Submission of the Government of Japan

Draft General Recommendation on Trafficking in Women and Girls

in the Context of Global Migration

Part Ⅳ

Sub-section b and Para 14

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

14.　In its general recommendation No. 19 (1992) on violence against women, the Committee clarified that discrimination against women included gender-based violence, the prohibition of which has evolved into a principle of customary international law. Recognizing the gender-specificity of the forms of trafficking in women and girls and its consequences, including harms suffered, the Committee acknowledges that trafficking in women and girls is unequivocally a phenomenon rooted in gender-based discrimination and inequality and may constitute gender-based violence against women.

 (Comment) According to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, the definition of trafficking in persons includes by means of fraud and deception, which means trafficking in persons does not necessarily constitute ‘violence.’ Therefore, to ensure the accuracy of the statement, it is necessary to insert the word ‘may’ as underlined above.

Para 27 d)

d)　Investigating, prosecuting and convicting, where possible, all perpetrators involved in the trafficking of persons, including those on the demand side.

(Comment) Considering that realistically whether suspects or defendants are investigated, prosecuted or convicted depends on the circumstances of each individual case, ‘, where possible,’ should be inserted as underlined above.

Para 29

29. Adopt and implement, in accordance with domestic laws, comprehensive gender-sensitive anti-trafficking legislation ensuring that it:

(Comment) Member states that appropriately punish trafficking in persons by Penal Code and relevant laws and regulations do not necessarily need a comprehensive gender-sensitive anti-trafficking legislation, so ‘, in accordance with domestic laws, ’ should be inserted as underlined above.

PartV.

Para 74

74.　Ensure, where possible, that trafficked women and girls are~~, in any circumstances,~~ not held in immigration detention or other forms of custody and will not be detained, charged or prosecuted for irregular entry or stay in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking.

(Comment) Considering that there are malicious cases where trafficked women or girls should be detained or prosecuted, ‘in any circumstances’ should be deleted and ‘, where possible, ‘ should be inserted as underlined.

Part Ⅵ

Para 90

90.　Adequate punishment: Ensure that the sanctions imposed on all convicted perpetrators of trafficking and related crimes are commensurate with the gravity of the crime and the degree of responsibility of the offender, ~~such that traffickers are adequately punished that fines and other non-custodial sentences are not considered as a possible sanction.~~including that traffickers are adequately punished by custodial sentences.

(Comment) Since sentences depend on the circumstances of each individual case, not considering that fines or non-custodial sentences are possible sanctions is inappropriate. In addition, where a legal person who is a perpetrator of trafficking in persons is punished, the punishment against the legal person cannot be a custodial sentence. ‘such that traffickers are adequately punished that fines and other non-custodial sentences are not considered as a possible sanction. ‘ should be replaced by ‘including that traffickers are adequately punished by custodial sentences. ‘

Para 91　a)，c)

91.　Victim’s exemption from criminal liability:

a)　Ensure that women victims of trafficking, with no distinction made on the basis of their ethnic, national or social background and legal status, are, where possible, exempted from criminal or administrative liability for acts committed as a result of their trafficking situation, irrespective of their ability or willingness to cooperate with the prosecutorial authorities;

c)　Provide recourse, in accordance with domestic laws, for trafficking victims who have been arrested or convicted for offences that were committed as a direct result of their being trafficked so they can clear their criminal records.

(Comment)

a) Considering that there are malicious cases where trafficked women or girls should be detained or prosecuted, ‘where possible’ should be inserted as underlined above.

c) How States deal with personal information of criminal records is a matter to be considered in accordance with their domestic laws, taking into account the way of dealing with records of other crimes. Therefore, ‘, in accordance with domestic laws, ‘ should be inserted as underlined above.

Para 97

97.　Tracking proceeds of crime includes:

a)　Building investigative teams capable of tracking the financial flows that trafficking in women and girls generates, striking with sequestrations and confiscation of all the capital attributable to such criminal conduct, also tracing and revealing the channels of recycling and cleaning money;

b)　Strengthening and adopting specialized Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) measures that are necessary to identify, disrupt, and confiscate illicit revenues from trafficking;

c)　Ring-fencing any confiscated funds for the purpose of redistribution to victims primarily by way of compensation for the human rights violations that they have suffered;

d)　Issuing guidelines and hold relevant private actors accountable for violations of AML/CFT laws relating to human trafficking.

(Comment)AML/CFT measures for trafficking in persons are not necessarily accomplished by specializing in trafficking persons. Comprehensive measures on AML/CFT are necessary.