

**Committee on the Elimination of Discrimination against Women**

**DRAFT General recommendation on Trafficking in**

**Women and Girls in the Context of Global Migration**

The present observations have been structured on the basis of the General Recommendation and the Convention articles. They have been elaborated and written by 130 organisations belonging to Spain Cedaw Shadow Platform through a collaborative process.

***I. Introduction*** (We propose to include)

1.Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention) 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”. Despite the plethora of existing anti-trafficking legal and policy frameworks at the national, regional and international levels, trafficking in women and girls remains pervasive globally. This is due to the fact that the root causes of trafficking, which in the case of trafficking for sexual exploitation are directly linked to the prostitution system, are not addressed, neither erradicated, according with full implementation of Article 6 of the Convention. Perpetrators enjoy widespread impunity and women and girls continue to be subjected to extreme forms of gender-based violence, constituting a violation of their human rights and an obstacle to their achievement of substantive equality. The call for strategic global action by States to combat trafficking in women and girls is echoed in the Global Compact for Safe, Orderly and Regular Migration and the 2030 Agenda for Sustainable Development as well as other international instruments of defense of women`s and girl`s rights such as the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and the Resolution 2331 (2016) on trafficking in persons in the context of conflict.

***II. Objective and scope*** (we propose to include a new paragraph)

**6**. The Committee appreciates the regional-specific approaches…

This Recommendation should also address exploitation and prostitution of others as cause of trafficking, as well as a violation of women human rights and violence against women and girls, which, as previously acknowledged, allows the “*exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercise by women of all human rights and fundamental freedoms*”[[1]](#footnote-1).

***III. Legal framework*** (we propose to include)

**7**. The internationally-accepted legal definition of trafficking in persons is contained in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (A/RES/55/25) (2000). However, the complex nature of the phenomenon and the acknowledgement of the fact that we face a violation of human rights and an exercise of structural violence against women, requires the incorporation of other frameworks related to gender-based violence against women[[2]](#footnote-2). The fact of being women and their position of gender-based vulnerability is what makes women and girls vulnerable to be trafficked, mostly to be trafficked for sexual exploitation in prostitution.

**8.** The Committee appreciates that the definition of trafficking in persons extends beyond situations where physical violence has been used or the victim’s personal liberty has been deprived. Particularly in the case of girls, trafficking is constituted simply when a trafficking act has been committed for the purpose of exploitation. Its examination of States parties’ reports reveal that the abuse of a position of vulnerability, the abuse of power and the culture of impunity and the reification of women being sold and purchased are the most common means used to commit the trafficking crime, and that victims are often subjected to multiple forms of exploitation, such as in cases where women and girls are trafficked for sham, forced, child/early or servile marriage, as well as for sexual exploitation, forced labour and domestic servitude. Prostitution and the exploitation of prostitution of others are also practices related to trafficking[[3]](#footnote-3)

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

***a. Women and girls are disproportionately affected by human trafficking.*** (we propose to include)

**12**. According to the United Nations Office on Drugs and Crime,… The Committee is particularly concerned regarding the trends oftrafficking in women and girls, as well as the role of technology in the recruitment of victims and the new forms of exploitation which require of trafficking to provide women and girls (subrogacy, sex trafficking, pornography, cyber trafficking...). These practices submit women and girls to a serious risk of violence and sexist abuse (UN Studies Association (UNSA), 2019: “Cyber crimes against women and girls”; ITU & UNESCO, 2015: “Cyber violence against women and girls”). The Committee identifies the higher risk faced by women and girls subjected to multiple and intersecting forms of discrimination, particularly women and girls in poverty, living in remote areas, forcibly displaced women and girls and women and girl migrants.

**15**. Trafficking in women and girls may amount to torture or cruel, inhuman or degrading treatment …. a crime against humanity or an act of torture constitute an act of genocide.

