

Comment by

the Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE)

on

Draft General Recommendation on trafficking in women and girls in the context of global migration

* **Remove from Para 8:** Its examination of States parties’ reports reveals that the abuse of a position of vulnerability~~,~~ *and* the abuse of power ~~and the culture of impunity~~ are the most common means used to commit the trafficking crime,

**Reason:** “Culture of impunity” is not a recognised means of trafficking in the Trafficking Protocol.

* **Insert in Para 12** The Committee notes the limitations of existing datasets on trafficking. Sexual exploitation is the most commonly identified form of trafficking because it is more widely reported in comparison to other forms of exploitation such as forced labour or domestic servitude.[[1]](#footnote-1) Further, according the 2017 Global Estimates of Modern Slavery, of the 16 million people in forced labour exploitation, 57.6% were female.[[2]](#footnote-2)
* **Title section IV Suggested Insertion:** In order to avoid misinterpretations, we suggest the Committee adds a paragraph outlining the definition of “demand” before moving on to discuss how to discourage it. The Commentary to the Recommended Principles and Guidelines[[3]](#footnote-3) acknowledges that the under-definition of ‘demand’ is one of the barriers to States addressing it. The Commentary also emphasises two central elements contributing to the demand that fosters exploitation: social attitudes that discriminate and devalue, and thus render exploitable, certain **groups of people** (e.g. women and migrants) and certain **types of work** (low-wage, informal, unorganised). It is important to recognise that in addressing social attitudes which lead to demand, education and awareness-raising should be prioritised over criminalisation.
* **Insert in Para 20** The ever-growing demand for commercial sexual exploitation of women and girls is clearly demonstrated by the profits generated by traffickers, which currently constitutes two thirds of all global human trafficking profits.[[4]](#footnote-4)
* **Change Para 27 a) into Para 26 f) and adjust** Adopting or strengthening legislative and other measures to implement prevention techniques through educational, social or cultural measures *that foster a culture of respect towards human and labour contribution, in particular of women, women migrants, and members of ethnic and racial minorities or other disadvantaged groups; and who may be disproportionally targeted for their labour* including in particular those targeted toward potential users of trafficked goods or services
* **Reason:** the demand that fosters exploitation is enabled by social attitudes that devalue women and other groups (and their labour); the change of such social attitudes requires concerted efforts by the state.
* **Clarify Para 27 b** Where applicable, instituting penal legislation to sanction the users of goods and services that result from trafficking in persons;
* **Reason:** Any guidance provided by the CEDAW committee in this General Recommendation should be clear, practical and actionable. As it stands this recommendation is overly broad and leads to enforceability issues. More clarity is required to outline how sanctions to users of goods and services will be applied in practice and avoiding secondary and undesirable effects.
* **Insert Para 29**

c) Sexual exploitation including for production of pornography.

Explanation: majority of women trafficked for the purpose of commercial sexual exploitation are also exploited in production of pornography, which impacts them even after they are removed from the situation of trafficking, inhibits their ability to return to their countries of origin due to stigmatization and creates continuous vulnerability to re-trafficking

e) including by establishment of national survivors’ advisory councils

l) takes into account the best interest of children and adolescents.

* **Insert Para 30**  National coordination **through National Referral Mechanisms or equitable systems** is required to align policies in order to ensure an effective and human rights-based approach to combatting trafficking in women and girls including those on gender equality, criminal justice, migration management and sustainable development.
1. Establish **National Referral Mechanisms[[5]](#footnote-5)** to and
2. Integrate gender-specific provisions into the national plan of action to combat human trafficking, with the meaningful participation of civil society; *and the empowerment and meaningful involvement of communities that are vulnerable to trafficking (such as migrant women and girls, women and girls working in unregulated or unmonitored labour sectors)*.
* **Insert Para 31**

d) **and victim-centered**includes the formulation of a right-based *and victim-centered* policy on rescue, repatriation and reintegration of victims; to add: through effective National Referral Mechanism systems.

e) Calls for the establishment of permanent bodies at different levels of government to coordinate and monitor its uniform implementation across the country.

i) includes trafficked persons and women and girls from communities vulnerable to trafficking in the impact assessment.

* **Change Para 32** Instead of victims here it should be survivors, as victims can’t participate in the activities outlined
* **Insert in Para 32 a)** The expertise and voices of women and girl victims of trafficking, *and those vulnerable to trafficking*, must be included and accounted for at all stages of efforts to prevent and combat trafficking, including training, programme and research design, development, implementation, monitoring and evaluation, as well as legislative and policy drafting;
* **Insert in Para 43 a)** Referral mechanisms should be preceded by “**National”** referral mechanisms.[[6]](#footnote-6)
* **Insert in Para 45**

a)Establish **National Referral Mechanisms** for the identification of victims of trafficking *including* within the asylum procedure…

e) Assess the impact of the national legal and policy framework, particularly in respect of the application of immigration and asylum laws on trafficking victims, in order to ensure that they do not have harmful consequences on victim identification, victim assistance and protection **and social inclusion/reintegration within National Referral Mechanisms or equitable systems**, and do not increase women and girls’ vulnerability to trafficking.

