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**CEDAW Committee Call for comments: Draft General Recommendation on trafficking in women and girls in the context of global migration**

Dear Madam, dear Sir,

As former UNHCR Protection Officer in Greece (Samos) and in my role as legal advisor and representative of women and girls in asylum and immigration procedures, it is my honour to submit this contribution.

***Chapter IV***

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

***point 25******Review statistical methodologies and conceptual frameworks related to data collection to include indicators that reflect States’ systemic responses to trafficking, including by:  
(…)***

***lit c) Collecting and publishing data on trafficking in women and girls, and specifically on:***

***(…)  
ix. the number of trafficked women and girls who sought and were granted asylum***

My recommendation would be to also include an additional point with non-conclusive references to different grounds based on which trafficked women and girls might have been granted with a residence permit to this list (my suggestion as follows):

* the number of trafficked women and girls who were granted with a residence permit based on other grounds, including *non-refoulement* grounds or compassionate grounds as well as in cases where a renewable residence card was issued owing to their personal situation or where the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.

The reference to *non-refoulement* grounds and compassionate grounds would be in line and consistent with Chapter V point 76 of the draft. Furthermore, I would recommend not to limit grounds for residence granted on *non-refoulement* or compassionate grounds as recent case law demonstrates, that Contracting Parties to the ECHR may also consider granting residence based on Art 4 ECHR[[1]](#footnote-1). The reference to cases where a renewable residence card was issued owing to their personal situation or where the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings is based on e.g. Art 10, read with Art 14 Council of Europe Convention on Action against Trafficking in Human Beings (‘CoE Anti-Trafficking Convention’) and recital 7 of the preamble of Directive 2011/36/EU.

***Chapter IV  
Point 42 Address the root causes of women’s and girls’ vulnerability to trafficking, in the context of forced displacement[[2]](#footnote-2), with specific attention given to asylum seekers, refugees, internally displaced and stateless women:  
lit f)* Raise awareness among displaced women and girls about all forms of trafficking;[[3]](#footnote-3)**

My suggestion on how lit f might be revised slightly (suggestions in italic):

Raise awareness among displaced women and girls about all forms of trafficking; *and provide information they can reasonably understand on how to access both, assistance and protection (including relevant service providers and competent authorities) as a potential victim and on how to access asylum procedures and material reception conditions addressing their specific needs.*

I would hope that my recommendation for a revised point 42 lit f is in line with relevant legal instruments and frameworks[[4]](#footnote-4).

Suggestions for taking into consideration to include additional points to the list (in point 42):

*k.) address practices based on customs or traditions which may be harmful to women and girls violating their human rights and which may be linked to trafficking*

With this suggestion I refer to harmful practices such as forced marriages of women and girls which might be seen as last resort to leave a reception or detention facility along the route to be able to leave a country, or phenomena such as “survival sex“ in refugee camps or reception or detention facilities[[5]](#footnote-5).

l*.) raise awareness among displaced women and girls and provide information in a language they can reasonably understand about legal pathways to obtain residence permits, which shall enable them to legally access the labour market and be granted independent of family members or others.*

Including these guarantees as an extra point would be consistent with other relevant legal frameworks such as the Council of Europe “Istanbul Convention” or Directive 2013/33/EU (in the European Context) in my opinion.

**Chapter IV  
 point 45, lit a Ensure access to asylum procedures:**

Recommendation which might be taken into consideration with regard to a suggested slight revision of lit a (suggestion made in italic):

1. Establish mechanisms for the identification of *(potential)* victims of trafficking within the asylum procedure as well as referral mechanisms to ensure that asylum claims are assessed in an age and gender-sensitive procedure in order to respond to the specific protection needs of trafficked women and girls[[6]](#footnote-6)

My recommendation shall take into account of the concept and positive state obligation of earliest possible identification of potential victims of trafficking (based on reasonable grounds) in order to ensure access to assistance and protection as soon as possible, independent of them being “formally” identified as a victim by an authority or court, independent of their willingness to cooperate with authorities in investigation or criminal proceedings or willingness to provide a testimonial statement to authorities or police[[7]](#footnote-7).

**Chapter IV  
 point 45, lit d Provide resources to support asylum claimants during the application process;**

It appears to me that it might be considered to revise lit d as at least for me the draft seems to be a bit unclear:

What does „resources to support asylum applicants“ mean?

Does it refer to the provision of support and assistance including access to information?

Why is the provision of resources to support asylum applicants limited to asylum application procedures?

