

Committee on the Elimination of Discrimination against Women (CEDAW)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

**Comments on the CEDAW draft General Recommendation on trafficking in women and girls in the context of global migration**

By Dr. Thomas Bundschuh, Dr. Lourdes Peroni and Mr. Matthew Sands

Dear Committee Members,

We welcome the opportunity to comment on the **Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration** by commenting and making related suggestions for amendments on the following topics: A. The relationship between trafficking and torture; B. Violations of social and economic rights as root causes; C. Human rights indicators; D. International human rights standards; E. Training.

## A. The relationship between trafficking and torture

***Comments:***

As currently presented, draft paragraph 15 may be interpreted as unnecessarily restricting the responsibility of States parties to prohibit trafficking, by emphasising the importance of individual criminal responsibility of non-State perpetrators. The authors would therefore encourage the Committee to split the paragraph, with the new paragraph 15 recalling that international human rights law requires that the prohibition of trafficking and torture is a State responsibility.[[1]](#footnote-1) Consequently, the State party should provide meaningful redress for its failures to prevent, investigate, prosecute, and punish acts of trafficking.[[2]](#footnote-2)

***Suggestions:***

**Para. 15**. [Revised] [From para.15:] Trafficking in women and girls may amount to torture or cruel, inhuman or degrading treatment.[[3]](#footnote-3) The direct obligation of non-State actors to respect the prohibition of torture, as a peremptory norm (*jus cogens*), is set out in both international humanitarian law and human rights law. [[4]](#footnote-4) [Partly new, footnote added:] The responsibility to offer redress to victims of human rights abuse is engaged where States parties have failed to exercise due diligence to prevent, investigate, prosecute and punish for acts of trafficking committed by non-State actors.**[[5]](#footnote-5)**

**Para.15(bis).** [New] [Revised, from para.15:] The positive obligation of States parties to prohibit trafficking is reinforced by international criminal law, including jurisprudence of the international and mixed criminal tribunals and the Rome Statute of the International Criminal Court, pursuant to which enslavement in the course of trafficking in women and girls may constitute a war crime, a crime against humanity or an act of torture constitute an act of genocide.[[6]](#footnote-6)

## B. Violations of Social and Economic Rights as Root Causes

***Comments:***

We commend the Committee for highlighting the need to address the root causes of human trafficking of women and girls. However, as these root causes are commonly associated with violations of women’s and girls’ social and economic rights, Chapter IV, Section e of the Draft General Recommendation (GR) would require a more explicit focus on these human rights. In this context, it is important to keep in mind that poverty is a root cause of trafficking in women and girls. Poverty, in turn, is a manifestation of multiple violations of social and economic rights of women and girls. We additionally suggest greater emphasis on women’s political rights, particularly when outlining the measures recommended to states to address the root causes of trafficking. Socio-economic inequalities are reinforced by women’s low public and political participation and, at the same time, barriers to enjoying social and economic rights limit women’s participation in politics and public life.[[7]](#footnote-7) We thus respectfully suggest the following amendments to **Chapter IV, Section e, paragraphs 19-22** **and 26** of the draft GR.

***Suggestions:***

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

## Section e. [New:] States parties' obligations to address the root causes affecting the Convention rights of women and girls

**Para. 19**. [Revised] [From para. 19:] Identifying, addressing and eliminating the root causes are key to States parties' obligations to prevent trafficking in women and girls. [From para. 20:] Trafficking in women and girls is rooted in gender-based discrimination, gender-based structural inequality and the feminisation of poverty. [From para. 19:] These structural and systemic conditions deprive women and girls of their fundamental rights, the consequence of which places them in situations of vulnerability to exploitation by traffickers. [New:] The fundamental rights of women and girls include the substantive rights enshrined in the Convention[[8]](#footnote-8) and in other international human rights treaties[[9]](#footnote-9).

