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**Submission by the Institute of Our Lady of Mercy to the CEDAW Committee regarding its Draft General Recommendation on TWGCGM – 15 May 2020**

Dear Distinguished Committee Members,

We are grateful for the opportunity to submit these comments on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global (TWGCGM) based on Article 6 of the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).

The Institute of Our Lady of Mercy (IOLM)[[1]](#footnote-1), is Roman Catholic women’s religious order based in the UK. We are part of the Mercy International Association[[2]](#footnote-2) which is an NGO with Eco Soc Status. We enabled the founding of women@thewell[[3]](#footnote-3), which is a front line service provider of exiting services based in London, UK. We are involved in the governance and staffing of the organisation and through this work with women whose lives are effected by prostitution, both on street and off street and including women who have been trafficked into prostitution. They work with over 300 women each year. All of the women they support are, have been or are at risk of being exploited in the sex trade. Most of the women using their services have multiple and complex needs including problematic drug and alcohol abuse, mental health difficulties, rough sleeping or insecure housing and trafficking.

We commend the CEDAW Committee (the Committee) for developing a General Recommendation on Article 6 of the CEDAW Convention. We thank the Committee for recalling its mandate of helping States parties to fulfil their obligations under CEDAW to combat discrimination against women and girls.[[4]](#footnote-4) As the Committee states in Section I, Paragraph 2, States parties have failed, and continue to fail us, in effectively addressing the trafficking, sexual exploitation and exploitation of prostitution in women and girls. The General Recommendation on TWGCGM should serve as an additional tool in assisting States parties to uphold their obligations under CEDAW, in particular its Article 6.

**GENERAL COMMENT:**

IOLM commends the Committee for recognizing the particular vulnerabilities of migrant women to trafficking. However, from our experience we remain concerned with the framing of a General Recommendation on Article 6 only within the context of global migration. We believe that there is significant risk that States parties will conflate (*i*) the trafficking in women and their exploitation in prostitution with (*ii*) women who migrate in all contexts, consequently misinterpreting the applicable legal frameworks, and mischaracterizing the purpose, objectives and States parties’ obligations under Article 6. Whilst in some cases there can be an overlap between the two phenomena, we believe these concepts are inherently different because whilst migration does not, in and of itself, include acts that dehumanize and inflict upon women severe physical, mental and sexual violence, or even death,[[5]](#footnote-5) or means that include abuse of power or abuse of a position of vulnerability, trafficking and the exploitation of prostitution rely on the perpetuation of such human rights abuses. In addition, the end goal of women and girls migrating is to find an environment in which they can fully enjoy their fundamental human rights, including the dignity of work and a life free of violence and discrimination—to which trafficking and exploitation in prostitution are antithetical.

We therefore suggest itis critical that Recommendation on TWGCGM is based on the whole text and purpose of Article 6, which requires States parties to “*take all appropriate measures, including legislation, to suppress all forms of traffic in women and* ***exploitation of prostitution of women***,”[[6]](#footnote-6) noting that this article does not mention migration.

With these general comments in mind, we offer the following suggestions.

**Title of the Draft Recommendation:** The title of the General Recommendation should read “General Recommendation on Trafficking ***and Exploitation of Prostitution*** in Women and Girls in the Context of Global Migration.”

**I. INTRODUCTION**

**Paragraphs 1 and 2:** Paragraphs 1 and 2 place the Draft Recommendation within the legal context of migration. IOLM agrees with the Committee’s underlining that trafficking in women and girls “in the context of global migration” creates specific vulnerabilities of migrant women to trafficking and exploitation in prostitution.

