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**Written submission in response to the Call for Comments on the Draft CEDAW General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

I welcome the opportunity to respond to the call for comments and would like to acknowledge the strong work done by the Committee in addressing the complex issues involved. I have been working on the issue of trafficking in persons for 20 years, commencing as the first manager for the UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region. I was a member of the expert panel to finalise the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking and an adviser to the Global Slavery Index with particular focus on government responses.

***General comment***

The draft raises concerns about the conflation of trafficking for the purposes of sexual exploitation and prostitution, in particular in the area of demand, where attempts to export the “Nordic model” would see already extremely vulnerable women deprived of their source of income. The concerns are well articulated in the submissions by Patricia Schulz and the Global Network of Sex Work Projects and rather than repeat them all here, I have limited my comments on this issue in favour of simply endorsing their views and recommendations .

***Specific comments***

***Para 3:*** As noted by ICAT, “counter-trafficking programmes do not routinely draw on the significant amount of knowledge accumulated from multiple responses to date. This knowledge includes experience and lessons learned from within the counter-trafficking field, as well as evidenced-based knowledge from other sectors such as public health, social protection, sexual and gender-based violence, and criminal justice more broadly.”[[1]](#footnote-1) As a consequence, significant resources continue to be wasted on activities that evidence suggests simply will not work. In this context, the reference to evidence-led measures is strongly welcomed. However, the commitment to evidence and accumulated knowledge in responding to trafficking does not appear to be fully reflected in the draft.

**Suggested change:**Add an additional sentence after para 7 along the following lines:

The Committee further encourages States to ensure that all responses to trafficking in women and children take full account of available evidence and knowledge in the counter-trafficking field, as well as related fields such as public health, behaviour change, social protection, and responses to other forms of (1) sexual and gender-based violence, and (2) organized crime.

**Para 12:** This data carries significant limitations, as noted by UNODC itself. The figures reflect identified cases and thus enforcement focus and cannot be taken as representative of the overall situation.

**Suggested change:** Add the following after “… victims worldwide in 2016 were women and girls.”

The Committee notes the limitations of existing data sets on trafficking, and that, as acknowledged by UNODC, these figures cannot be taken as representative of all trafficking cases. By way of comparison, ILO and Walk Free Foundation estimated in 2017 that of 16 million people in forced labour exploitation, 57.6% were female.

**After para 18:** Prevention in counter-trafficking has generally been interpreted to focus mainly in vulnerability reduction, albeit with some recent focus on demand. As highlighted by ICAT, there is little evidence that TIP can be addressed in this manner, which essentially reflects a public health prevention model.[[2]](#footnote-2) Put simply, the current approach to trafficking prevention does not work. The assumptions underlying this approach do not hold for crime prevention, in particular due to criminal displacement, which is not currently addressed in the GR. It is thus recommended to re-frame trafficking prevention in a manner more aligned to a crime prevention model, which involves a more integrated approach.

**Suggested change:** After para 18, or elsewhere, add the following sub-point:

**The importance of integrated prevention approaches**

Preventing trafficking of women and children requires an integrated approach, one that takes into account the potential displacement effect, whereby traffickers can adjust their targets, tactics and/or modes of operation in response to counter-trafficking efforts. This requires a model based on crime prevention theory, involving the following components working together rather than in isolation:

* Reducing the opportunity for offenders to commit the crime.
* Increasing the risks of offending.
* Decreasing the vulnerability of potential victims.
* Ensuring the effective rehabilitation and reintegration of survivors
* Increasing the capacity of law enforcement and other guardians.
* Targeting efforts directly at the people and factors that stimulate or facilitate slavery.[[3]](#footnote-3)

**Section IV heading:** As highlightedin the UN Recommended Principles and Guidelines (Principle 4 and Guideline 7), demand is a root cause of trafficking. As the person who initially tabled this for discussion in the Principles and Guidelines process, I can confirm that it was never intended to refer to general demand in any general sector or dimension in which trafficking occurs, whether this be sex work, domestic work, seafood, marriage, adoption, organ transplants, etc.

