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

Dear Madam, dear Sir,

As former member of the Committee and of WG tasked with elaborating the planned General Recommendation, it is my honour to submit this contribution. I regret the Committee’s decision not to allow comments in track change, which might have provided improvements to the draft .GR.

1. **Introduction**

I am aware of the complexity of the issues the GR attempts to tackle and would like to thank the Committee members, staff members of the Secretariat and consultant who have worked on the Draft. Unfortunately, it relies excessively on criminal law and uses a puzzling detour through “discouraging demand that fosters exploitation through trafficking” instead of focussing on the global economic model that favours the haves and further dispossesses the have-nots ; instead, the GR should directly combat the poverty, inequality and (gender) discrimination and exploitation that the global capitalism (private and State) causes. Due to these elements, I don’t see the present GR’s added value in comparison with other existing instruments and efforts tackling trafficking; on the contrary I fear it brings a dangerous **retrogression** in the Committee’s approach to women’s rights.

However, the elements needed to make the GR a **progressive and useful instrument** are present in the draft. Indeed, it covers a wide range of issues in a well-organized fashion, is well written, and proposes many far-reaching recommendations. Some restructuring and the setting of a new orientation would make the GR very relevant especially in the context of the **coronavirus pandemic and its consequences** and would avoid the feared retrogression. According to a recent Oxfam report, the pandemic may lead to an**additional** half a billionpersons living in poverty; by the time the pandemic is over, **half** of the world’s population of **7.8 billion people** could be **living in poverty** with poor countries unable to “bail out poor and vulnerable communities” , mass destruction of jobs with up to half of them disappearing in Africa [[1]](#footnote-1) and **2 billion people facing joblessness without unemployment benefits in poor countries**[[2]](#footnote-2). In addition, the **climate crisis may worsen** while States concentrate on relaunching their economies at the detriment of the climate change goals and the most affected populations[[3]](#footnote-3). This will undoubtedly expand the number of people desperate to migrate – and exposed to being trafficked, within their country or over borders.

A lot depends on how the economic recovery efforts will be oriented and financed. There is no certainty that the relaunching[[4]](#footnote-4) of the world economies will prioritize, or at least address and improve the situation of the poorest, especially in poor countries: their already weak/inexistent social protection and large budget deficits and the North-South divide hinder effective poverty elimination. Debt relief, international coordination, targeted support for the poor populations, with their participation, respect for human rights and innovative policies are required[[5]](#footnote-5). Yet one can fear that as in 2007-2008, the poor and in particular women and girls will be left stranded while corporations, the financial sector and the richest individuals[[6]](#footnote-6) pocket the most part of the tax-funded rescue funds[[7]](#footnote-7). The policies that have in the last decades wreaked havoc on the social compact and massively increased poverty and inequality[[8]](#footnote-8), women bearing the brunt of these policies, cannot be allowed now[[9]](#footnote-9) : the GR can be an instrument in the reorganisation of the global economic system towards social and economic (gender) justice.

1. **Title of the GR**

Since inequality and poverty are the main drivers of trafficking, I suggest adding to the title “…context of global migration ***and increasing inequality and poverty***”.

1. **The reasons for reorienting and restructuring of the GR**

The chosen structure, the heavy reliance on the Palermo Protocol approach and a skewed statistical framework and the detour by “discouraging the demand that fosters exploitation through trafficking” are not conducive to making the General Recommendation an effective tool to combat trafficking: on the contrary it would become a doubly **retrogressive instrument** affecting the poorest, most marginalised and discriminated against women and girls in violation of the CEDAW Convention and the SDG’s motto of “leave no one behind”.

With the present structure, criminal law appears as the main vehicle to combat trafficking whereas other means are not given adequate attention, although they present a superior efficiency by addressing the social and economic needs and rights of women and girls. The Draft is focussed on sources that present a too narrow approach to trafficking, based solely on data emanating from the United Nations Office on Drugs and Crime and not on data from the International Labour Office which would better enable to seize the totality of the phenomenon, see <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>. I therefore suggest to (better) include ILO’s approach, both statistical and as legal and practical framework, in the Draft. I also suggest adopting an economic framework helping to analyse how women’s rights are crushed and to make recommendations overcoming these violations.