***Suggestion:***We urges the Committee to more clearly differentiate the conceptual and legal framework of migration from that of trafficking, and to focus on the latter. We also call upon the Committee to more explicitly address the exploitation of prostitution, which is discussed briefly in the Draft Recommendation *[paras. 24, 92, and 103]*, when, in reality, the exploitation of prostitution is one of the gravest and most pervasive purposes of the trafficking in women and girls.[[7]](#footnote-7) Not recognising, at the outset, that different national and international legal frameworks govern States parties’ obligations regarding migration as distinct from trafficking and exploitation of prostitution risks confusing the urgent obligations of States parties to ensure safe, orderly and humane migration for women and girls, on the one hand, with the trafficking in and exploitation of prostitution of women and girls, on the other. This potentially weakens States parties’ ability to combat the trafficking and exploitation of prostitution of women and girls around the world. For example, women seeking opportunities and means of survival are most often put in debt bondage and trafficked from origin, not always during the process of migration. Furthermore, the consent[[8]](#footnote-8) that she may give to her traffickers or other facilitators of her exploitation is irrelevant under the law, whether it occurs in her place of origin or at any point leading up to the destination of her trafficking.[[9]](#footnote-9)

**II. OBJECTIVE AND SCOPE**

**Paragraphs 4 and 5:** We commend the Committee for recalling the CEDAW Convention articles and existing Committee jurisprudence that address sex-based discrimination in connection to Article 6.

***Suggestion:*** Refereeing back to our earlier comments we therefore urge the Committee to explicitly address the **exploitation of prostitution** in this section, recognising the Convention articles and other Committee jurisprudence as applicable to prostitution, as the effect of the inherent violence and discrimination of prostitution likewise “deprives women of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”[[10]](#footnote-10)

**III. LEGAL FRAMEWORK**

**Paragraphs 7 and 8:**  We commend the Committee for recognising the connection between Article 6 and fundamental human rights principles, resolutions and international instruments, including the Universal Declaration of Human Rights, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), and other United Nations instruments to which they have pledged implementation.

*Suggestions:* IOLM, however, considers it imperative that the General Recommendation also invoke the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 1949 (the 1949 Convention)[[11]](#footnote-11), as it is a pillar in the international legal frameworks against trafficking and the exploitation of prostitution. The 1949 Convention offers internationally accepted principles with which the General Recommendation should address prostitution. Additionally, when discussing the definition of “trafficking in persons” under Article 3 of the Palermo Protocol, we urge the Committee to emphasize clause (b), establishing the irrelevancy of consent of trafficking victims. [[12]](#footnote-12) This would accurately reflect that, despite the fact that vulnerable women are those who are most frequently trafficked for exploitation or at risk of being trafficked for exploitation, factors of vulnerability and related lack of consent are not a prerequisite to their identification as victims.

**IV. ROOT CAUSES AND DISCOURAGING THE DEMAND THAT FOSTERS EXPLOITATION THROUGH TRAFFICKING**

**a. Women and girls are disproportionately affected by human** **trafficking**

**Paragraph 12:** We commend the Committee for recognising that traffickers overwhelmingly target women and girls, as well as pointing to the significant role played by of technology in the recruitment of victims.

***Suggestion:***We also urge the Committee to address digital business models and the advancement in technological innovations, access, and anonymity in the use of content and persons—including the Internet, marketing and advertising, social media platforms, mobile technology, “sugar dating” sites, pornography, micropayment systems, webcams, and other avenues—through which exploiters use tools of deception, recruitment, coercion, and sell women and girls to sex buyers.[[13]](#footnote-13) We urge the Committee to contextualise this discussion with regard to pornography and its production, which is not addressed in the Draft Recommendation as it relates to legal adults. The General Recommendation should recognise that the sex trade and its promoters, through the media and other forms of communications, promote, normalise and glamorise male violence and discrimination against women and girlsand that the exploitation of women and girls in prostitution and pornography is a harmful cultural and customary global practice, perpetuating violence and promoting negative stereotypes against them.

**b. Trafficking in women and girls constitutes gender-based violence against women**

**Paragraphs 13 and 14:** IOLM commends the Committee for recognizing that trafficking violates legal frameworks that have come to be customary international law.

***Suggestion:***Following on from earlier comments we urge the Committee to recognize that the exploitation of prostitution of women also violates such norms.