Given the existence of a “continuum of violence”[[4]](#footnote-4) and the existence of sexual violence crossing different forms of trafficking which affect women and girls (domestic labour trafficking and sexual exploitation, as in the case of domestic workers; women with diverse capabilities, etc.), holistic approaches and intersectional perspectives are required in order to meet the demands of the causes and consequences of gender-based violence and understand how interpersonal and structural forms of violence are generated, reproduced and interlinked. States must implement once and for ever their commitment to establish gender mainstreaming to answer the continuum of violation of human rights which prevent women from exercising their rights both in the private and the public spheres[[5]](#footnote-5), applying enough funds, resources and specific and appropriate policies.

***d. Obligation to identify women and girls subjected to multiple forms and compounded discrimination as rights bearers.*** (we propose to include)

**18.** The Committee has acknowledged that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied exercise of a right because there was no recognition of the pre-existing sex-based disadvantage and inequality that women face. Discrimination on the basis of sex or gender may affect women belonging to groups in situations of vulnerability in different ways. Women are not a homogenous group and their experiences as trafficking victims are diverse. States parties are required to proactively identify as rights-bearers women and girls within the jurisdiction of the State party who are marginalized, being subjected to multiple forms of discrimination, including non-citizen, migrant, refugee, asylum-seeking and stateless women and girls, and women and girls with an irregular migration status.

In no case, irregular administrative situation or lack of complaint or collaboration with the police by victims and survivors may affect their right to the State assistance and protection. Victims and survivors must not be deprived of their right to the State assistance and protection in case of irregular administrative situation, or lack of denounce or collaboration with the police.

***e. Root causes of trafficking in women and girls and discouraging the demand that fosters their exploitation through trafficking.*** ( we propose to include)

**19**. Identifying, addressing and eliminating the root causes and discouraging the demand that fosters all forms of exploitation of women and girls through trafficking, including the demand of prostitution of others, pornography and sexual tourism as well as the causes of reification and sexualization of women and girls, are key to States parties’ prevention efforts. A gender-transformative approach is required to dismantle the structural and systemic conditions that deprive women and girls of their fundamental rights, the consequence of which places them in situations of vulnerability to exploitation by traffickers. Women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights. An effective anti-trafficking response must engage all substantive provisions of the Convention. Regarding demand, it must be understood not only the direct demand linked to trafficking but the one which fosters the existence of exploitation.

**25.** ***c)*** Collecting and publishing data on trafficking in women and girls, and specifically on: (we propose to include)

***iii****)* Its potential link with exploitation of prostitution of others, bonded labour, domestic servitude and child and forced marriage

(We propose to include a new subsection c) :

***xi)*** Number of potential victims and survivors of trafficking attended by NGOs,

***f) Analyzing the data with the objective to inform the development of:*** (We propose the inclusion of a new subsection):

***v)*** Adopting measures so that recognised NGOs may identify trafficking victims and survivors and accredit their status, widening police and judicial proceedings.

**27.** (we propose to include) Discourage the demand that fosters all forms of exploitation of persons, especially women and children, including prostitution and pornography, that leads to human trafficking by …(We propose to include a new subsection “b”, passing present “b” to “c”)

b) Promoting other forms of masculinity and sexuality respectful with women and girls.

**29**. Adopt and implement comprehensive gender-sensitive anti-trafficking legislation ensuring that it: (we propose to include):

***b)*** Fully complies with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, including the definition of “trafficking in persons”; and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

***c)*** Has as its objective to combat trafficking for purposes of, among others, child and forced marriage, debt bondage, serfdom, forced or compulsory labour, slavery and sexual exploitation and prostitution of others;

***e)*** Includes specific provisions addressing the prevention of trafficking in women and girls and the economic and physical and psychological rehabilitation and reparation of victims.

(We propose to include a new subsection):

k***)*** Promote patrimonial investigation as a key element in the fight against trafficking that may be used, as well, as an instrument to improve crime prosecution and to create a Fund for victims reparation.

**31.** (we propose to include)

a)Takes into account the UN Trafficking Protocol, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the Recommended Principles on Human Rights and Human Trafficking of the United Nations Office of the High Commissioner for Human Rights (E/2002/68/Add.1).