**Suggested change.** As follows:

Root causes of trafficking in women and girls ~~and discouraging the demand that fosters their exploitation through trafficking.~~

**Para 21:** The GR lacks reference to child support or the vulnerability faced by many single mothers due to the failure of States to enforce adequate laws on child support, and the subsequent need to take work in high-risk sectors including sex work.

**Suggested change:**Add something along the lines of:

 … the concentration of women in insecure and vulnerable work, their lack of decent work opportunities and failure of governments to enact and/or systematically enforce laws on child support in case of parental separation.

**Para 25c (iv):** This refers to **“**the number of investigations, prosecutions, convictions and the sentences imposed on perpetrators and the access to justice and compensation awarded to victims. The focus on raw numbers encourages a focus on targeting individuals and smaller, disposable players in criminal networks and thus (1) provides limited insight into the effectiveness of criminal justice responses in combatting trafficking of women and children, (2) incentivizes mistargeting of efforts, and, in regard to a convictions focus, (3) has been observed to compromise the right to a fair trial.

***Suggested change:*** Divide this point and reword as follows:

* The effectiveness of criminal justice response in disrupting traffickers and, in particular, trafficking networks including through routinely supplementing raw numbers on investigation, prosecutions and conviction with (1) information on the extent to which investigations and prosecutions have targeted more than one link in the trafficking network, and (2) the use of an arrest matrix to assess the impact of each arrest.
* Information on access to justice and compensation awarded to victims.

**Para 26d):** The reference here and throughout the document to awareness raising continues to mistake an ingredient for a meal. To continue the analogy, awareness raising is somewhat like flour in that it is a crucial ingredient to many other things but is largely worthless on its own. This is a crucial distinction because neither decades of evidence on behaviour change, nor twenty years of counter-trafficking programming provides support for awareness-raising as a stand-alone activity.[[4]](#footnote-4)

**Suggested change:** The wording should focus on the desired action. It is not clear what that is here but a possible framing is:

Ensure that vulnerable populations, particularly in rural communities, are equipped with the understanding, means and motivation to avoid human traffickers, including through evidence-informed communication campaigns based on clear understanding of community risk factors and the barriers faced by community members in protecting themselves and others from trafficking.

**Para 30a):** Many countries have ineffective coordination bodies with heavy rotation and members having to work on trafficking in addition to other duties. This is likely best addressed by a Secretariat.

**Suggested change:** Change “Establish an inter-agency coordinating mechanism to”

Establish an inter-agency coordinating mechanism with a dedicated and fully funded Secretariat to …

**Para 31:** Many National Plans tend to be shopping lists rather than actual plans, and even when they exist do not always guide the national response. The para makes a good attempt to move beyond some of these issues, but in this context, the use of the word “comprehensive” is potentially problematic as it encourages the inclusion of all possible interventions rather the prioritization based on available resources and potential impact.

**Suggested change:** Change to:

Adopt, adequately finance, implement, and regularly review and report on a ~~comprehensive~~ strategically targeted, evidence-led national plan of action to prevent and combat human trafficking, ensuring it is in line with this general recommendation and that it:

**Para 42f.** See para 26d on page 3.

**Suggested change:** Replace the text with something along the following lines:

Increase the ability of displaced women and girls to protect themselves from all forms of trafficking including through evidence-informed communication campaigns based on clear understanding of their specific risk factors and the barriers they face in taking and maintaining protective action.

**Para 48:** The GR makes no reference to the availability of child care for migrant workers which has major gender dimensions, as well as adding to the vulnerability of both children left behind and accompanying children, who in some cases may further be unable to attend school in the place of destination.