The first retrogressive element concerns the “discouraging demand” call.

The Committee had in its jurisprudence so far focussed its “efforts to end demand” **solely** on trafficking for sexual exploitation and also for prostitution, even when exercised voluntarily, that is for sex work[[10]](#footnote-10). The Committee had not requested[[11]](#footnote-11) an end – or in the draft terminology a discouragement - to the **demand** for female workers for instance in the garment industry, agriculture, fisheries, care or domestic work. Indeed, the Committee has not recommended that States parties do all they can to incite the **buyers** of services such as care work and domestic work to **renounce** having a cleaning lady, or carer for children or aged parents. For female workers, including migrant domestic and care workers, the Committee rightly requested **improvements** of the legislative framework through sound social and labour laws and their implementation, including surveillance of recruiting agencies, types of permits, prohibition of withdrawing of passport, kafala system, and better concrete working conditions for women and girls. In other words, it requested **an end to their exploitation**, not an end to, or discouragement of, the **demand** for such work, which in effect means **an end to the possibility of having an income**. The approach chosen in the draft GR would, if followed, actually condemn a large number of women to additional poverty and trafficking – as **jobless women and girl**s. This cannot be the aim of the GR. It would contradict the Committee’s constant recommendations to State parties to promote the economic autonomy of women and respect their agency, including by fighting stereotypes on their autonomy of decision.

Therefore I believe the focus of the GR has to be reoriented thus: addressing **directly** the economic and social conditions that cause the vulnerability of women and girls to migration in dangerous conditions and trafficking, while ensuring parity in decision-making, with no detour through the **deceptive** approach of “discouraging demand”. States must also be made more clearly **accountable** for providing women and girls with education (not just primary school, art. 10), proper health care, housing, sanitation (art. 12), employment possibilities and social protection (art. 11-14) , protection against GBVAW including domestic violence, protection against early, forced marriage (art. 16), etc. : all the **means to avoid the risk of trafficking by diminishing the general risk of exploitation.**

This is the first part of my concern with retrogression.

The second part concerns the use of the “discouraging the demand that fosters exploitation through trafficking” as a **Trojan horse** to **surreptitiously** introduce the “**Nordic model**” of criminalization of the buyers of sexual services, without even mentioning it, see para 27 a), b) and d). In its Concluding Observations the Committee has **unsystematically** swerved between rarely, discreetly or directly, promoting the “Nordic model” of criminalizing buyers of sexual services, [[12]](#footnote-12) promoting the use of labour and social laws to protect the rights of sex workers[[13]](#footnote-13), recognizing the adverse human rights impact of the clients’ criminalization and recommending to “ design programmes to improve the safeguarding of their human rights, including their rights to protection against violence, health and access to social security” [[14]](#footnote-14). Sex workers organisations have in the course of the years provided the Committee with detailed information on the proven negative effects the end demand approach has on the security, health, economic autonomy and caring rights and capacities for their children and other dependents of the women involved[[15]](#footnote-15).

Yet although there is no clarity on the Committee’s line in this field, except that women in prostitution should not themselves be criminalized, I gather that thanks to paras 27 a, b and d, the criminalization of buyers will concern in the end **only** sex workers, that is adult women who freely exercise their activity and no other workers; sex work will seem the only domain where the “When applicable” reference (para 27 b) to criminal law will be applied. As seen above, the framework of “discouraging the demand that fosters exploitation” doesn’t work for the rest of the economy but it risks applying to sex workers; they will be the only women deprived of agency to decide which job they hold, due to “moral” considerations and to the conflation between trafficking and sex work, in the eyes of those who consider that any woman selling sex is a victim of sexual exploitation – whatever she may say to the contrary. I therefore consider that the **extension of the end demand framework under the new terminology of discouraging demand is a masquerade to conceal the adoption by the Committee of the “Nordic model”. I urge changing the chapeau of para 27 to address directly exploitative socio-economic conditions thus : “Combat all forms of exploitation of persons, especially women and girls, that…” ….and deleting para 27 b). Also delete para 27 a) whose content is better formulated in para 62 g).**

The Committee that should best protect the rights of **all** women against **all** forms of discrimination must not renege on the protection of the human rights some of the most marginalized and stigmatized groups of women and disrespect the autonomy and dignity of sex workers while depriving them of their livelihood and security.