**32.** (we propose to include)

**a)** The expertise and voices of women and girl victims of trafficking and of the exploitation of prostitution, must be included and accounted for at all stages of efforts to prevent and combat trafficking, including training, programme and research design, development, implementation, monitoring and evaluation, as well as legislative and policy drafting.

***f. Forcibly displaced women and girls face a higher risk of being trafficked.*** (we propose to include)

**36**. Inequalities in marriage and family relations affect women’s experiences in conflict and post-conflict situations. In such situations, women and girls may be forced to get into prostitution as a strategy of generation of family income even in refugee camps, or to get into marriage by their families to placate armed groups or as a result of poverty and a misconception that marriage may protect them against forms of sexual and gender based violence, including rape.

**45. *Access to asylum procedures:*** (we propose to include)

***a)*** Implement or, in its abscence, establish mechanisms for the identification of victims of trafficking within the asylum procedure as well as referral mechanisms to ensure that asylum claims are assessed in an age, sex and gender-sensitive procedure in order to respond to the specific protection needs of trafficked women and girls

53. Data and research: (we propose to include)

**b*)*** Conduct research on the drivers of women’s migration, the discrimination they face in every phase of the migration cycle, and on the disproportionately high number of migrant women concentrated in specific occupational sectors, or in spheres of exploitation such as the one resulting from the so-called “sex industry” with a view to eliminating discrimination and providing a coherent and comprehensive approach to addressing their specific needs and vulnerabilities to being trafficked. This includes an examination of the laws, policies, programs and practices that enables exploitative conditions for women in migration.

59. Scrutinize recruitment agencies:(we propose to include)

b) Prosecute and punish labour recruiters, intermediaries and employment agencies, including measures concerning assets prosecution, engaged in illegal recruitment processes, including for acts of violence, coercion, deception or exploitation, such as intentional provision of misleading information and documentation, the confiscation of passports and the charging of recruitment fees to workers.

***V. Victim identification, assistance and protection.***

**72. *Strengthen the unconditional assistance and protection provided to victims of trafficking*** (we propose to include)

***j)*** Ensure that social inclusion policies enacted by States for trafficking victims do not require compulsory protective detention or any other manner of arbitrary detention of women who are trafficked neither of their children.

***n)*** Women who, after conducting a risk assessment cannot be safely returned to their homes, should be provided with assistance to build an independent life, including a residence permit, psychosocial support, vocational training, employment assistance, and, if necessary to ensure their safety, a changed identity, as well as family reunification in their country of origin in case of safety risk. Ensure that the skills training that trafficked women receive correspond to the local market needs and women’s own ambitions, and result in receipt of a living wage, avoiding gender stereotypes.

**92. *Adverse collateral effects of anti-trafficking efforts.*** (We propose to modify and substitute as following):

a) Guarantee that the authorities do not unduly use legislation, directives and guidelines against trafficking, to impose greater restrictions, prosecute, arrest or deceitfully accuse victims, especially women from vulnerable groups or women in prostitution.

b) Guarantee that police raids conducted with the objective to dismantle trafficking gangs, do not justify neither provoke gender-based violence, abuse or harassment against any victim of trafficking or women in prostitution.

c) Guarantee that women victims of trafficking and prostitution do not suffer discrimination, stigmatization or lack of rights or protection.

d) Guarantee that efforts against trafficking and exploitation of women in prostitution, are not employed as means for deportation of migrant women in irregular administrative situation.

***VII. Dissemination and reporting*** (we propose to include)

**100.** States parties’ strategies to implement a gender-transformative anti-trafficking response should be included in their reporting to other mechanisms, including under the: Universal Periodic Review process of the United Nations Human Rights Council and Periodic Review of the Istanbul Convention; High Level Political Forum on Sustainable Development; Global Compact on Safe, Regular and Orderly Migration; and the Mechanism for the Review of Implementation of the Convention against Transnational Organized Crime and the Protocols Thereto.

