Annex 1

**UNODC recommendations to CEDAW on the forthcoming General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

**Legal Framework**

The draft General Recommendation usefully summarizes the major international conventions and obligations contained within them relevant to the issue of trafficking in women and girls. UNODC recommends that the Committee consider including specific information on the Convention on the Rights of the Child, including articles 34 to 36 that pertain to the trafficking of children. Such information could be included, for example, in the section beginning at paragraph 7.

**Data Collection**

UNODC welcomes the numerous specific recommendations on data collection. Having clear, accurate, reliable and contemporary information on the nature and scope of trafficking in persons and its victims is a necessary precondition to successful anti-trafficking measures.

At paragraph 25, we recommend that consideration be given to ensuring that data collection measures allow for the collection of information on the basis of gender identity and/or sexual orientation. Members of the LGBTQ community may be particularly vulnerable to trafficking; having more comprehensive data will assist in developing more effective anti-trafficking responses that address the particular needs of those impacted by it.

At paragraph 25(c)(ix), we recommend the following formulation:

The number of trafficked women and girls who sought and were granted asylum and the basis upon which asylum was granted.

**Criminal Justice Responses: Addressing Demand**

The General Recommendation’s focus on addressing the demand (e.g., at paragraph 27) that fosters all forms of exploitation is welcome, including by encouraging the use of criminal justice measures to respond to the use of goods or services that were derived from victims of trafficking. It is, however, worth emphasizing that such laws should not be used in isolation and/or result in inappropriate sentences for serious criminal conduct. To be clear, cases involving trafficking in persons for the purpose of sexual exploitation can constitute sexual assault or rape under national laws. Accordingly, such offences should be additionally relied upon, in appropriate cases, so as to appropriately recognize the serious nature of the conduct of so-called “users.” The Committee may wish to address this in the General Recommendation.

**Victim Participation**

UNODC welcomes the General Recommendation’s call (at paragraph 32, for example) to include the voices of women and girls in the development of anti-trafficking efforts, consistent with prevailing international best practices. At the same time, we would encourage the Committee to consider providing more specific guidance on how to do this in the case of children, recognizing their inherent vulnerability and in a manner that takes into consideration their best interests. Indeed, it may be inappropriate in some cases to involve children in the elaboration of policies in this area, though it is clear that such policies must be responsive to their specific needs.

**Addressing Trafficking in Supply Chains**

There continues to be important progress at the national and international levels to address trafficking in persons through the implementation of supply-chain legislation and policies. The General Recommendation rightly identifies action that can be taken in this regard at paragraph 62. While we welcome the actions contained therein, we would recommend that governments and international organizations not be excluded from such measures. As significant purchasers in their own right, we should expect that those entities responsible for setting policies and actively responding in this area, are held to the same standards as corporations, recognizing that all are vulnerable to unintentionally contributing to trafficking.

**Supporting Victim Participation in the Criminal Justice System**

At paragraph 68 (and also paragraph 88), the Committee recommends different strategies to support victim identification, as well as their participation in cases against traffickers, including, for example, guaranteeing victim anonymity. UNODC would recommend that consideration be given to expanding upon the range of measures that could be taken to provide necessary and practical support and protection of victims, as well as to encourage victim reporting and participation in prosecutions against traffickers. This could include, for example: the use of screens to prevent victims from the sight of an accused while testifying; the giving of evidence by video-link; the presence of support persons to accompany witnesses in court and to stand near them while testifying; the exclusion of the public from court while victims testify, where it is in the interest of justice to do so; the use of publication bans; and, the enactment of rules of evidence that permit impermissible lines of questioning or that prevent unnecessary intrusion into the privacy rights of the witness. At the same time, it is important to ensure that such measures are consistent with fundamental rights and uphold the rule of law, including an accused’s fair trial rights, and freedom of the press.

**International Cooperation**

The need for strong bilateral, regional and international cooperation in a broad range of areas is critical to address trafficking in persons effectively. The Committee’s recommendations on this point encompass such issues as labour standards, development and criminal law. It is important to recall that the Convention against Transnational Organized Crime and the Trafficking in Persons Protocol provide a comprehensive basis for international cooperation in the area of criminal justice, including in respect of mutual legal assistance, extradition and the confiscation and return of proceeds of crime.

The Committee may wish to include a recommendation that encourages States Parties to the Convention against Transnational Organized Crime and the Trafficking in Persons Protocol to make full use of these instruments as a means of effectively addressing transnational trafficking in persons cases. Further, the recommendation could also note, in particular, the measures contained in paragraphs 26(c) and (d) of the Global Compact for Safe, Orderly and Regular Migration, under objective 10 on preventing trafficking in the context of international migration and that focus on international cooperation. A possible place to locate any additional recommendations in this area could be paragraph 87 of the General Recommendation.

**Addressing Corruption**

At paragraph 89, the Committee correctly recommends addressing corruption as a means of combatting trafficking in persons. This recommendation could be strengthened by more clearly focussing on the activities of government officials or their agents, rather than also discussing the activities of traffickers. To the extent that government officials aid or abet the activities of traffickers, it should be noted that they can also be held liable as parties to the crime of trafficking in persons, in addition to being charged and prosecuted for corrupt activities.

The Committee may also wish to emphasize the need for more stringent sentencing responses for government officials who engage in corrupt activities that facilitate trafficking in persons, given the unique role that government officials occupy and the adverse impact that corruption has on public institutions, society and the rule of law.

**Non-Punishment Principle**

We welcome the Committee’s recommendations concerning the implementation of the non-punishment principle for victims of trafficking (at paragraph 91, for example). We would propose that this recommendation be modified in the following ways:

* At paragraph 91(a): Ensure that all women and girl victims of trafficking, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked, irrespective of their ability or willingness to cooperate with prosecutorial authorities
* At paragraph 91(c): Provide recourse for trafficking victims to clear their criminal records in cases where they been convicted of crimes that were committed as a direct consequence of being a victim of trafficking.

The suggested changes reflect the most recent advice on the issue of non-punishment, including as contained in the recent publication on the same subject by the Inter Agency Coordination Group against Trafficking in Persons (ICAT) and provide broad protection to all women and girls who have been caused to commit crimes and other illegal acts as a result of being victims of trafficking.

UNODC welcomes the General Recommendation’s focus, at paragraph 92, on ensuring that anti-trafficking efforts are effective in dismantling trafficking networks while, at the same time, are done in a manner that respects the rule of law and human rights and do not cause harm to already vulnerable groups of people. We are, however, concerned that the recommendations may be misconstrued. When read literally, the recommendations could be viewed as prohibiting charges and prosecutions against female traffickers (e.g., at paragraph 92(b)). We would recommend that the Committee consider reviewing its proposed recommendations at paragraphs 92(a) to (e) so as to provide greater clarity, while emphasizing the importance of anti-trafficking measures being implemented in a manner that appropriately respects the autonomy and dignity of those impacted, the rule of law and fundamental human rights.

**Proceeds of Crime**

We strongly support the proposed measures to identify, freeze and seize proceeds of crime. We believe that the strategies contained in paragraph 97 should be included in those parts of the General Recommendation that deal with investigating and prosecuting trafficking in persons; for example, starting first at paragraph 29 and then again at paragraph 85 through to paragraph 92.

At the same time, we agree that it is important to encourage the development of legislative schemes that allow for the possibility that seized proceeds of crime be used to compensate victims of trafficking for the harm suffered. This would be in addition to measures that allow the return of proceeds or property to legitimate owners.