**Suggested change:** Here, or elsewhere (e.g. para 51), something along the following lines:

Failure to ensure the availability of reliable, safe and affordable childcare facilities for migrant workers further places many women in extremely difficult circumstances as they attempt to balance the importance of earning a livelihood with the potential vulnerabilities faced by their children whether they are accompanying or left behind.

**Para 49:** It is important not to equate legal migration with safe migration. ILO, for example, finds that migrating through legal channels in South-East Asia is not necessarily protective.

**Suggested change:** As follows:

The lack of ~~safe and~~ legal routes to migration and the lack of safety along many irregular and existing legal routes, contravenes human rights principles and contributes to an increased risk of being trafficked.

**Para 50:** This para could be strengthened by emphasizing the protective value of worker rights prior to noting that women are overly represented in sectors where these rights are limited.

**Suggested change:** After the first sentence add the following quote:

“Demand for the labour or services of trafficked persons is absent or markedly lower where workers are organized and where labour standards for wages, working hours and conditions, and health and safety, are monitored and enforced.”[[5]](#footnote-5)

**Para 59b):** Many illegal brokers currently provide an important service in linking women to jobs in the absence of labour migration policies that are fit for purpose. Conversely, many legal brokers engage in highly exploitative, often relating to excessive recruitment fees. In the current context, the focus should be on exploitative practice, not legality. Further, while the banning of recruitment fees is a laudable principle, most recruiters do not have a viable business model without charging fees to migrants. Also, where fee bans are in place, they are regularly circumvented. The focus should be on illegal fees.

**Suggested change:**

Prosecute and punish labour recruiters, intermediaries and employment agencies engaged in ~~illegal~~ exploitative 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 illegal recruitment fees to workers.

**Para 62f:** Grievance mechanisms to date have tended to be passive, relying on workers to come forward with complaints and failing to acknowledge the barriers to doing so. In many places, other, more proactive forms of outreach are needed to provide more opportunities for workers to come forward.

**Suggested change:** Replace para 62e and 62f with something along the following lines. IOM’s International Recruitment Integrity System team could also be consulted on this wording

Establish an integrated monitoring, complaints and remedy system which incorporates and links: (1) pre-departure and on-arrival education on rights and avenues of redress; (2) pro-active outreach to workers by an independent entity; (3) formal complaints and grievance mechanisms: (4) transparent systems to investigate, address and remedy exploitative practice and prevent their reoccurrence, and (5) an effective reporting system.

**Para 63:** The powers of labour inspectors have generally not been developed with trafficking in mind. A notable example is ability to enter a premises after hours.

**Suggested change.** Consider the following:

Adequately resource and strengthen the capacity, ~~and~~ mandate and investigative powers of labour inspectors to proactively and systematically recognize and report breaches of labour laws and presumed cases of trafficking in women and girls uncovered during both routine and unscheduled inspections, including of migrant workers’ workplaces and accommodation, agricultural farms, seasonal and informal workplaces, including private households

**Para 68:** By any available data, the number of victims identified appears a small proportion of overall cases. This not only limits our potential to assist victims, but also to identify traffickers and develop evidence-based responses. Many barriers to identification have been identified and include victims deliberately avoiding identification due to the likely consequences including mandatory return to country of origin, albeit sometimes disguised by misuse of the term “voluntary return”.

**Suggested change.** It is essential in my view that this para makes reference to barriers to identification, including in relation to unsuitable services. For example, adding after sub-point c or d:

Identifying and addressing barriers to identification of victims, including disincentives for victims to come forward such as lack of trust in authorities and the provision of services that (1) do not meet victim’s needs or (2) in some cases such as mandatory return and/or forced stay in shelters, may be specifically contrary to the wishes of the victims;

**Para 68g:** It is not clear as to (1)the link between increased reporting of TIP and increased knowledge of risks and (2) who is being targeted, members of the public, or victims or both.

**Suggested change:** Depending on the intent:

Encourage increased reporting of trafficking by members of the public including through ~~intensifying~~ tailored, evidence-based nationwide education ~~and awareness-raising~~ campaigns about the ~~risks and criminal nature~~ crime of trafficking and possible signs, and setting up a 24/7 free hotline.

