**CEDAW Recommendation 38**

**Suggestions for strengthening points and/or change of wording**

1. **General Suggestion:**

Reference, where relevant, the United Nations Courts of International Human Rights, including the European Court of Human Rights (EUCHR), the Court of Justice of the European Union (CJEU), the Inter American Court of Human Rights Justice (IACHR), the African Court of Justice and Human Rights (ACJHR), and the International Criminal Court (ICC).

Call for the implementation of the sentences passed down by these courts in terms of the laws they uphold on trafficking and the specific jurisprudence regarding trafficking in persons on the international and national levels.

1. **Specific suggestions and comments in context:**

**IV a: Women and girls are disproportionately affected by trafficking:**

**Para 12: General data on trafficking of women and girls:**

 The data should be disaggregated by migration status.

**IV b: Trafficking in women and girls constitutes gender-based violence against women:**

 The section is general – not in the context of migration

**IV c: Scope of application of the Convention:**

**Para 17: Shared responsibility. “States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.”**

This paragraph is absolutely crucial, but the concept of shared responsibility should be more specifically delineated, indicating who the actual duty-bearers are, what is meant, for example, by shared responsibility between country of origin consulates and country of destination authorities.

**IV e: Root causes of trafficking in women and girls and discouraging the demand that fosters exploitation through trafficking:**

This section is general to trafficking and does not mention the specific challenges/barriers, experiences of migrant women (except for para 24 on irregular and stateless women). Many of these root causes, including the lack of decent work and access to resources (including education and decision-making power), the feminization of poverty, and the demand for cheap labor are also drivers of migration as women move in search of opportunity. One root cause that is not adequately discussed here, though mentioned in Section G, is the economic demand of destination countries for cheap labor without providing appropriate regular channels and labor protection for migrant workers, especially for those in informal, low-wage and seasonal work.

**Para. 30:** **Recommendations on national coordination – in line with the “whole of government and whole of society” approach of the GCM:**

 Because traffickers are highly mobile, often fleeing abroad, it is difficult to prosecute cases, resulting in impunity for perpetrators and a lack of effective justice for victims. International coordination and cooperation are also needed here.

**Para. 31:** **Recommendations on adopting, financing, implementing and reviewing a comprehensive plan of action to prevent and combat human trafficking. d) includes policy on rights-based “rescue, repatriation and reintegration of victims.”**

Caution is necessary here in the context of aggressive immigration enforcement/detention/deportations.

**Para. 32: Recommendations on meaningful participation, including legislative and policy drafting**.

This paragraph raises the question of how to ensure the participation of non-citizens (including irregular migrants) in the formulation of national laws.

**IV g: Women and girl migrants increased risk of being trafficked:**

**Para. 57: recommendations on promoting a gender-responsive, safe migration framework (in line with GCM guiding principles), including ensuring more regular pathways, eliminating gender discrimination in migration laws, access to visas, residence permits, work permits and documentation, respect for non-refoulement, decriminalization of irregular entry for trafficked women and girls, and provision of assistance for women in need of protection**:

All irregular entry should be decriminalized. The words “for trafficked women and girls” should therefore be deleted.

**Para. 64: Recommendations on international cooperation to address root causes for low-income women:**

This paragraph does not mention cooperation on addressing demand; it focuses om women rather than on those who exploit them.

**Para. 65: Recommendation to engage in regional and bilateral processes regarding employment, including for regulating working conditions and protecting the rights of migrant women workers and dealing with violation of rights during employment:**

This paragraph could be more explicit about cooperation to investigate, prosecute and convict perpetrators.

**VI a: Victims’ access to justice: Investigations, prosecutions and punishment:**

**Para. 86: The Committee condemns the use of anti-trafficking conventions to justify violence against specific groups of women, particularly in the case of violent raids and entrapment operations by law enforcement authorities conducted with a view to dismantling trafficking networks:**

Anti-trafficking conventions should also not be used to justify restrictive immigration and border policies.

The NGO Committee on Migration is indebted for the suggestions above to Cecilie Kern, NGO Representative to the United Nations, Congregation of Our Lady of Charity of the Good Shepherd; Evalyn Tennant, consultant; Maria Pia Belloni-Mignatti, Organization for Early Childhood Development (OMEP; and Eva Richter, Poverty Elimination and Community Education (PEACE) Foundation).