**Para. 20.** [Revised] [From para. 22:] Women and girls at risk of being trafficked are more likely to be uneducated, unemployed, impoverished and/or disempowered by political, economic, societal and family structures[[10]](#footnote-10), including being subjected to unequal treatment, carrying the burden of household and childcare responsibilities. [New, based on elements of para. 21:] As a result of social and economic structures limiting women's and girls' autonomy, women are disadvantaged over their life course in relation to participation and decision-making[[11]](#footnote-11) in the social, economic, public and political spheres. [New:] Socio-economic inequalities are further reinforced by women’s low public and political participation. Violations of the following Convention rights may be found at the root of trafficking of women and girls and need to be addressed as part of a gender-transformative approach that empowers women and girls by promoting their civil, political, economic, social and cultural rights and is congruent with Sustainable Development Goal 5, aimed at achieving gender equality for all women and girls.[[12]](#footnote-12)

1. **[New:] Equal rights in the field of education (art. 10, read alongside art. 13 of the Convention):** [From para. 21:] Inequalities experienced by women and girls are manifest in women's and girls' lower access to education and vocational training opportunities. [New:] The obligation to secure equal rights in the field of education, not least by addressing barriers such as low socio-economic status and living conditions,[[13]](#footnote-13) goes hand in hand with Sustainable Development Goal 4, aimed at overcoming the often limited access for women and girls to education.[[14]](#footnote-14)
2. **[New:]** **Employment-related rights, in particular the rights to work and social security, (art. 11 (a) and (e) of the Convention):** [From para. 21:] Social structures and inequalities based on economic and public policies may result in unequal pay for women, the concentration of women in insecure and vulnerable work and women's lack of decent work opportunities. [New:] The obligation to secure just and fair working conditions and decent work opportunities as well as social security goes hand in hand with addressing Sustainable Development Goad 8, aimed at overcoming the concentration of women in insecure and vulnerable work and their lack of decent work opportunities.[[15]](#footnote-15)
3. **[New:] Right to adequate living conditions (art. 14(2)(h), read alongside art. 13 of the Convention):** [From para. 21:] In addition to differential treatment in the law, women and girls may be adversely impacted by economic and public policies that result in a lack of sustainable livelihood options and basic living standards. In particular, related social structures and inequalities may limit women's access to asset and land ownership, as well as access to credit. [New:] The obligation to secure adequate living conditions for women and girls goes hand in hand with addressing Sustainable Development Goal 1, aimed at overcoming the vulnerability of women to poverty.[[16]](#footnote-16)

**Para. 21.** [Revised] [From para. 21:] Root causes and related human rights violations are compounded by gender-based violence[[17]](#footnote-17). [From para. 22:] Women are often subject to domestic violence. [From para. 19:] Women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights. [From para. 20:] Women and girls continue to be the prime targets of traffickers, especially for the purpose of sexual exploitation, due to pervasive and persistent gender inequality resulting in an economic, social, and legal status that is lower in comparison than that which is enjoyed by men and boys. [From para. 21:] Such status due to the pervasiveness of patriarchal gender roles makes girls vulnerable to child/early and forced marriage.

**Para. 22.** [Revised] [From para. 22:] Root causes persist as they are being sustained by patriarchal norms and stereotypes regarding male domination, including the need to assert male control or power and enforce gender roles[[18]](#footnote-18), male sexual entitlement, coercion and control which drive the demand for the gender-stereotyped exploitation of trafficking victims, as well as the lure of massive financial gains with few risks due to the impunity enjoyed by perpetrators. Having no access to information on trafficking and how traffickers operate, women and girls are susceptible to being lured by promises of a means of escape from impoverished circumstances.

