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Comments by the Committee on the Rights of the Child on the Draft General Recommendation on TWGCGM of the Committee on the Elimination of All Forms of Discrimination against Women

1. The Committee on the Elimination of All Forms of Discrimination against Women has invited submissions on the draft General Recommendation on trafficking in women and girls in the context of global migration (“Draft GR”). The Committee on the Rights of the Child (“CRC Committee”) takes the opportunity to present its comments on the Draft GR.

1. Legal basis

1. Article 35 of the Convention on the Rights of the Child (“Convention”) provides the obligation of the States parties to prevent traffic in children for any purpose or in any form. States parties have obligations to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of trafficking under Article 39 of the Convention. Trafficking in children is considered under the cluster “Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d), and 38-40)” in the CRC Committee’s reporting guidelines[[1]](#footnote-2).
2. The CRC Committee’s General Comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, Joint General Comment No. 22 (2017) on the general principles regarding the human rights of children in the context of international migration and Joint General Comment No. 23 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return address the human rights of child victims of trafficking in the context of international migration.

2. General observations

1. The CRC Committee appreciates that the Draft GR acknowledges the different causes, consequences and experience of trafficking for girls from that of adult women victims of trafficking and while recalling that States parties are obliged to promote the equal rights of girls as part of the larger community of women, encourages States parties to adopt a nuanced response to combatting trafficking which takes into account these differences (para. 6). The CRC Committee reiterates the special status of girls as children and their entitlement to the protection and promotion of their rights under the Convention.
2. The CRC Committee also notes that Draft GR refers to “women and girls” in 97 places among all references to “women”. While there may be the areas mainly relevant to adult women and the specific vulnerability of girls needs to be addressed, focus should not be put only on the protection of girls as victims. As Draft GR rightly emphasizes women’s and girls’ empowerment as a strategic priority for sustainable development (para. 3), girls should be always referred to together with women in all relevant recommendations in particular concerning their empowerment.

3. Specific comments

3.1. Best interests of the child

1. Article 3 of the Convention obliges States to take the best interests of the child as a primary consideration in any decision to return a child to his or her country of origin. Girls who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken[[2]](#footnote-3). The procedure for a decision whether girl victims of trafficking are returned to their country of origin should include a robust individual assessment and determination of the best interests of the child. For girl victims of trafficking, whether they, upon return, will be safe and provided with proper care, therapeutic support and enjoyment of rights[[3]](#footnote-4) should be added as elements to be assessed (para. 46, a)). Girl victims should be promptly provided a legal representative to ensure their right to be heard (art. 12 of the Convention) and the application of the principle of the best interests of the child (art. 3 of the Convention) as the procedural safeguards (para. 46, b)).[[4]](#footnote-5)

3.2. Child-friendly and multi-agency arrangement for girl victims

1. The measures to protect women victims of trafficking for testimony in trials from their traffickers are not sufficient for girl victims of trafficking. In addition, child-friendly and multi-agency arrangements should be provided for obtaining testimony from them with the aim of avoiding re-traumatization as a result of multiple/repetitive interviews (para. 68, h).

3.3. Right to education

1. Girl victims' right to access education as well as vocational training should be clearly mentioned (paras 72 and 76). All children in the context of international migration, irrespective of status, shall have full access to quality and inclusive education at all levels on the basis of equality with nationals of the country where those children are living. States are also encouraged to avoid disruption during migration-related procedures, avoiding children having to move during the school year if possible, as well as supporting them to complete any compulsory and ongoing education courses when they reach the age of majority. States should put in place adequate measures to recognize the child’s former education by acknowledging previously obtained school certificates and/or issuing new certification based on the child’s capacities and capabilities[[5]](#footnote-6).

3.4. Access to justice

1. Particular challenges and risks for girl victims to access to justice should be mentioned in recommending that States ensure access to justice for all trafficking victims (para. 84). [[6]](#footnote-7) When compensation is provided to girl victims of trafficking (para. 96), which form of compensation is preferable for each girl victim should be carefully considered, depending on her specific situation, her view and prospects for life.[[7]](#footnote-8) Appropriate forms of compensation for girl victims of trafficking may include financial or other support for education and/or income-generating activities, which could benefit the victim in the long term, in addition, or as an alternative to cash payments.[[8]](#footnote-9)

3.5. Girls’ participation

1. Article 12 of the Convention underscores the importance of children’s participation and Joint General Comment No. 23 highlights the obligations of the States parties to adopt measures directed at facilitating the participation of children in the context of international migration in the design, implementation, monitoring and evaluation of policies that could affect them and the need of measures to prepare girls to participate actively and effectively, through consultations, collaborations and child-led initiatives.[[9]](#footnote-10)
2. The Draft GR should clearly recognize the right of girls to participate in developing policies, strategies and measures for the prevention of trafficking (para. 32), at all stages of the peacemaking, stabilization and reconstruction process (para. 41) and in developing policies and programmes to address existing and new risk factors which increase the vulnerability of displaced women and girls to being trafficked (para. 42). Also ‘children’s rights non-governmental organizations’ should be added to para. 32, b) to ensure the meaningful participation of girls in the consultation.

