We suggest supplementing the reference to “*normalization of gender-based violence against women*” in paragraph 28 by adding “*and girls in the public and private spheres, including sexual and other types of exploitation*” to better align this language with Target 5.2 of Goal #5 referenced therein. [↑](#footnote-ref-13)
14. Draft General Recommendation, ¶ 19. [↑](#footnote-ref-14)
15. Related to this issue, we note that paragraph 20 of the Draft General Recommendation refers to “*demand for cheap and/or forced labour, including the demand for sexual exploitation*.” Please consider making sexual exploitation the focus of this paragraph instead, particularly given the statistics that are cited in paragraph 12, which show that only 35% of women are trafficked for forced labor purposes. In any case, we reject the notion of equalizing sexual exploitation with forced labor. [↑](#footnote-ref-15)
16. Draft General Recommendation, ¶¶ 33–65. [↑](#footnote-ref-16)
17. Draft General Recommendation, ¶ 9. [↑](#footnote-ref-17)
18. Draft General Recommendation, ¶ 29(g). [↑](#footnote-ref-18)
19. Draft General Recommendation, ¶ 32. [↑](#footnote-ref-19)
20. Draft General Recommendation, ¶ 66. [↑](#footnote-ref-20)
21. Draft General Recommendation, ¶ 67. We suggest adding a reference to “*legal barriers*” in addition to administrative, linguistic and cultural barriers as migrant victims, especially those in irregular immigration status, often face significant legal obstacles to access assistance in the country where they currently reside. [↑](#footnote-ref-21)
22. Draft General Recommendation, ¶ 82. [↑](#footnote-ref-22)
23. *Id*. [↑](#footnote-ref-23)
24. *See* Julie Bindel & Liz Kelly, *A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden, London Metropolitan University*, 78 (2003) (examining the Nordic Model and noting “[decriminalizing solicitation] *not only changes* [women’s] *legal status, but how they are seen and treated by others*”). [↑](#footnote-ref-24)