**Para. 26. [Revised] Address the root causes of trafficking by:**

**c) [New, with elements from para. 26 (c), footnote added:] Enhancing women’s access to and participation in decision-making, including political, legislative, judicial and executive decision-making, as well as in public policy formulation and implementation;[[19]](#footnote-19)**

**c)bis [Revised, from para. 26 (c):]** **Enhancing women’s access to credit, land, and the modern tools and inputs required for its efficient cultivation;[[20]](#footnote-20)**

## C. Human Rights Indicators

***Comments:***

Human rights indicators are critical tools to monitor States parties' compliance with the Convention. Data collection needs to go hand in hand with the identification of indicators generally and, in particular, with the identification of indicators regarding Convention rights, such as women's and girls' rights in the field of education, their rights to work and social security, and their right to adequate living conditions.

Where data collection is encouraged, it should be clarified which indicators should guide the data collection. Strictly speaking, there can be no data collection without a prior clarification of indicators. The UN manual on human rights indicators[[21]](#footnote-21) offers guidance in this regard and the use of the approach advanced by the Office of the High Commissioner for Human Rights should be recommended, namely the differentiation of structural, process and outcome indicators.[[22]](#footnote-22)

***Suggestions:***

**Para. 25. [Revised] Review statistical methodologies and conceptual frameworks related to data collection to include indicators that reflect States’ systemic responses to trafficking, including by:**

1. **Enhancing the collection, analysis and dissemination of comprehensive data and using measurable indicators to assess trends on the situation of women and girls and progress achieved towards the realization by women of substantive equality in all areas covered by the Convention, in particular combatting trafficking.**

**[New part of para. 25 (a), including footnotes:] Indicators should differentiate between structural indicators[[23]](#footnote-23), process indicators[[24]](#footnote-24) and outcome indicators.[[25]](#footnote-25)**

## D. International Human Rights Standards

***Comments:***

As all human rights are interdependent and indivisible, the emphasis on applicable international human rights standards should be accompanied with the specification of core international human rights treaties. Where States parties have not ratified these treaties, they could be encouraged to do so.

***Suggestions:***

**Para. 29. Adopt and implement comprehensive gender-sensitive anti-trafficking legislation ensuring that it:**

**a) [Footnote added:] Fully complies with international human rights standards[[26]](#footnote-26), including the Convention; …**

## E. Training

***Comments:***

There are a number of important actors in addition to law enforcement (both State and non-State) who should be trained and given the capacity to protect displaced women and girls at risk of trafficking.

***Suggestions:***

**Para. 42. [Revised] Address the root causes of women’s and girls’ vulnerability to trafficking, in the context of forced displacement[[27]](#footnote-27), with specific attention given to asylum seekers, refugees, internally displaced and stateless women:**

**h) [Revised] [From para. 42(h):] Train law enforcement agents, including police and border control officers, [New:] social workers and health professionals on the risks faced by displaced women to trafficking; [[28]](#footnote-28)**

**h)bis [New:] Train non-State actors, including bank and hotel staff, employment agencies, public transport operators and landlords on the risks faced by displaced women to trafficking.**

1. UN High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, U.N. Doc. E/2002/68/Add.l (20 May 2002). [↑](#footnote-ref-1)
2. See in particular, CAT, General Comment No.2: Implementation of Article 2 by States Parties, para. 18, U.N. Doc. CAT/C/GC/2 (24 January 2008) on the general duties to prevent acts of torture and other forms of ill-treatment. See also, the European Court of Human Rights found that the State failed to live up to the positive obligation to have in place a criminal law system to prevent, prosecute and punish non-State actors involved in domestic slavery, in *Siliadin v. France* (Application no. 73316/01), 26 July 2005. [↑](#footnote-ref-2)
3. General recommendation No. 35 (2017) (CEDAW/C/GC/35), paras. 16-17. The Committee has set out that a gender-sensitive approach is required to determine when an act of gender-based violence against women amounts to torture or cruel, inhuman or degrading treatment. This requires an understanding of the level of pain and suffering experienced by women. The purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex. [↑](#footnote-ref-3)
4. General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 25. [↑](#footnote-ref-4)
5. ## [New:] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (21 March 2006), paras. 19-23. CAT General Comment No. 3 (2012) on the implementation of article 14 by States parties CAT/C/GC/3 (13 December 2012), para. 6.

