**CEDAW DRAFT General recommendation on Trafficking in Women and Girls in the Context of Global Migration**

**Written Contribution submitted by The Advocates for Human Rights, a non-governmental organization in special consultative status**

Submitted 15 May 2020

1. The Advocates for Human Rights (The Advocates) is a volunteer-based non- governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Our human trafficking team is a leading resource for anti-trafficking efforts in the United States and internationally. We monitor and document government compliance with international obligations, advocate for human rights-based public policy responses, and provide free legal assistance to trafficking victims in the Upper Midwest. In 2008, The Advocates published the first comprehensive *Sex Trafficking Needs Assessment for the State of Minnesota*, and subsequently has worked to increase penalties for traffickers, strengthen Minnesota’s definition of sex trafficking, and provide child victims of trafficking with services through the passage of the Safe Harbor Act in 2011. In 2019, The Advocates published *Protocol Guidelines on Labor Trafficking*, and in 2020 is working on an updated *Sex Trafficking Needs Assessment*.
2. The Advocates is also one of the leading organizations providing legal services to migrants in the United States, operating a national asylum hotline for migrants to use in finding legal counsel nation-wide. We also provide direct legal services to asylum seekers, detained migrants, unaccompanied minors, and trafficking victims in the region—having served nearly 1000 clients in 2019. Through this work, we have gained first-hand knowledge of the challenges facing women and girls in the context of migration. With this submission, we share with the Committee recommendations based on information received directly from trafficking survivors.
3. **Paragraph 21** addresses root causes of trafficking in women in women and girls but fails to explicitly identify lack of access to stable or permanent housing as a key factor that significantly increases the vulnerability of women and girls to trafficking and sexual exploitation. In interviews conducted by The Advocates, qualitative information indicates that high rates of homelessness among poor and minority groups such as American Indians contributes directly to trafficking and sexual exploitation. In our experience, not having enough housing perpetuates trafficking. We recommend amending paragraph 21 to acknowledge this issue by adding “***access to housing*”** as an inequality faced by many women and girls. **Paragraph 26(b)** should, for the same reason, be amended to state: “Providing women and girls in situations of disadvantage with access to basic services, including education, information, health care, ***housing***and employment opportunities.”
4. **Paragraph 25(c )** on States’ data collection should also include data collection on criminal record relief for victims of trafficking. We recommend adding a new part 25(c) (xi): ***“The number of trafficked women and girls granted criminal record relief or post-conviction relief (e.g., vacatur) for crimes committed as a result of being trafficked.”***
5. **Paragraph 26** We also recommended that a new part be added to the paragraph that states ***26(g): “Identifying and addressing any adverse impact of arrest and criminal records on trafficked women and girls for crimes committed as a result of being trafficked, including access to basic services such as employment and housing.”***
6. **Paragraph 29(b)**  The Advocates has found, through multiple interviews and direct experience, that where criminal law requires a showing of force, fraud or coercion to prosecute a trafficking crime and particularly in the case of adults, systems actors often mistakenly focus on the conduct of the victim (i.e., were they really coerced or forced), rather than on the actions or exploitative practices of the perpetrator. This tendency is compounded by persistent stereotypes about why women are exploited, particularly for sex (i.e., they chose this life) and by the fact that many trafficking victims will not immediately self-identify as victims, either through fear of retaliation from their trafficker or the state, or due to cumulative trauma. This can result in a failure to prosecute perpetrators, charging perpetrators with a lesser offense, or in the victim herself being charged with a crime. We recommend that paragraph 29(b) be updated to state to include the following: ***“.. and ensures prosecution of traffickers depends on the criminal conduct of the perpetrator and avoids moral judgments about the perceived culpability of the victim.”.***
7. **Paragraph 42** We recommend that the following be added to the end of the paragraph 42(h): ***“…and red flags and policies for screening and identifying trafficking victims to ensure trafficking victims are not inadvertently placed in detention or removal proceedings.”*** Our experience has shown that numerous trafficking victims are not identified as victims during interactions with immigration and law enforcement officials. This is particularly true of adult trafficking victims where legislation and policy do not provide mandatory screening protocols. Many law enforcement officials are also unfamiliar with red flags for trafficking and best practices for trauma-informed practices to ensure victims feel safe sharing their experiences.