**Para 68j:** It is not clear why faith-based organizations are singled out here.

**Suggestion:** *The list be expanded to include a wider range of groups, such as sex worker-led organizations. Alternatively, specific reference to faith-based organizations be removed or included with sex-worker led organizations in a separate point about supportive organizations which could also include trade unions. Although there is one reference to unionization, trade unions are currently not mentioned in the GR.*

**Para 69:** Although, as stated, trafficking victims have special status, it is important the categorization of trafficking victim is not used to deny rights to non-trafficked girls that they are entitled to as children.[[6]](#footnote-6)

**Suggested change:** Here, or elsewhere, add something along the lines that:

Governments should ensure that the categorization of trafficking victim is not used to deny to girls not so categorized access to the rights they have simply by virtue of being children. This includes, but is not limited to, their rights under the Convention on the Rights of the Child.

**Para 72 (i):** This is a crucial point. Suggested change is self-explanatory.

**Suggested change:**

Ensure that all short- and long-term assistance services for trafficked women are provided on an informed and voluntary basis and women are not placed or maintained in ~~into~~ shelters or “rehabilitation” programmes against their will …

**Para 72 (n): “**Women who, after conducting a risk assessment cannot be safely returned to their homes,” This phrasing seems to embed the notion that being safely returned to their homes is the ideal outcome for trafficked women. This should not be assumed and some trafficked women will in fact go to significant trouble to avoid being returned to their homes, or having been made to return, to migrate again.

**Suggested change.** My suggestion would be for further discussion on this point but, *inter alia:*

Women who, after conducting a risk assessment cannot be safely returned to their homes, or do not wish to be returned, 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.

**Paras 77-84 and 93-96**. Access to justice, in particular compensation, is a fundamental component of assistance and protection, and should be incorporated in that section, rather than treated separately. The placement of a section on investigations between Access to Justice and Remedies further seems out of place, as does the inclusion of para 97 on Proceeds of Crime under compensation. This further risk linking realization the right to compensation with the ability to confiscate trafficker assets.

**Suggested changes:** Change *Victim’s Access to Justice* from VI, to V sub-point c. move paras 93-96 on compensation into this section and make*Investigations, Prosecutions and Punishment* its own section and combine with para 97 on Proceeds of Crime.



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1. Inter-agency Coordination Group Against Trafficking in Persons (ICAT) (2016). Issue Paper No. 4: Pivoting toward the Evidence: Using accumulated knowledge and a shared approach to monitoring, evaluation and learning to build effective counter-trafficking responses. UNODC, Vienna. Available [here](http://icat.network/sites/default/files/publications/documents/16-10259_Ebook.pdf). [↑](#footnote-ref-1)
2. Ibid. For a specific case study, see also Kiss, L. et al. (2020). ‘The use of Bayesian networks for realist evaluation of complex interventions: evidence for prevention of human trafficking.’ Journal of Computational Social Science https://doi.org/10.1007/s42001-020-00067-8 [↑](#footnote-ref-2)
3. Minderoo Foundation’s Walk Free initiative (Walk Free), June 2019. Measurement, Action, Freedom: An independent assessment of government progress towards achieving UN Sustainable Development Goal 8.7 [↑](#footnote-ref-3)
4. ICAT, op. cit [↑](#footnote-ref-4)
5. Anderson, B. and O’Connell-Davidson, J., Trafficking: A Demand-led Problem? A Multi-country Pilot Study (Save the Children, 2002), p. 54 [↑](#footnote-ref-5)
6. See, for example, discussion in, Marshall, P. and S.Nordh, 2012. Study on Child Trafficking in the Nordic Countries, UNICEF Innocent Research Centre, Florence, [www.unicef-irc.org/publications/654](http://www.unicef-irc.org/publications/654). [↑](#footnote-ref-6)