   [↑](#footnote-ref-5)
6. General recommendations: No. 30 (2013) (CEDAW/C/GC/30), para. 23; No. 35 (2017) (CEDAW/C/GC/35), para. 16: ref. articles 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi) of the Rome Statute of the International Criminal Court. Also see Article 9(1) of the Trafficking Protocol: “1. States Parties shall establish comprehensive policies, programmes and other measures: (a) To prevent and combat trafficking in persons; and (b) To protect victims of trafficking in persons, especially women and children, from revictimization.” [↑](#footnote-ref-6)
7. General recommendation No. 23 (1997), “Political and Public Life”, paras. 13 and 14. [↑](#footnote-ref-7)
8. **[New:]** General recommendation No. 35 (2017) on gender-based violence against women (CEDAW/C/GC/35), para. 21. [↑](#footnote-ref-8)
9. **[New:]** International Covenant on Civil and Political Rights and its First Optional Protocol; International Covenant on Social, Economic and Cultural Rights and its Optional Protocol; International Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; Convention on the Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on armed conflict; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention on the Rights of Persons with Disabilities and its Optional Protocol. [↑](#footnote-ref-9)
10. Para. 30(i), CEDAW/C/ITA/CO/7. [↑](#footnote-ref-10)
11. CEDAW, Contributions to the 2030 Agenda for Sustainable Development (2017 HLPF). [↑](#footnote-ref-11)
12. **[New:]** United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), Goal 5. Achieve gender equality and empower all women and girls. [↑](#footnote-ref-12)
13. **[New:]** General recommendation No. 36 (2017) on the right of girls and women to education, (CEDAW/C/GC/36), para. 46 (b). [↑](#footnote-ref-13)
14. **[New:]** United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; Target 4.5. By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations. [↑](#footnote-ref-14)
15. **[New:]** United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Target 8.8. Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment. [↑](#footnote-ref-15)
16. **[New:]** United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), Goal 1. End poverty in all its forms everywhere; Target 1.4. By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance. [↑](#footnote-ref-16)
17. General recommendation No. 35 (2017) on gender-based violence against women (CEDAW/C/GC/35). [↑](#footnote-ref-17)
18. General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 19. [↑](#footnote-ref-18)
19. **[New:]** General recommendation No. 23 (1997) “Political and Public Life,” para. 5. [↑](#footnote-ref-19)
20. Para. 25(c), CEDAW/C/ETH/CO/6-7. [↑](#footnote-ref-20)
21. UN OHCHR (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*. [↑](#footnote-ref-21)
22. Ibid. [↑](#footnote-ref-22)
23. **[New:]** Structural indicators ‘reflect the ratification and adoption of legal instruments and the existence as well as the creation of basic institutional mechanisms deemed necessary for the promotion and protection of human rights’, UN OHCHR (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, p. 34. [↑](#footnote-ref-23)
24. **[New:]** Process indicators ‘measure duty bearers’ ongoing efforts to transform their human rights commitments into the desired results’, UN OHCHR (2012), *Human Rights Indicators*, p. 36. [↑](#footnote-ref-24)
25. **[New:]** Outcome indicators ‘capture individual and collective attainments that reflect the state of enjoyment of human rights in a given context’, UN OHCHR (2012), *Human Rights Indicators*, p. 37. [↑](#footnote-ref-25)
26. **[New:]** UDHR; International Covenant on Civil and Political Rights and its First Optional Protocol; International Covenant on Social, Economic and Cultural Rights and its Optional Protocol; International Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; Convention on the Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on armed conflict; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention on the Rights of Persons with Disabilities and its Optional Protocol. [↑](#footnote-ref-26)
27. Para. 28(c), CEDAW/C/PHL/CO/7-8. [↑](#footnote-ref-27)
28. Para. R(c), CEDAW/C/LIE/CO/4. [↑](#footnote-ref-28)