* Shall it address ensuring access to asylum procedures taking into account e.g. pushbacks along borders?
* Shall it address concrete guarantees for persons who wish to apply for asylum, such as access to legal counselling and info provision?   
  If so, I would kindly suggest to take into consideration to include an additional point here (suggestion in italic):

*Asylum claimants shall have access to information in a language they can reasonably understand in view of their personal circumstances and individual situation about their rights and guarantees as potential victims of trafficking as well as about services, assistance and protection during the asylum application process and in all (later) stages of their procedure*[[8]](#footnote-8)

Suggestion for an additional point to the list (in italic):

*When assessing whether applications for asylum can be admitted by a state to initiate assessments on the merits, due consideration shall be given to risks and/or past experiences related to trafficking in transfer countries*

My recommendation takes into consideration that admissibility assessments shall have due regard to possible violations of the principle of *non-refoulement[[9]](#footnote-9)* or guarantees deriving from the right to be free from slavery and/or slavery-like practices (including trafficking for sexual exploitation)[[10]](#footnote-10).

**Chapter IV  
 point 57 Promote a gender responsive safe migration framework to protect, outgoing, returning and incoming   
 women migrants, including irregular migrants, from all forms of violations of their human rights**[[11]](#footnote-11) **including by:**

1. **Ensuring respect for women’s autonomy in relevant policies including those regarding access to visas, residence permits, work permits and other documentation for migration;**[[12]](#footnote-12)

I would recommend to include to ensure to respect a woman’s right to a residence permit independent of partners or family members as it would reflect e.g. the guarantees laid down in the CoE Istanbul Convention (in Art 59 in particular) and can contribute to prevent sexual abuse and exploitation abusing a woman’s or girl’s dependency.

1. **Reviewing and monitoring the impact of laws, policies and programmes affecting migrant women[[13]](#footnote-13), ensuring:**
   1. **Respect for the principle of *non-refoulement*;[[14]](#footnote-14)**

I would recommend to include “access to asylum procedures (in particular in cases where potential victims of trafficking fear (re-)trafficking upon return to their countries)” to lit a, upholding the Saving Clause in Art 14 UN Palermo Protocol.

**Chapter V   
 points 67 and 68**

I would kindly propose to take into consideration to include other professionals who are/might regularly be in contact with potential victims of trafficking or involved in the process of early identification and protection of presumed victims[[15]](#footnote-15).

Certainly, access to health is an urgent and crucial issue to ensure victims’ protection and assistance, whereas I would respectfully argue that access to other services and professionals should be considered as well in this paragraph. Consequently, Standard Operational Procedures (SOPs) should be developed considering all different services and service providers, both state- and non-state actors (such as NGOs). It shall be ensured that SOPs are developed but also reviewed systematically on a regular basis ensuring applicability and implementation by all actors involved and to ensure that the chain of intervention is not being interrupted.

Suggestions for additional points which are based on guarantees and positive state obligations deriving from Directive 2012/29/EU, 2011/36/EU, 2013/33/EU, CoE Istanbul Convention and CoE Anti-Trafficking Convention, as examples for the European context (including members of the CoE), but also from e.g. Art 14 UN Anti Torture Convention or the UN CRC[[16]](#footnote-16) or the UN CRPD:

* Ensuring access to adequate material reception conditions including accommodation addressing individual protection needs
* Ensuring access to info provision in a language they can reasonably understand
* Ensuring access to free legal services
* Ensuring access to psychosocial support and counselling
* Ensuring that interpreters who assist service providers and potential victims are trained and receive relevant ongoing training

**Point 68 Early identification and protection of presumed victims of human trafficking:**

1. **Create national guidelines and standard operating procedures on victim identification and referral that is benchmarked to international standards, integrating a gender-sensitive, victim-centered, age- gender-sensitive and trauma-informed approach, and which is uniformly applicable throughout the territory of the State party[[17]](#footnote-17)**

My suggestions which I would kindly propose to be taken into consideration:

* SOPs shall be developed upon consultation with all relevant actors in order to ensure that they are then being applied by *all* relevant actors, both state actors as well as non-state actors such as NGOs which might be in direct contact with potential victims of trafficking[[18]](#footnote-18).
* SOPs on victim identification shall in addition be updated and adjusted systematically on a regular basis in order to ensure to address possibly changed patterns of trafficking or practices of perpetrators – aiming at ensuring a highest possible applicability SOPs by all relevant actors. Examples for such updates can be changed (traditional) practices, changing patterns of country/region specific recruitment, routes, changed „hotspots“ for trafficking along routes on the one hand, but also possible changed responsibilities or authorities on the other hand.
* Referral pathways including standards for referrals shall be developed upon consultation with all relevant state- and non-state actors. Referral pathways and standards for referrals shall be benchmarked to international standards, integrating a gender-sensitive, victim-centered, age- gender-sensitive and trauma-informed approach, and which is uniformly applicable throughout the territory of the State party[[19]](#footnote-19).

