

**Draft General Recommendation on TWGCGM**

**Contributions**

**Lawyers Without Borders Canada -LWBC- to the draft general recommendation of the CEDAW Committee on trafficking of women and girls in the context of global migration.**

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with the support of:

 

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# **Recomendaciones**

LWBC considers that the draft general recommendation proposed by the CEDAW Committee includes all of the important and relevant aspects to improve institutional capacity in order to combat the trafficking of women and girls in the context of global migration. Therefore, the suggestions proposed by LWBC in this document seek only to specify and reinforce those aspects already established by the Committee in the draft:

**Paragraph 68:** **Early identification and protection of presumed victims of human trafficking: (...)**

**b)**  **Increase the early detection capacity and authority of law enforcement and border personnel, immigration and asylum authorities, particularly in detention centers for undocumented migrants, labour inspectors, social workers and health-care professionals, consular personnel, and local authorities to promptly identify trafficking and related offences against women and girls and to facilitate the referral of victims, including non-nationals, to the appropriate services, assistance and rehabilitation and social integration, including by providing mandatory systematic training on the:**

**i. Causes, consequences and incidence of trafficking in women and girls and different forms of exploitation;**

**ii.**  **Effective implementation of national guidelines on victim identification;**

**iii.**  **Gender-sensitive and child-sensitive protocols for dealing with victims. (...)**

Justification: Generally speaking, in order to properly address the complexity of the context of migration and mixed migration flows, judicial actors must be trained in the detection of victims of human trafficking. They must also be able to identify international protection needs and to process the temporary or permanent stays of the victims in safe territories, while attending to their particular needs and interests.

For this reason, it is important to insist on strengthening the detection abilities of all state authorities regarding human trafficking indicators and human trafficking in general, particularly those who carry out their functions in border areas, migratory routes, areas of greater risk, migrant detention centers, as well as for migration personnel, customs agents, labor inspectors, consular personnel, and local officials, including civil society organizations.

**Paragraph 72:** **Strengthen the unconditional assistance and protection provided to victims of trafficking: (...)**

**h) Provide free and immediate access to these specialized shelters, high-quality medical care, psychosocial counselling, financial support, and educational and employment opportunities, in addition to access to free legal services provided by trained and specialized professionals in sufficient numbers, and specialized rehabilitation and reintegration services; (...)**

**Paragraph 83: States parties must have an effective and accessible legal services framework in place to address all forms of gender-based violence against women committed by State agents and non-State actors, whether on their territory or extraterritorially, that takes into consideration the diversity of victims and the risks of intersecting forms of discrimination. Women must have access to education and information about their rights and the remedies that are available and how to gain access to them. The remedies must be affordable, accessible and timely, and women must be provided with free, quality legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law. Alleged violations of women’s rights are to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate.**

**Paragraph 84: Ensure access to justice for all trafficking victims, including forcibly displaced and migrant women, including those in an irregular situation: (...)**

**b) Establish accessible legal aid systems with services provided by specialized, trained professionals in sufficient numbers and legal information sharing systems for victims, so they can access justice in any judicial and administrative processes in all fields of law, including immigration and criminal proceedings; (...)**

Justification: Experience shows that victims who are assisted by legal professionals specialized in human trafficking have greater access to justice and are more likely to obtain reparations. These independent professionals ensure that the specific interests and concerns of each victim are taken into account in the criminal proceedings against traffickers and/or in any other judicial or administrative environment.

Therefore, States should be urged to provide high-quality free legal representation by trained and specialized professionals so that victims of human trafficking have access to justice in all judicial and administrative spheres, including immigration procedures and criminal proceedings. If this is not possible, States must at least facilitate the legal representation of victims by civil society organizations.

**Paragraph 84: Ensure access to justice for all trafficking victims, including forcibly displaced and migrant women, including those in an irregular situation: (...)**

**e) Design, implement and evaluate the impact of capacity-building programs on women’s rights and gender equality for lawyers, judges, prosecutors and police officers, facilitating continuous and multisectorial training that systematically includes victim, gender, and human rights-based approaches; (...)**

Justification: It is essential that States have trained and specialized judicial actors who can deal with all of the issues related to human trafficking. Experience has shown that intersectoral training facilitates inter-institutional coordination thanks to the human interaction among judicial actors who pursue the same goal: eradicate human trafficking. Likewise, it allows them to understand the difficulties and obstacles that arise when addressing this problem, generating empathy towards the other judicial actors and consolidating cooperation between them.

In this sense, States must guarantee institutional capacity in the areas of prevention, investigation, prosecution and sanction, as well as comprehensive care and the reparation of harm caused to victims, through continuous and multisectoral training of the judicial actors that systematically includes victim, gender and human rights-based approaches.

**Paragraph 96:**  **Prompt, adequate and effective compensation and rehabilitation (...)**

**d)** **Ensure, through legislative and other means, that trafficked women can access the right to remedy and prompt, adequate and effective compensation through different avenues, such as criminal, civil and labour courts, and that victims are compensated, as far as possible, commensurate with their loss, injury and suffering;**

**e)** **Adopt legislation on the organization, allocation and functioning of a special compensation fund for victims of and witnesses to trafficking and allocate sufficient funds for them. Ensure that the conditions to access prompt, adequate and effective funding from the compensation fund are reasonable and swift and do not place undue burden on trafficked women, and are not made conditional on confiscation of assets from their traffickers; (...)**

**f) De-link funding and support for female victims of trafficking from their participation in the criminal justice process or the obtaining of a conviction against traffickers. States Parties must take innovative measures to provide such funds.**

Justification: The creation of national reparations funds is essential to restore the victims' fundamental rights, as well as to guarantee their comprehensive care and consequently their rehabilitation, their reintegration into society, and their reconstruction or the realization of their life project, particularly in the migratory context. Said international obligation is a historical debt that States have to promptly, adequately and effectively repair for the victims.

Consequently, States must create national funds for comprehensive care that include reparations, without making them conditional on the obtaining of a conviction or on participating and contributing to the criminal process. They must also adopt innovative measures to provide such funds.