**e. Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking**

**Paragraphs 19-32:** We commend the Committee for its discussion, in this subsection of the identifying, addressing, and eliminating root causes of, and discouraging the demand of, exploitation of women and girls through trafficking. National legal frameworks that address the demand that fosters trafficking and the exploitation of prostitution, in accordance with Article 9.5 of the Palermo Protocol, have shown promise in reducing such demand[[14]](#footnote-14) and in combating trafficking.

***Suggestion:***Following on from points raised earlier discussed above we urge the Committee to extend this section and explicitly mention the exploitation of prostitution and its particularities in all the paragraphs in which it addresses trafficking. See following examples

In **Paragraphs 22 and 23:** We urge the Committee to recognize that prostitution, like so many other harmful forms of culturally accepted customs, norms, and manifestations of sex-based violence and discrimination, is widely accepted by the public—such that perpetrators, including purchasers of women and girls for sexual acts, are rarely held accountable. We also urges the Committee to recognize that harmful traditional and stereotypical attitudes contribute to the proliferation of pornography and the “depiction and other commercial exploitation of women as sexual objects,” which contributes to sex-based discrimination and violence.[[15]](#footnote-15)

In **Paragraph 25:** Again we urge the Committee to encourage States parties to invest in the development of studies and data collection on the impact of unwanted, monetised and serial sexual invasion and psychological coercion on women and girls, as well as on their children. Reports show that girls and women sexually exploited in the pornography and prostitution industries face increased risk of domestic violence, physical assault, harassment, and rape. We believe particular attention should be paid to links with family abuse and neglect, as high-risk factors to trafficking and early abuse in prostitution, and a higher death rate and/or murder are linked to sexual exploitation. Without the collection of such data, it is impossible for States parties to uphold their obligations under CEDAW and report measures that must be taken to overcome violence against women and girls in the sex trade perpetuated by exploiters and sex buyers.

**g. Women and girl** **migrants’ increased risk of being trafficked**

**Paragraphs 47-65:** As mentioned in the general introductionIOLM commends the Committee for recognising the importance of the links between migration and the risks of trafficking.

***Suggestion****:* As discussed above, we urge the Committee to further develop in this subsection the distinction between the frameworks of migration and of trafficking and the exploitation of prostitution.

Specifically in **Paragraph 50:** We commend the Committee for recognising that sector-specific migration rules and policies may contribute to the victimisation of women by perpetuating traditional stereotypes, offering no labour protections, and heightening women’s exposure to human rights abuses. We encourage the Committee to further recognise that harmful cultural norms can lead to the erroneous notion that women “choose” or “migrate to” the sex trade, as implied when the Committee links migration to the “male-centred entertainment sector.” Such conflation dangerously risks to leading States parties to infer that women might “choose to migrate” for purposes of prostitution in commercial sex establishments, thus inadvertently condoning the sex trade as means of employment for migrant women. Any such suggestion would contradict the provisions of CEDAW, the Palermo Protocol, the 1949 Convention, and other United Nations instruments protecting women and girls against sex-based and gender-based violence and discrimination.*.*

Additionally in **Paragraph 59:** We agree with the Committee’s emphasis on the scrutinising of recruitment agencies, intermediaries, and employment agencies. We encourage the Committee to also point out that ethical recruitment measures, such as information campaigns, should inform women and girls that their consent “to migrate” or “enter debt bondage” is irrelevant in situations of trafficking and the exploitation of prostitution. Agencies should accordingly be prosecuted and punished for misinforming women in this regard.

**V. VICTIM IDENTIFICATION, ASSISTANCE, AND PROTECTION**

**a.** **Victim identification and b. Victim assistance and protection**

**Paragraphs 66, 67, 71, and 72:** We commend the Committee for recognising that victims may be reluctant to engage with law enforcement and health care professionals, and for recognising the need for standard operating procedures to assist trafficked women exit from exploitative situations.

***Suggestion:***We urge the Committee to encourage States parties to inform women that consent is irrelevant in the context of trafficking and exploitation in prostitution as well as to further develop the link between de-criminalisation of trafficking victims and of women and girls exploited in prostitution *[discussed in paragraphs 91 and 92]* with provision of services and opportunities to exit systems of violence and exploitation.

