

**Submission by the Institute for Gender, Law and Development (INSGENAR) to the CEDAW Committee regarding its**

**Draft General Recommendation on Trafficking in Women and Girls in the Context of**

**Global Migration (Draft Recommendation)**

**14 May 2020**

INSGENAR in a non governmental, non-profit association, with legal status 834/95, granted by the State Prosecutor's Office, which has been working for more than 25 years in Argentina for the promotion and defence of women and girls rights. It participates as a civil society organization in the Organization of American States activities as human rights defenders.

INSGENAR congratulate the CEDAW Committee (the Committee) for developing a General Recommendation on Article 6 of the CEDAW Convention. This document will provide greater clarity to States Parties about their obligations related to compliance with Article 6 of the Convention.

General Comments:

a) As women of the South, we were concerned that a General Recommendation on trafficking and migration may suggest to the state parties some similarity between the two figures and result in greater impediments to migration. Migration is a right. People who migrate have rights that must be respected by countries of origin, transit and destination, while trafficking is a crime and a violation of human rights, which must be prevented, investigated and punished. However, this draft reassures us, as the GR clearly differentiates the two concepts.

b) Taking in consideration that Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women sets out States parties’ legal obligation to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”, we want to highlight that there is an imbalance between trafficking and exploitation of prostitution. Indeed, while trafficking is the subject of many paragraphs, the exploitation of prostitution is hardly mentioned. An opportunity is being missed to better clarify the situation of millions of women and girls who are being sexually exploited; its causes and consequences. This becomes even more problematic when we consider that women and girls are 94% of victims trafficked for sexual exploitation (millions according to US TIP Report 2019). “in Central America and the Caribbean in 2016 were trafficked for sexual exploitation 87 per cent. Most were females, with women and girls reported in near-equal shares.” (UNDOC 2018).

1. Introduction:

* Paragraph 2:
* In the last sentence of the paragraph it says: “Restrictive migration policies and over-reliance on the criminal justice system to address trafficking in women and girls are barriers for victims’ access to justice and other services including health and psychosocial support.”
* The paragraph is so short that it can lead to confusion. It is true that many States feel that they already solve the problem of trafficking by shifting all responsibility to the criminal justice system. Some national action plans only include training for law enforcement officials. However, the high and shameful levels of impunity for trafficking reveal that this justice system is not working well, as the GR explains in paragraph 80. In fact, there are millions of victims and only a handful of convicts in each country. Our fear is that if it continues as drafted, States may feel that it is not their obligation to strengthen the criminal justice system by applying due diligence to investigate the perpetrators, punish them properly and provide reparations to the Victims.
* Suggestion: To clarify these two different issues including the two problems:
* (a) On the one hand, there is an over-reliance on criminal justice systems, which makes the government only focus on criminal justice and not take other measures, such as addressing the causes that make women and girls victims of trafficking and preventing it from happening.
* (b) on the other hand, this criminal justice system is not working well and must be improved and strengthened to avoid impunity.( as explained in GR paragraph 80)

III. Legal Framework:

Paragraphs 7 to 11.

It calls our attention that the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 1949 (the 1949 Convention) is not mentioned as part of the background legal framework on the issue of trafficking, taking into account that it was the basis on which many national legal frameworks began to be built and that it is one of the tools available to us from civil society in Argentina to work on the prevention of sexual exploitation and trafficking.

Suggestion: To include the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 1949 (the 1949 Convention) within the legal framework.

IV. Root causes and discouraging the demand that fosters exploitation through trafficking

g. Women and girl migrants’ increased risk of being trafficked

* Paragraphs 47 till 65:

During the last decade, one phenomenon has concerned us: that of girls migrating alone. Although unaccompanied migrant boys have been detected for many years, it was not common to see girls in the same situation. However, now thousands of girls from the age of 9 have been found at the borders or in large caravans that go from Central American countries to the North, trying to reach Mexico and the United States. Many have been held in refugee detention centres, others are returned to their countries of origin and others are lost in anonymity.

This problem is particularly acute in the northern triangle of Central America. It is no coincidence that it is this same area that has an unusually large number of girls trafficked, (40% according to UNDOC 2018 report, page 72) well above the world average of 23%.

Some of the girls in detention were escaping from violent situations, either in the family or from gangs. Others went in search of their parents who had already migrated. Some were orphans, fleeing hunger, lack of opportunity and discrimination. Girls in this situation face specific problems and are particularly vulnerable to traffickers.

Despite the seriousness of this problem and the fact that it is a growing trend, there is no explicit mention of this situation in this chapter.

Suggestion: To include the problem of girls migrating alone in this chapter, as well as recommendations to States parties to collect accurate data and take specific measures to protect girls in this situation.

1. Victims access to Justice:

Paragraph 78: In this paragraph “the Committee notes the high level of impunity enjoyed by perpetrators of trafficking and draws a link to the gender-related factors underpinning trafficking in women, which, as recognized in general recommendation No. 35 (2017), contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard.”

One of the greatest impediments to reporting and punishing traffickers and detecting victims of trafficking is the naturalization of the exploitation of prostitution; the fact that it is not considered by many societies a form of violence against women and girls. Many brothels and spaces where sexually exploited women are found are in public view, either openly or concealed under the rubrics of whisky shops or nightclubs. Many people know what goes on inside them, but it is not reported. This is only possible with a high level of complicity or social indifference to the fate of exploited women and girls.

Suggestion: make explicit mention of the naturalization of the exploitation of prostitution as a cultural norm that must be eradicated.

Respectfully yours,

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