Signed: **Spain Cedaw Shadow Platform**

ALQUIMIA FEMINISTA; FORUM FEMINISTA DE MADRID; Plataforma Estatal de OOMM por la Abolición de la Prostitución-PAP-; Centro de Estudios e Investigación sobre Mujeres; Asociación Por Ti Mujer; INCIDE (Inclusión, Ciudadanía, Diversidad, Educación); Asociación para la Defensa de la Imagen Pública de las Mujeres; Asociación de Mujeres Feministas Tomando Partido-Andalucia-Spain; APPROMIG CV.Asociación Profesional de Técnicas en Promoción de Igualdad CV; AMILIPS; Asociación Feminista Tiemar; AUVIM - Asociación Universitaria contra la Violencia Machista; [Feminicidio.net](http://feminicidio.net/)-Asociación La Sur; UNESCO Madrid; Asociación de Mujeres Progresistas de Retiro; Andereak Plataforma contra la Violencia Sexista; AAMM Feministas Marcela Lagarde; Asociación de Mujeres Nerea; Federación de Asociaciones por la Igualdad de Género Guadalhorce Equilibra; Mulheres Nacionalistas Galegas ; Plataforma contra los malos tratos a mujeres Violencia Cero; FPF; Asociación egeria desarrollo social; Jone Gurrutxaga; Ehuleak-CIMTMNAVARRA ; Plataforma Navarra de Mujeres por la Abolición de la Prostitución; FEDERACIÓN FEMINISTA GLORIA ARENAS; Asociación de psicología y psicoterapia feminista; Agencia Comunicación y Género; Frente Abolición Prostitución ; THEMIS; Grupo de Acción Feminista de Alcorcón-GAFA; Tertulia Feminista Les Comadres ;Federación de Organizaciones de Mujeres de Lorca; Red Académica Internacional de Estudios sobre Prostitución y Pornografía; Consejo de las Mujeres del Municipio de Madrid; Foro de Madrid contra la Violencia a las Mujeres; Tertulia Katte Millet; Mdm Benalmadena; Colectivo Feminista Lanbroa; Toledo Abolicionista; Asociación Terapia y Genero; Asociación XXI en Igualdad; Por la abolición de la prostitución y contra cualquier forma de maltrato, abuso, explotación y violencia contra las mujeres y niñas; IES JAUME I; Dones de negre Castelló; Asociación de mujeres Carmen de Burgos,Moncofar.; Mujeres Progresistas; Federación de Asociaciones de Mujeres de la Comunidad de Madrid (FAMCM); Derechos de las mujeres y desarrollo (DEHMUDE); Comité Reivindicativo y cultural de Lesbianas (CRECUL); PLATAFORMA ANDALUZA DE APOYO AL LOBBY EUROPEO DE MUJERES; Asociación de Mujeres Feminista Puntos Subversivos; UNION GENERAL DE TRABAJADORES DE ESPAÑA ; EHMA; Plataforma 7N-Madrid contra las violencias machistas; Mujeres de [izquierdas.org](http://izquierdas.org/); FEVIMI - Federación para la Erradicación de la violencia contra las mujeres y la infancia; ADAVAS - León; Comisión para la Investigación de Malos Tratos a Mujeres; Movimiento Democrático de Mujeres ; Asociación para la Defensa de la Imagen Pública de las Mujeres; Mujeres en Zona de Conflicto (MZC); Plataforma Abolicionista Canaria; Movimiento Social Politico cultural Recortes Cero; Área de Educación para la Ciudadanía Global de MZC; Femme Força Vinaròs; Asociación de Mujeres Feministas Tomando Partido -Andalucia-Spain; Frente de Lucha Feminista ; Partido Feminista de España; Asamblea Abolicionista de Madrid; ALIA. ASOCIACION POR LA IGUALDAD DE OPORTUNIDADES ENTRE MUJERES Y VARONES; Asociación Por la Senda Violeta ; Foro Feminista de Castilla y León; Enclave Feminista; Fórum de Política Feminista de Granada; El Parto es Nuestro; Asociación de Mujeres Pandora; Asociación Terapia y Género ; Intersindical Valenciana; Egeria Desarrollo Social; La Independent,Agencia Noticias con Visión de Género; Consell Nacional Dones d'Espanya  CNDE; Apramp; Asociación de mujeres Montserrat Roig;Federación Ágora; ASOCIACION CLARA CAMPOAMOR; FEDERACION DE ASOCIACIONES DE MUJERES ARENA Y LAURISILVA; Colectivo Feminista de Miño; Colectivo Feminista Carmen Olmedo; FADEMUR Federación de Asociaciones de Mujeres Rurales; FÓRUM DE POLÍTICA FEMINISTA CÓRDOBA; Xateba Por los Derechos de la Mujer; Asociación Círculo Feminista; Federación AA MM rurales Sol Rural ; Colaboratorias;Asociación Feminista Leonesa "Flora Tristán”; ASSOCIACIÓ CATALANA DE LLEVADORES; Asociación social y cultural para las mujeres Mararía;Asociación MATIZ; Plataforma Andaluza de Apoyo al Lobby Europeo de Mujeres; Asociación Gitana de Mujeres Drom Kotar Mestipen ; Federación de Asociaciones Culturales y Educativas de Personas Adultas FACEPA;AMIGA 1931; Asociación Profesional Técnicas promotoras Igualdad CV; Friedan Associate; Haurralde Fundazioa ; Malen Etxea mujeres inmigrantes; Mujeres Supervivientes de violencias de género; Asociación Lunes Lilas Navarra/Astelehen Lilak Nafarroa; Forum de Politica Feminista de MÁLAGA; RED CANTABRA CONTRA LA TRATA Y LA EXPLOTACION SEXUAL; FEDERACION NACIONAL DE ASOCIACIONES DE MUJERES SEPARADAS Y DIVORCIADAS; Asociación Mujeres Progresistas contra la Discriminación y la Violencia de Género; Federación Mujeres Jóvenes; Red de Mujeres Latinoamericanas y el Caribe; Clásicas y Modernas Asociación para la Igualdad de Género en la Cultura; MEDICOS DEL MUNDO ; Plataforma unitària contra les violències de gènere; Red de Hondureñas Migradas; COLECTIVA MUJERES REFUGIADOS, EXILIADOS Y MIGRANTES; Asociación Lunes Lilas Navarra/Astelehen Lilak Nafarroa; Plataforma contra los malos tratos a mujeres Violencia Cero. Málaga; Coordinadora de Organizaciones de Mujeres para la Participación y la Igualdad COMPI; FUNDACION DE LA MANO CONTIGO; COLECTIVO TRENZADA SOMOS MAS; ACCOES.