1. **Increase the early detection capacity and authority of law enforcement and border personnel, immigration and asylum authorities, labour inspectors, social workers and health-care professionals to promptly identify trafficking and related offences against women and girls and to facilitate the referral of victims**

I would take the opportunity to recommend to include a non-conclusive list of actors (instead of the conclusive list in the current version of the draft) in order to demonstrate that a number of different relevant authorities and different relevant professionals might be involved in early identification.

Examples for other state actors which might be involved would be youth welfare authorities, authorities responsible for first reception and registration Courts dealing, with e.g. family-law, appointment of legal guardians, divorce or custody; authorities dealing with provision of material reception conditions, including accommodation, to migrants with unclear legal status, asylum seekers or holders of international protection.

Examples for non-state actors who are regularly in contact with potential victims of trafficking: legal advisors[[20]](#footnote-20), staff in accommodation centres for adults and/or for (unaccompanied) minors, appointed legal guardians[[21]](#footnote-21).

In addition, representatives of international organisations, such as UNHCR[[22]](#footnote-22) or IOM might also be in contact with potential victims of trafficking.

1. **Adopt adequate gender-sensitive screening mechanisms for the early identification and referral of victims of trafficking among women asylum seekers[[23]](#footnote-23) as well as for women migrant workers suspected of breaches of national labour, immigration or criminal laws[[24]](#footnote-24)**

I would take the opportunity to kindly recommend to make a non-conclusive list of actors (instead of the conclusive list in the current version of the draft) in order to avoid that other women or girls not be considered sufficiently. Examples for other migrant women or girls would be women with irregular/unclear migration status, migrant women or girls whose residence is dependent on family members or employers, detained migrant women or girls.

With my best regards,  
Marie-Luise Möller

1. UK Supreme Court, [*MS (Pakistan) (Appellant) v Secretary of State for the Home Department (Respondent)*](https://www.supremecourt.uk/cases/docs/uksc-2018-0159-judgment.pdf), judgment given on 18 March 2020, Hilary Term [2020] UKSC 9. [↑](#footnote-ref-1)
2. para. 28(c), CEDAW/C/PHL/CO/7-8. [↑](#footnote-ref-2)
3. para. R(c), CEDAW/C/LIE/CO/4. [↑](#footnote-ref-3)
4. See for instance for the European context Arts. 5, 10(5), 18(6), 24(1) Directive 2013/33/EU, Recitals 19, 21 and Arts. 11(5) and (6) Anti-Trafficking Directive; Arts. 12-15 CoE Anti-Trafficking Convention; Art. 9 UN CRC; Art. 11 EU Charter.

   The use of ‘at least’ in the first sentence of Article 5(1) Directive 2013/33/EU (recast) (RCD (recast) in the following) demonstrates that information provided with regard to reception-related benefits can also address additional benefits which may be relevant for applicants with special reception needs who might be in need of information on very specific services and assistance, such as victims of trafficking. Article 5(1) Directive 2013/33/EU (recast) does not distinguish between state- and non-state organisations or institutions. Additionally, Article 5 RCD (recast) does not lay down any specific requirements for the mandate of an organisation. Rather, the requirement is that it shall be an organisation ‘that *might* be able to help or provide information (…)’ (emphasis added).

   Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings underlines the importance of a coordinated response for addressing special reception needs of vulnerable applicants. It requires competent authorities to provide personnel trained in identifying and helping victims of trafficking (‘focal points’) to ensure that different authorities collaborate with each other. According to the Explanatory Report, ‘immigration authorities’ are listed among the ‘competent authorities’ referred to in Article 10 of the Convention [↑](#footnote-ref-4)
5. See e.g. Centre for Refugee Research, [*Making Mainstreaming a Reality – Gender and the UNHCR Policy on Refugee Protection and Solutions in Urban Areas. A Refugee Perspective*](https://www.unhcr.org/4b0bb83f9.pdf) [↑](#footnote-ref-5)
6. para. R(b), CEDAW/C/LIE/CO/4. [↑](#footnote-ref-6)
7. See for instance Art 10 and 14 CoE Anti-Trafficking Convention as well as CoE [*Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*](https://rm.coe.int/16800d3812)*,* para 134, 180-182. [↑](#footnote-ref-7)
8. See for instance potentially relevant provision on the obligation to continuously provide adequate assistance: Arts. 17, 18, 23-25 Directive 2013/33/EU, Article 12 CoE Anti-Trafficking Convention; Art. 11 EU Anti-Trafficking Directive; Art. 14 CAT; Arts. 23-28 CRPD; Arts. 18-28 CRC, Arts. 20, 22 Istanbul Convention; Article 22(1) Directive 2013/33/EU (recast) requires Member States to assess whether an applicant for international protection is an applicant with special reception needs According to Article 22(1), third sentence, RCD (recast), special reception needs shall be ‘addressed’ if they become ‘apparent’ at a later stage in the asylum procedure.

