**Comments of the Netherlands concerning Draft General Recommendation on trafficking in women and girls in the context of global migration**

The Government of the Kingdom of the Netherlands (the Government) welcomes the Committee on the Elimination of Discrimination Against Women Draft General Recommendation on trafficking in women and girls in the context of global migration and the Committee’s invitation to submit comments on this draft. The Netherlands submits the following observations.

Recommendation 29c and 62a

The Government proposes to add ‘*where appropriate*’ to 29c and 62a. With regard to 29c, this is because Member States might have laws in place already. In the Netherlands for example, forced marriage is penalised through the Forced Marriage Prevention Act 2015, but does not explicitly relate this to trafficking in persons. This is because forced marriage does not necessarily contain the element of exploitation. With regard to 62a there are of course Member States that have other well-functioning methods to ensure corporate responsibility.

Recommendation 45c

The Government is concerned that this paragraph broadens the scope of the United Nations Convention Relating to the Status of Refugees. This paragraph suggests that in the application for international protection, the circumstance that a person is a victim of human trafficking in itself should weigh heavily in the decision-making procedure by classifying those victims as a social group. The Government does not support this recommendation. Of course, all relevant circumstances concerning the person involved should be taken into account in for the assessment of an application for international protection. Attention should be paid to whether a person is a victim of trafficking in persons and to whether other circumstances put a person in a vulnerable position in her country of origin. This should all be taken into account in the decision making process.

Having been subject to trafficking is not, however, in itself a ground for acquiring international protection as a refugee. Although there is no final list of what may constitute a particular social group, the Government considers that belonging to a social group requires a certain identity and/or social perception. Article 45 could include the recommendation to give residence permits for victims of human trafficking on humanitarian grounds, and shelter and assistance for victims of trafficking.

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| Recommendation 58 |

Regarding sub a), the Government notes that there seems to be a contradiction in this paragraph. The Government would furthermore like the paragraph to explain in which ways legislation for unregulated and unmonitored economic sectors should be different from legislation designed to protect migrant workers from labour exploitation in general. With respect to sub c), an elaboration could be useful in understanding how this should be recognised in practice.

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| Recommendation 59 |

The Government wishes to remove ‘license’ from the recommendation, or to replace ‘Regulate, license *and* monitor’ with *‘*Regulate, license *or* monitor*’*, or to change the text in such a way that makes the licensing optional when appropriate. In our view, it is possible to regulate recruitment agencies without a system of licensing.

Recommendation 60

With regard to the heading of the article, in the view of the Government, a dependency between employer and employee is a risk which can be mitigated. Therefore, the Government proposes to replace ‘remove’ with mitigate risks of dependency’.

Regarding sub b), the Government proposes to eliminate this paragraph. In the Netherlands, the aim of the employment permit, with dependency on a specific employer – as regulated in the Aliens Employment Act – is both to avoid competition on labour conditions and to protect the rights of labour migrants. Dutch authorities test whether this employer will offer a salary and other labour conditions conform sector specific standards and laws and what is conform the labour law. The employment permit will be refused when these conditions are not met. The employment permit will also be refused if the employer has been charged with an administrative fine or an irrevocable criminal conviction because of a violation of the labour law. In case of a preliminary termination of the labour contract or unemployment, the residence permit will be withdrawn. The labour migrant has the possibility to find a new job within a period of three months.

With regard to sub c), the Government suggests rephrasing this paragraph as follows:

“Enforcing the rights for migrants to seek alternative employers and sectors of employment without seeking their existing employers’ permission or leaving the country.”

The risk of dependency on a specific employer and possible vulnerability can be mitigated through other means than discontinuing the use of employer-specific work permits. In the Netherlands, the labour migrant has the possibility to change jobs, and, as mentioned above, in case of preliminary termination resulting in the withdrawal of her residence permit, she is given a period of three months to find new employment. Furthermore, a labour migrant is free on the labour market when she has worked in the Netherlands for 5 years, and does not need a residence permit for employment or an employment permit. Additionally, upon the slightest indication of human trafficking the supposed victim has access to assistance and shelter and can apply for a residence permit on humanitarian grounds.

Recommendation 61d

The Government proposes to use ‘mitigate consequences of dependency’ instead of ‘remove any dependency’. In cases of family reunification the Government stresses the inherent dependency between family members, this does however not mean that migrant women should not be able to apply for independent residence permits or other visa. Some of the safeguards the Netherlands has installed, for example, is that if the marriage ends within five years as a result of domestic violence independent, residence is granted on humanitarian grounds. Additionally, migrant women with contingent residence on the basis of their marriage can apply for independent residence after five years.

Recommendation 76

The Government believes that there should be a balance between the prosecution of perpetrators and the assistance and care for victims. In the Netherlands this balance is maintained as follows: even the slightest indication of trafficking in human beings gives foreign victims access to specialised shelter and assistance. During the three-month reflection period, as part of the regulation for victims of trafficking in human beings, possible victims get assistance without having to cooperate with the investigation. After this period, or sooner, possible victims of trafficking can get a residence permit for trafficking in human beings. When a victim of human trafficking is not able to cooperate with the investigation and prosecution because of trauma, a psychological or physical condition or security risks (i.e. the conditions of the so-called ‘schrijnend pad’), the victim will receive a temporary residence permit for a year. The non-ability to cooperate has to be substantiated by declarations of the police and/or a medical practitioner.

In the Government’s view, the essence of this recommendation is that proper care and safeguards are in place. This does not exclude conditionality of the residence permits on law enforcement cooperation. Furthermore, proper care and safeguards do not under all circumstances require the duration of a permit of at least one year, this will be dependent on the situation. The Government therefore proposes the following phrasing:

“Grant temporary or permanent residence permits to enable trafficked women to remain in the country in which they have been identified as a victim, considering humanitarian and compassionate factors, and to take part in protective and rehabilitation measures. During this period, victims should be granted access to accommodation, welfare benefits, authorization to work, vocational training, medical care and counseling, to enable them to begin a process of recovery and reintegration.”