8. We also recommend that a new section be added to the paragraph that states: ***42(k)*** *“****Prevent trafficking amongst displaced persons and unaccompanied youth by ensuring proper screening and adequate protections in procedures for finding, placing and monitoring placements with sponsors to whom displaced persons or unaccompanied youth are released.”***Our experience has indicated that this additional language is crucial as many displaced youth are trafficked by the very people chosen by States party to protect them. With the unprecedented numbers of displaced minors seeking protection in other countries, States party may implement systems that lack adequate controls to screen sponsors and unwittingly release minors into the hands of traffickers who exploit these overburdened and inadequate systems. Such exploitation can be exacerbated, moreover, through inadequate funding for shelters and protections—especially when coupled with unprecedented levels of funding for immigration enforcement operations.
9. **Paragraph 53** include the following additional language: ***“Systematically collect and analyse disaggregated data on migrant women who report having contact with law enforcement, systems actors, or immigration systems and were not screened for trafficking.”*** The Advocates has identified many trafficking victims who had some interaction with law enforcement or immigration officials but were not screened for or identified as trafficking victims. Systematic data collection would provide clear information as to the reasons for these gaps—funding, training, or other gaps.
10. **Paragraph 56**. The Advocates commends the Committee for including training requirements and recommends adding training for criminal, civil and administrative judges, including judges who adjudicate family, immigration, and workers’ compensation matters. Beyond training, we recommend that States party develop policies for screening and reporting by these actors. This recommendation is based on our experience that many victims are not identified because they do not feel comfortable sharing their trafficking experience with law enforcement officials who may be intimidating, but could be identified by more neutral parties, such as judges, who are well-placed to interact with victims, and should play a crucial role in identification before they make determinations on deportation, criminal penalties, or other ancillary matters.
11. **Paragraph 57** should be amended with the following: Add new sub-paragraph ***(l) Legislating and implementing protections against exploitation and abuse by family-based petitions, including fiancé(e)s, parents, children, siblings, and spouses, as well as employer-petitioners.*** Add new subparagraph ***(m) Legislating and implementing protections against exploitation and abuse by sponsors of domestic worker visas, particularly through screening at the consulate and border levels*.** The Advocates is encouraged by the Committee’s recognition of the vulnerability created by the power dynamics of immigration visas. Based on our experience, this power goes beyond employment and spousal relationships, but can extend into any relationship that requires a petitioner or sponsor for a visa. While we *do not* encourage sweeping reforms that further restrict viable paths for migration by doing away with any visa category that requires a sponsor or petitioner, we do encourage States parties to ensure adequate protections in all such instances through both policy and training, as well as legislation that provides fall-back visa options for victims if the relationship becomes exploitative.

1. **Paragraph 58(d)** should be amended to add the following language at the end ***“… which also provide protection from immigration consequences, and requires training for all immigration, labor and consular staff to identify trafficking red flags.”*** This recommendation is based on The Advocates’ witnessing severe gaps in protections if a relationship does turn exploitative. Victims of trafficking often face immigration consequences because of sanctions against their employer. While some States provide special visas for victims, the standards for these visas often are too narrow to adequately protect all victims. Further, visas must be coupled with adequate training and policies across all immigration actors to meaningfully protect victims at all stages.
2. **Paragraph 59(b)** should also be amended for the same reasons. The Advocates has documented gaps in protection where victims cooperate in prosecutions but may still fall outside narrowly defined categories of visas for victims. We propose the following be added to 59(b): ***“During prosecution, take active steps to protect victims from retaliation and immigration consequences. Develop programs that provide required support, such as housing and immediate work authorization.”***
3. **Paragraph 60(b)** should have the following additional language: ***“Ensure that work authorization is easily and quickly granted upon identification by an attorney or law enforcement agency.”*** In our experience, it can take many months to obtain work authorization, and may even take years where authorization-granting agencies do not freely grant such authorization. During this time, victims may fall prey to other traffickers or exploitation due to their need to work without authorization or rely on unsafe relationships for basic needs.