**Paragraphs 68, 72, and 73:** We appreciate the numerous measures put forward by the Committee for the identification of, protection of, and the accordance of all human rights to the victims of trafficking.

*Suggestion:* We further suggest that the Committee add, as a measure, informing both presumed and identified victims about the irrelevance of consent. This would facilitate States parties’ efforts in victim identification and protection, while ensuring that such mechanisms are carried out in accordance with international law, furthering women and girls’ exercise and knowledge of human rights and fundamental freedoms.

**VI. VICTIMS’ ACCESS TO JUSTICE**

**Paragraph 92:** IOLM urges the Committee to include “***exploited in***prostitution.”

Thank you again for this opportunity, please contact me if further information is required

Sister Lyndsay Spendelow

Assistant Leader IOLM

lyndsay.spendelow@iolmercy.org.uk

1. <https://www.mercyworld.org/> [↑](#footnote-ref-1)
2. <https://www.mercyworld.org/> [↑](#footnote-ref-2)
3. <http://ww.watw.org.uk> [↑](#footnote-ref-3)
4. General recomendación No. 28 (2010) (CEDAW/C/GC/28), Para. 2. [↑](#footnote-ref-4)
5. Moreover, women and girls who are trafficked for labour exploitation are also acutely vulnerable to sexual violence, sexual exploitation and to the exploitation of prostitution. [↑](#footnote-ref-5)
6. United Nations Office of the High Commissioner, *Convention on the Elimination of All Forms of Discrimination against Women* 3 (1979) (*emphasis added*). [↑](#footnote-ref-6)
7. “Most of the victims detected across the world are females; mainly adult women, but also increasingly girls. The vast majority of the detected victims of trafficking for sexual exploitation are females…” UNODC, *Global Report on Trafficking in Persons 2018* (United Nations publication, Sales No. E.19.IV.2), p.10. [↑](#footnote-ref-7)
8. http://www.conservativehumanrights.com/news/2019/CPHRC\_Consent\_Report.pdf [↑](#footnote-ref-8)
9. Article 3(b) of the Palermo Protocol states that the “**consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant** where any of the means set forth in subparagraph (a) have been used…” (*Emphasis added*)*.* UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (2000), Art. 3(b). [↑](#footnote-ref-9)
10. General recommendation No. 19 (1992) (HRI/GEN/1/Rev.9 (Vol. II)), para. 11. [↑](#footnote-ref-10)
11. UN General Assembly, *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 1949* (1949). [↑](#footnote-ref-11)
12. *See supra*, n. 5.  [↑](#footnote-ref-12)
13. A/71/303 (2016), para. 51; A/73/263 (2018), paras. 26-27. [↑](#footnote-ref-13)
14. Jude Towers, Brian Francis & Sylvia Walby, *Measuring Trafficking EU-28*, *in* Study on the Gender Dimension of Trafficking in Human Beings: Final Report57, 81-82 (European Commission ed., 2016); European Parliament Resolution on Implementation of the Directive 2011/36/Eu of April 5, 2011, on Preventing and Combating Trafficking in Human Beings and Protecting its Victims from a Gender Perspective, paras. O, 50, P8\_TA(2016)0227 (2016);Parliamentary Assembly of the Council of Europe Resolution 1983 (2014), *Prostitution, Trafficking and Modern Slavery in Europe*, para. 12.1.1 (adopted April 8); SOU 2010:49 Förbud mot köp av sexuell tjänst: En utvärdering 1999-2008 [government report series] 122-23 (Swed.); Rikspolisstyrelsen, Lägesrapport 10: Människohandel för sexuella och andra ändamål 2007-2008 (2009), at https://perma.cc/9ZAV-N8CQ, p. 10. [↑](#footnote-ref-14)
15. General recommendation No. 19 (1992) (HRI/GEN/1/Rev.9 (Vol. II)), para. 12. [↑](#footnote-ref-15)