## Submission by the Norwegian Government Draft General Recommendation on trafficking in women and girls in the context of global migration

The Norwegian Government refers to the invitation from the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) to submit written comments on the Draft General Recommendation on trafficking in women and girls in the context of global migration.

Norway has been a party to the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as the Convention) since 1981. The Norwegian Government would like to underline the importance it attaches to the Convention and to confirm its commitment to fully comply with Norway’s treaty obligations. According to the Norwegian Human Rights Act of 1999, the provisions of the Convention and its Optional Protocol have the force of Norwegian law with precedence over any other legislative provisions that conflict with them.

Norway welcomes the Committee’s efforts to formulate the Draft General Recommendation and appreciates this opportunity to submit its observations on the draft. The Norwegian Government would like to submit its comments on the following parts of the Draft General Recommendation on trafficking in women and girls in the context of global migration:

Norway is concerned that the Draft General Recommendation’s **section IV, subsection c,** on the scope of application of the Convention contains wording that goes beyond the legal obligations of the Convention.

**Paragraph 16:** In the Norwegian Government’s opinion, the Draft General Recommendation’s **para. 16** should specify that States parties’ due diligence obligation is limited to the acts or omissions of perpetrators within their jurisdiction.

In **para. 16** second sentence, the Committee states, in general terms, that States parties’ due diligence obligation “includes the regulation of the activities of national corporations operating extraterritorially, as affirmed in general recommendations No. 28 (2010) and No. 37 (2018) and reinforced in the United Nations Guiding Principles on Business and Human Rights”. As Norway expressed in its submission of 31 January 2017 to CEDAW’s *Draft General Recommendation on the Gender-related dimensions of Disaster Risk Reduction in a Changing Climate*, which contained a similar statement, it is the Norwegian Government’s view that Principle 2 of the UN Guiding Principles on Business and Human Rights (UNGP) more accurately reflects the present legal status. In the commentary to UNGP 2 it is acknowledged that “[a]t present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction”. The Norwegian Government agrees with this latter statement.

Accordingly, Norway would like to suggest **para. 16** of the Draft General Recommendation be revised, for instance to the following:

*“States parties’ obligation of due diligence to suppress all forms of trafficking in women and girls extends to the acts or omissions of all perpetrators, including private persons, intimate or extended family members and intimate partners, as well as organizations or enterprises,* ***within States parties’ jurisdiction.*** *This* ***may include*** *~~includes~~ the regulation of the activities of national corporations operating extraterritorially as affirmed in general recommendations No. 28 (2010) and No. 37 (2018) and reinforced in the United Nations Guiding Principles on Business and Human Rights.”*

**Para. 17:** Similarly, the Norwegian Government is of the view that States parties’ human rights obligations are limited to respecting and ensuring the rights of persons within their jurisdiction, that is, within their territories or effective control. In Norway’s opinion, **para. 17** is not sufficiently clear on this point and should therefore be revised, for example to the following:

*“States parties are responsible for all their actions affecting human rights,* ***within their jurisdiction,*** *~~regardless of whether the affected persons are in their territory~~. This* ***may include*** *~~includes~~ obligations towards States parties’ nationals who are trafficked abroad. The obligations of States parties under the Convention apply without discrimination both to citizens and non-citizens, including refugees, asylum-seekers, migrant workers, migrants with irregular status and stateless persons, within their territory or effective control, even if not situated within the territory.”*

**As a general comment**, we note that the draft recommendation paints a bleak picture of the global situation, without any mention of the many positive actions and gender sensitive measures taken by a number of countries to identify and assist women and girl victims, as well as preventive measures.

We further wish to draw attention to current challenges facing a large number of Council of Europe member states. Countries of destination in this region have over the years developed comprehensive systems for the identification and assistance of women and girls trafficking for sexual exploitation. The same countries have recently seen an increase in trafficking for forced labour, where male migrant workers are the predominant victims. (Recent police investigations in labour exploitation cases in Norway have mainly involved male victims.)The identification and assistance system for male victims has however not been developed in a similar satisfying manner.

We refer to the 7th General Report from the expert group GRETA, published in 2019, which provides more detail on this topic. We especially wish to highlight some excerpts from the executive summary:

*The statistics included in GRETA’s country reports indicate that trafficking for the purpose of labour exploitation has been on the rise and has emerged as the predominant form of exploitation in some countries. Trafficking for the purpose of labour exploitation occurs in the formal and informal economies, with migrant workers particularly at risk. Men constitute most of the identified victims of labour trafficking, in sectors as diverse as agriculture, construction, hospitality and fisheries. Women are also victims of trafficking for labour exploitation, often in the more isolated setting of domestic and care work. The provision of assistance to victims of trafficking for the purpose of labour exploitation has specificities linked to the fact that the majority of these victims are men who may fear losing their jobs and any payments due, may feel responsible for what happened to them and not see themselves as victims. Providing support to victims of labour exploitation therefore requires an approach which addresses these particular factors. The second evaluation round has brought to light some improvements when it comes to assisting male victims of trafficking. However, in several countries, there are still no shelters or crisis centres providing assistance to male victims of trafficking. GRETA has urged States Parties to provide assistance, including safe accommodation, adapted to the specific needs of male victims of trafficking.*

In **chapter IV para. 12,** the draft recommendation mentions that women and children are disproportionately affected by human trafficking. The figures provided in the UNODC Global Report do not, however, in any way purport to give accurate figures on the number of victims worldwide. The sharper focus that has existed on female victims could be assumed to be the reason that 72% of reported victims in 2016 were women and girls.

**Para. 20** mentions the “feminisation of poverty” and states that women and girls continue to be “the prime targets of traffickers, especially for the purpose of sexual exploitation,..”. While there is no disagreement that victims of trafficking for sexual exploitation are predominantly female, we suggest a more balanced wording in order to reflect current realities.

We suggest to delete the word «penal» from **para. 27 (b)**. The act of consuming goods and services that result from trafficking in persons is potentially far removed from the primary offense of trafficking. Depending on the circumstances, different types of sanctions may be appropriate.

Concerning **para. 29 (h):** The judicial power in Norway consists of ordinary courts and some specialized courts. The ordinary courts deal with disputes in all jurisdictions. Norway has no plans to establish new specialized tribunals at this time, nor a specialized tribunal for human trafficking cases. Due to this, we suggest to formulate the recommendation less strictly.

Concerning **para. 29 (j):** As a general comment, we want to emphasize that the Norwegian courts according to our Constitution, are independent. It is the Norwegian Courts Administration and the individual courts who decide what the training should consist of, and how to do this. It is also a general principle in Norway that the counsel, the prosecutor and the counsel of defense, should introduce relevant provisions of laws and international

Finally, concerning issues raised in the draft General Recommendation on which Norway has not provided specific comments, this should not be interpreted as either agreement or disagreement with its substance.

*Oslo, 12 May 2020*