4. **Paragraph 60(c).** The Advocates encourages the Committee to remove the clause “Discontinuing the use of employer-specific work permits,…” Discontinuing viable immigration paths exacerbates current backlogs and lack of immigration opportunities faced by migrants, which contribute to irregular migration paths that are rife with opportunity for exploitation and often result in trafficking situations, such as smuggling turned trafficking. Instead, we recommend the following language instead: ***“Include adequate screening in employer-specific work permits or visas, protections and monitoring to reduce exploitation,…”***
5. **Paragraph 61(d)** For the reasons explained in paragraph 11, *supra,* we recommend the following addition: “… **any dependency on their spouses*, fiancé(e)s, parents, children or other visa sponsors.”***
6. **Paragraph 66** The Advocates recommends the following addition: ***“Beyond gender-sensitivity, a challenge in identifying victims of trafficking is the lack of protocols and training to spot and support trafficking victims in immigration removal or deportation proceedings, criminal proceedings, family court, worker’s compensation cases, and more. Adequate training coupled with mandatory screening protocols will be essential to increasing identification.”***
7. **Paragraph 68 (c)** emphasizes the importance of screening and referrals for women asylum seekers. Based on The Advocates’ experience that many victims of trafficking are not identified as such despite contact with law enforcement and other systems actors, we recommend that the following be added to the paragraph to make it stronger: “**…immigration or criminal laws, *and require that screening occur for all those with whom relevant staff come into contact regardless of age, gender, sexual orientation or other status,* to ensure they receive coordinated protection, assistance and support.”**
8. **Paragraph 71** should be amended with the following additional language to read **“…prosecution of trafficking offences,** ***yet, protections from retaliation by the trafficker or negative collateral consequences are not appropriately mitigated.”*** We recommend this change because The Advocates has observed that many victims of trafficking confront gaps in the law, resources, and policy that leave them without adequate protections from their traffickers and/or subject to negative collateral consequences (such as deportation) despite their cooperation with law enforcement. Many victims are willing to cooperate—and do—however, gaps in how trafficking is defined or viewed have meant that victims cooperate in an investigation but are not entitled to protections dedicated to the narrowly defined set of victims or policy goals. Additionally, lack of funding and training for advocates has meant victims do not receive adequate protections against the trafficker even where a prosecution occurs. Not only is this contrary to international standards set forth in the Palermo Protocol, but it also discourages other victims from coming forward.
9. **Paragraph 72.** For the reasons noted, *supra*, include in **paragraph 72(m)** the following: “***by, inter alia, providing employment authorization and resources,”.*** We also suggest the following revision **to paragraph 72(o)**: ***“…In addition, facilitate return should they wish to return to home country.”*** We make this note based on experience that some victims wish to return home but confront challenges in either funding or coordinating return to their home country. In addition, some victims must remain in the destination country in order to support the investigation or prosecution, making them feel like they are victims of a new form of control—this time by those systems actors charged with protecting them.
10. **Paragraph 74.** We recommend the following addition to the end of paragraph 74: ***“This must be done through legislation and proper training to ensure actors are able to identify trafficking victims for such relief, as well as through political will to provide a viable path for these cases regardless of migration status.”*** The Advocates makes this note based on our first-hand experience that written policy and aspiration is insufficient unless coupled with political will for implementation. When the overarching policy is directed at immigration enforcement or heavy-handed law enforcement approaches, actors on the ground may lose sight of individual victim protection in favor of implementing these competing policies.
11. **Paragraph 80.** We suggest the following addition at the end of the paragraph***: “Not only does this violate victims’ rights, but it puts them at risk of secondary victimization by compounding the trauma of trafficking and restricting victims’ access to basic services needed to recover and escape their trafficking situation.”***
12. **Paragraph 84.** We recommend the following be added to the end***: “This should be accomplished through mandated training of immigration staff and judicial officers, and mandated screening for all trafficking victims (regardless of age and gender).”*** Further, **paragraph 84(d)** should be amended to add: **“…while ensuring fair trial guarantees, *and which avoid the threat or use of criminal penalties against victims for crimes committed as a result of being trafficked.”***
13. **Paragraph 91**. We recommend adding a new subparagraph: ***91(d): “Provide generous waivers for immigration consequences, without requiring a fee for such waiver, where immigration relief would otherwise be barred.”*** The Advocates notes that, in our experience, the law or policy may not allow broad enough waivers of acts that trafficking victims are often forced to engage in as part of their trafficking experience. Legislation should exempt trafficking victims from any bars that relate to their trafficking experience—including those who may have trafficked others due to the experience or trauma that is known to occur—rather than requiring waivers. In addition, if waivers are required, they should be free of fees. In our experience, expensive fees can be a complete bar to trafficking victims applying for relief. Fee waiver requests can take time or be too difficult to obtain in order to meaningfully allow victims to access benefits made available by law.