1. **Proposals for a new structure and some changes to the text**

 **1. Main changes**

**Part III. The Legal framework** should be completed by a **new para 11 bis** insisting that most of the problems created by trafficking will not be addressed or redressed by criminal law due to lack of reach of criminal law, lack of harmonization of laws between countries, and in some federal states with different definitions of trafficking , complexity of the financial operations, powerlessness of justice systems, underfunded, under resourced, often corrupt, fighting with unequal tools against some of the best criminal, tax, international lawyers, hired by trafficking organisations. The para should insist on 1) the macro economic effect of sound labour and social laws, 2) an organized labour market, not crazily deregulated, 3) imposing controls on working conditions, and on 4) adequate implementation of economic and social rights, 5) the necessary changes to tax laws in order for States to finance public services taking into account those that women need most.

**Part IV letter c Scope and application** of the Convention (paras 16 to 18) is to **move to Part II** **Objective and scope** and should become paras 5 (ex 16), 6 (ex 17), 7 (ex 18). Indeed, these issues don’t belong in Part IV on Root causes.

**Part IV**: the **present letter e) (§ 19-24) should become letter a), with the title “Root causes of trafficking in women and girls”.** Indeed, the main root causes of trafficking are inequality, poverty, gender discrimination, lack of education, lack of decent employment opportunities, lack of, poor or unimplemented labour and social laws and protections, marginalization, austerity measures and/or low budgets for the domains that would most support women’s lives in dignity, overburden of care work and GBVAW including domestic violence, etc. This analysis should be the central focus of the GR and it should be clear that the GR operates in a world in which the dominant economic model **produces** trafficking, notwithstanding all the criminal prosecutions against traffickers that States might conduct.

The **new letter b)** **of Part IV** would be devoted to **Employment and labour framework**, and **consist of the whole of the present para 58 : indeed** it applies not only to migrant workers according to letter g) but to all women workers and should therefore move up in Part IV. **Modify** para 58 a) 1st line : … legislation to ***protect all women workers, including migrant workers***, irrespective of …” In para 58 f) **add** ***including*** after “unionisation of women”, so as to cover all women. **Add** a new letter g) with parts of para. 55: **Increase access to safe and protected formal employment opportunities for women and improve the informal labour market in particular thanks to universal health coverage, rural and urban development and other activities focused on women, including small credit schemes and capacity building. In absence of existing good social protection, delink social protection from employment, develop non contributive social protection floors and introduce universal basic income.**

**Part IV Letter c)** would be the **present para 62** with as title **Trafficking in corporate supply chains.** Same as the present para 58, para 62 applies to **all** women workers, not only migrant workers and this form of trafficking for labour exploitation concerns millions of women

**The present paras a, b, d of Part IV would become paras d (ex a) e (ex b) and f (ex d).**

**Para 95** on **Tracking proceeds of crime** should move, as the most part of it (except letter c) doesn’t belong under Remedies for victims. I suggest **moving para 95 letter c) to para 94,** as the **new letter b).** The rest of para 95 would becomea new **Part VII.** It should receive a few additions or grouping of elements dispersedelsewhere dealing with **financial flows** and the **actors** enabling trafficking operations, money laundering, etc. Going after the money!

**2. Detailed suggestions:**

**Reorder** para 42 in order to better group elements thus: a) g) b) c) e) d) i) f) h) j).

**Add** **sex workers organisations** in **para 68 j)** 2n line: l found it baffling to see faith-based organisations mentioned here: some of them have been involved in “rescue” raids, illegal detention and forced labour of women in prostitution[[16]](#footnote-16). Whereas sex workers organisations who have provided the Committee with numerous and high-quality, evidence-based, contributions through the reporting process, participation in the General discussion for this GR and other ones and also in various meetings and briefings to the Committee in the course of many years, are not even mentioned here, when they would be best placed to “provide critical information on trafficked women” and also to avoid any conflation between these women and sex workers.

**E. Clarification regarding the use of the due diligence terminology**

The draft contains some references to due diligence obligations that may create confusion between the **direct** obligations of States parties for their own actions or omissions and their responsibility for the actions or omissions of non-State actors. Please see annex for the suggested language changes.