3.6. Training

1. Girl victims of trafficking may be in a situation of multiple vulnerability and may face intersecting discrimination as victims of trafficking, as women and as children. Training and awareness-raising programmes should contain child-sensitive elements in addition to gender-sensitive elements (para. 29, j), para. 56, b) and para. 68, k)). Targeted professional groups for training to strengthen capacities for early identification and providing protection and support to girl victims of trafficking, should include all relevant professionals who come into contact with children including child protection officers (para. 72, e))[[10]](#footnote-11).

3.7. Official corruption

1. The link between official corruption and trafficking of women and girls is only mentioned once, and only in the context of access to justice (para. 80) where it reads “corruption of State officials and their implication in crime, all prevent female victims of trafficking from gaining access to justice.” However there is emerging evidence “that human trafficking could not exist without corruption”[[11]](#footnote-12) and especially more so for the cases that involve migration. It would be advisable to cover this aspect in other sections of the Draft GR.

3.8. Women who traffic women and girls

1. Paragraphs 12 and 13 address “Women and girls are disproportionately affected by human trafficking”and the manner in which trafficking, including by use of technology has increased. However one of the critical emerging evidence is thatthere is a large number of women that are traffickers themselves[[12]](#footnote-13)and that a good number of those are former victims themselves. In some countries the role of older girl children has been identified. The draft needs to capture and integrate this reality as it affects the responses proposed herein.

1. Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child (CRC/C/58/Rev.3, 3 March 2015), para. 40 (d)(iv) and (e)(iv). [↑](#footnote-ref-2)
2. General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children outside their Country of Origin (CRC/GC/2005/6, 1 September 2005), para. 53 [↑](#footnote-ref-3)
3. Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (CMW/C/GC/3-CRC/C/GC/22, 16 September 2017), para. 33 [↑](#footnote-ref-4)
4. Ibid., paras. 32 (c), 33 and 37. There can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives. [↑](#footnote-ref-5)
5. Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (CMW/C/GC/4-CRC/C/GC/23, 16 November 2017), paras. 59-61. See also the report of Special Rapporteur on trafficking in persons, especially women and children (A/HRC/41/46, 23 April 2019), para. 58. She points that not all survivors wish to be employed after being trafficked but would rather invest in their formal education, especially in cases where they were compelled to abandon school as a result of being trafficked and were never given the chance to complete their studies afterwards. [↑](#footnote-ref-6)
6. Report of the United Nations High Commissioner for Human Rights, “Access to justice for children” (A/HRC/25/35, 16 December 2013). Human Rights Council Resolution, “Rights of the child: access to justice for children” (A/HRC/RES/25/6, 14 April 2014). Committee on the Elimination of All Forms of Discrimination against Women, General recommendation No. 33 on women’s access to justice (CEDAW/C/GC/33, 3 August 2015), para. 24. [↑](#footnote-ref-7)
7. Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/156, 10 September 2019), para. 100 (c). Special Rapporteur on trafficking in persons, especially women and children identifies as a challenge the tendency to award “ready-made assistance packages”, on the basis of the assumption that survivors are unable to manage the money awarded and is convinced that depriving trafficked persons of their agency perpetuates a paternalistic approach to anti-trafficking action that needs now to be challenged. Supra note 5, para. 16. This point should apply girl victims as well. [↑](#footnote-ref-8)
8. Ibid. Guidelines, para. 100 (c). [↑](#footnote-ref-9)
9. Supra note 3, Joint General Comment No. 22, para. 39. [↑](#footnote-ref-10)
10. Ibid., para. 18. Supra note. Joint General Comment No. 23, para. 43. [↑](#footnote-ref-11)
11. OECD, Trafficking in Persons and Corruption: Breaking the Chain (2016). International Bar Association, Human Trafficking and Public Corruption A report by the IBA’s Presidential Task Force Agains Human Trafficking (2016). [↑](#footnote-ref-12)
12. In 2016 35% of those prosecuted for trafficking in persons were females. United Nations Office on Drugs and Crime, Global Report on Trafficking in Persons 2018. [↑](#footnote-ref-13)