1. “[Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, Ms Sigma Huda, E/CN.4/2006/62,February 20](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/109/67/PDF/G0610967.pdf?OpenElement)[th](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/109/67/PDF/G0610967.pdf?OpenElement)[,](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/109/67/PDF/G0610967.pdf?OpenElement) 2006, (paragraph 42). The Rapporteur stresses that most prostitution as actually practised satisfies all the elements to be considered trafficking. Evidence shows that both the factors that take a person into prostitution, as the person’s experience in prostitution, imply abuse of power and/or abuse of vulnerability, and even violence. [↑](#footnote-ref-1)
2. Beijing 1995 Declaration and Platform for Action (paragraphs 99, 113b, 1 22, Strategic Objective D.3, 224) which related trafficking with exploitation of others prostitution pornography and sexual tourism, and ide4ntifies them as gender-based violence against women; and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others, as well as the Reports of the UN Rapporteurs against Slavery (2003) and Trafficking (2006). [↑](#footnote-ref-2)
3. Special Rapporteur’s Report, E/CN.4/2006/62. [↑](#footnote-ref-3)
4. Special Rapporteur on Trafficking in Persons, mostly Women and Children (2011): Report on violence against Women, its causes and consequences, A/HRC/17/26. [↑](#footnote-ref-4)
5. Idem, paragraphs from 100 to 103. [↑](#footnote-ref-5)