I hope the General Recommendation will bring clarity and help overcome the root causes of trafficking that are inequality and poverty, not only in the field of sexual exploitation but in agriculture, fisheries, garment and other industries, domestic work and care work, that are a priori legal businesses and/or endeavours but that in reality often make their benefits through exploitative conditions due to a predatory form of capitalism, encouraged or enabled by tax and other legislations and policies skewing the balance in favour of enterprises and against workers, including in the informal sector. I also hope that the General Recommendation enables a better fight against the financial illegal gains and corruption resulting from trafficking that are destructive of rule of law and democracies.

Best regards,



April 28, 2020

Annex regarding

**E. Clarification regarding the use of the due diligence terminology**

The text should read :

Para 3 line 5 State parties’ obligations ~~of due diligence~~

Para 15 line 4, should read “States parties’ obligation ~~to exercise due diligence~~ to prevent, investigate, prosecute and punish acts of trafficking…”

Para 16 line 1, should read “States parties obligation ~~of due diligence~~ to suppress all forms of trafficking in women and girls extends under the obligation of due diligence to the acts or omissions…

Para 72 b), there is need to clarify why due diligence is mentioned here? Should due diligence be replaced by gender-sensitive framework?

Para 77 1st line should read ..”provides for comprehensive and effective ~~due diligence~~ obligations on the part of States ~~along with~~ including the responsibility…”. “…punish and provide reparations for, acts or omissions by both State and non-State actors (due diligence obligation), including private individuals or entities…

Para 81 3rd line before end should read “the authorities frequently fail to act with ~~due~~ diligence to investigate, prosecute and punish perpetrators and/or provide remedies”…

1. <https://www.theguardian.com/world/2020/apr/09/coronavirus-could-push-half-a-billion-people-into-poverty-oxfam-warns> [↑](#footnote-ref-1)
2. https://www.nytimes.com/2020/04/12/opinion/coronavirus-poverty.html?action=click&module=Opinion&pgtype=Homepage [↑](#footnote-ref-2)
3. https://www.technologyreview.com/2020/04/10/998969/the-unholy-alliance-of-covid-19-nationalism-and-climate-change/ [↑](#footnote-ref-3)
4. https://www.nytimes.com/2020/04/12/opinion/coronavirus-poverty.html?action=click&module=Opinion&pgtype=Homepage [↑](#footnote-ref-4)
5. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E> [↑](#footnote-ref-5)
6. <https://www.investopedia.com/investing/5-ceos-biggest-payouts-during-global-financial-crisis-bailouts/> [↑](#footnote-ref-6)
7. <https://www.theguardian.com/commentisfree/2020/apr/13/with-working-americans-survival-at-stake-the-us-is-bailing-out-the-richest> [↑](#footnote-ref-7)
8. Austerity measures affecting the State budgets women and girls are most dependent on, privatization of public services, deregulation of the labour market, tax competition, tax deductions for the rich, etc. [↑](#footnote-ref-8)
9. See note 5 [↑](#footnote-ref-9)
10. Although it has been informed repeatedly by sex workers organisations in the course of the reporting process, participation in the drafting of GR’s and private briefings, including with Amnesty International, on the negative consequences of this approach [↑](#footnote-ref-10)
11. See my contribution to the Day of General discussion, 18.02.2919, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DiscussionOnTrafficking.aspx> [↑](#footnote-ref-11)
12. CEDAW/C/SWE/CO/8-9(2016) para 28-29 [↑](#footnote-ref-12)
13. CEDAW/C/THA/CO/6-7(2017) para 26-27 [↑](#footnote-ref-13)
14. CEDAW/C/NOR/CO/9 (2019) para 28-29 [↑](#footnote-ref-14)
15. See the footnotes in my contribution for the half-day of general discussion on 22 February 2019 [↑](#footnote-ref-15)
16. <https://www.thenation.com/article/archive/crusade-against-sex-trafficking/>; <https://www.denverpost.com/2014/02/06/column-take-a-closer-look-at-the-pros-and-cons-of-prostitution/> [↑](#footnote-ref-16)