* **Insert in Para 46 a) footnote[[7]](#footnote-7)**
* **Insert in Para 53 b)** *Conduct a survey of women migrant survivors of trafficking in human beings to reflect their voices in policy development directly impacting them.*
* **Insert Para 56 c)** *Ensure that public information about migration and migrants is factually correct and fosters open and inclusive societies while discouraging xenophobia and violence against migrants. Consider measures to address incorrect or misleading information about migration and migrants being disseminated by the media and public figures or hate speech.*
* **Insert in Para 58 a)** Introduce, strengthen, and enforce employment legislation designed to protect all migrant workers, irrespective of *their legal status,* level of skill or the sector in which they work, duration of their employment, and to minimize the opportunities for exploitation by providing very clear protections, including minimum wage, overtime pay, health and safety, and decent working conditions, particularly in unregulated or unmonitored economic sectors that rely on migrant women’s labour.

**Insert in Para 58 f)** Facilitate the self-organisation and unionisation of *all* women *workers, including* migrant *women* workers, in unregulated or unmonitored labour sectors.

**Reason:** The exploitation of migrants is enabled by negative and discriminatory attitudes towards them as poor, desperate, and willing to accept any sort of employment. A four-country study by ILO found that an overwhelming number of nationals think that migrants should not have the same labour rights or receive the same wages as nationals (and these lower standards can reach the level of exploitation).[[8]](#footnote-8) Such public attitudes are enabled by xenophobic speech and inaccurate/misleading media reporting and, in turn, influence public policies that enable exploitation and discrimination of migrants.

* **Remove from Para 64:** take into account the root causes of ~~real~~ migration patterns
* **Insert in Para 68 e)** Introduce proactive inspections *and criminal investigations* for the identification of trafficking victims in workplaces and recruitment agencies
* **Insert in Para 72 c)** Adopt a gender-sensitive *and trauma-informed* policy and procedures manual for the protection of trafficked victims, including as related to the identification of their needs for assistance and support, development, implementation and monitoring of the rehabilitation plans, and reporting to the national anti-trafficking coordination authorities on the progress achieved with due consideration to data protection and confidentiality.
* **Insert in Para 84 d)** Develop comprehensive gender*- and age-*sensitive policies strategies and programmes aimed at facilitating trafficking victims’ access to justice, while ensuring fair trial guarantees;
* **Insert and Remove from Para 92 c)**  Ensure that no group of women, is targeted for investigation or prosecution, discrimination, stigmatisation, ~~or suffers from the lack of rights and protections~~ *is subjected to other human rights violations*, as part of anti-trafficking initiatives or under the guise of combatting trafficking, including violations of their rights to *liberty*, movement, assembly, health and safety, to dignity and livelihood.
* **Clarify Para 92** ODIHR would like to draw the Committee’s attention to the current wording in paragraph 92 which might lead to confusion and misunderstanding of the real need for protection of women and girls in situations of vulnerability. The current wording might indeed capture situations which fall outside the scope of the General Recommendation and might exclude possible scenarios where traffickers are female perpetrators. This would seem in contradiction with the need to ensure that anti-trafficking efforts are effective in dismantling trafficking networks. By encouraging States not to investigate, prosecute or detain any woman, the subparagraphs (b), (c) and (d) might read as a call for impunity, creating loopholes and giving blanket amnesty including to those who might have committed offenses (which are not the result of an exploitative situation / outside the scope of an exploitative situation). This is particularly problematic as UNODC and others have highlighted that 35% of trafficking offenders are females and women traffickers are particularly active in the recruitment phase of human trafficking (UNODC 2018 report). ODIHR would therefore recommend that the Committee consider reviewing paragraph 92 (a) to (e) so as to provide unambiguous language on the need to ensure justice for victims of trafficking and protection for the most vulnerable.
* **Insert in Para 103 e)** ILO Labour rights framework, including for the governance of labour migration and protection of migrant workers,*Convention C189 on Decent Work for Domestic Workers and Convention C190 on Ending Violence and Harassment in the World of Work.*
1. UNODC, 2018, “[Global Report on Trafficking in Persons](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)”. [↑](#footnote-ref-1)
2. ILO & Walk Free Foundation, 2017, “[Global estimates of modern slavery: Forced labour and forced marriage](https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm)”. [↑](#footnote-ref-2)
3. <https://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf> [↑](#footnote-ref-3)
4. https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\_243391/lang--en/index.htm [↑](#footnote-ref-4)
5. OSCE (2003): Permanent Council Decision No. 557: OSCE Action Plan to Combat Trafficking in Human Beings, available at: <https://www.osce.org/actionplan>. A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective gender-sensitive and victim centered way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met. OSCE (2004): National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook, p. 15, available at: https://www.osce.org/odihr/13967. [↑](#footnote-ref-5)
6. As developed by the Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in 2004. [↑](#footnote-ref-6)
7. OSCE (2012): Guiding Principles on Human Rights in the Return of Trafficked Persons, p. 55, available at: https://www.osce.org/odihr/124268. [↑](#footnote-ref-7)
8. ILO, *Public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand*, ILO, Bangkok, 2019. [↑](#footnote-ref-8)