   Such an assessment shall be ‘*initiated* within a reasonable time after an application for international protection is made’ (emphasis added). The use of the word ‘initiated’ acknowledges that an assessment of special reception needs may take some time (e.g. due to the need for interviews and/or medical assessments).

   Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings underlines the importance of a coordinated response for addressing special reception needs of vulnerable applicants. It requires competent authorities to provide personnel trained in identifying and supporting victims of to ensure that different authorities collaborate with each other. According to the Explanatory Report, ‘immigration authorities’ are listed among the ‘competent authorities’ referred to in Article 10 of the Convention (see Council of Europe, [*Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings*](https://rm.coe.int/16800d3812), 16 May 2005, para. 129). [↑](#footnote-ref-8)
9. See for instance Art 3 Dublin III Regulation (for the European Context), Art 3 ECHR [↑](#footnote-ref-9)
10. The Austrian Federal Administrative Court (Bundesverwaltungsgericht) for example found that in a case of women who were to be transferred to Italy where they had been trafficked for the purpose of sexual exploitation, a transfer might be a violation of fundamental rights under Article 4 ECHR. The Court therefore ordered a remittal of the case back to the first instance for further investigations on the specific reception conditions for victims of trafficking and the risk of former victims being re-trafficked in Italy (see Austrian Federal Administrative Court, judgment of 28 March 2017, [*W161 2149727-1/5E ua*](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=11f8e890-08be-4d88-b267-6c5d72edc6f4&Position=1&Abfrage=Bvwg&Entscheidungsart=Undefined&SucheNachRechtssatz=True&SucheNachText=True&GZ=&VonDatum=28.03.2017&BisDatum=28.03.2017&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=menschenhandel&Dokumentnummer=BVWGT_20170328_W161_2149730_1_00)) [↑](#footnote-ref-10)
11. para. R, CEDAW/C/LAO/CO/7; para. 31, CEDAW/C/ROU/CO/7-8; para. 34(c), CEDAW/C/NPL/CO/4-5. [↑](#footnote-ref-11)
12. para. 39, CEDAW/C/LKA/CO/8. [↑](#footnote-ref-12)
13. para. 36(c), CEDAW/C/NOR/CO/8. [↑](#footnote-ref-13)
14. para. 43(a), CEDAW/C/GTM/CO/8-9; para. 20(f), CEDAW/C/AGO/CO/6; para. 27(d), CEDAW/C/NOR/CO/9. [↑](#footnote-ref-14)
15. See also footnote 8 [↑](#footnote-ref-15)
16. See also CRC Committee, [*General Comment no 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*](https://www.refworld.org/docid/42dd174b4.html). [↑](#footnote-ref-16)
17. para. 36(d), CEDAW/C/SAU/CO/3-4; para. 23(d), CEDAW/C/ARG/CO/7. [↑](#footnote-ref-17)
18. European Commission, [Study on comprehensive policy review in anti-trafficking projects](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_comprehensive_policy_review.pdf), 2016, p. 64: The EU Commission stressed the need to strengthen the role of NGOs throughout the identification process as “extremely important” [↑](#footnote-ref-18)
19. European Commission, [*Study on comprehensive policy review in anti-trafficking projects*](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_comprehensive_policy_review.pdf), 2016. [↑](#footnote-ref-19)
20. See for instance ICMPD, [*Trafficking along Migration Routes to Europe*](https://childhub.org/sites/default/files/webinars/bridging_the_gap_between_migration_asylum_and_anti-trafficking.pdf), 2018: on the role of legal advisors involved in early identification, page 95. [↑](#footnote-ref-20)
21. See for instance FRA, [*Guardianship for Children Deprived of Parental Care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*](https://fra.europa.eu/en/publication/2015/guardianship-children-deprived-parental-care), 2014, CRC Committee, *General Comment no 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*. [↑](#footnote-ref-21)
22. See for instance Article 5 Directive 2013/33/EU (recast) read with Article 18(2)(a) and (b) Directive 2013/33/EU (recast) related to an applicant’s right to, inter alia, communication with UNHCR and other organisations (as listed in Article 18(2)(a) RCD (recast)), as well as relatives, and the applicant’s right that UNHCR and other actors, as mentioned in Article 18(2)(b) RCD (recast), shall have access to the applicant to ensure assistance. [↑](#footnote-ref-22)
23. General recommendation No. 32 (2014) (CEDAW/C/GC/32), paras. 44 and 46. [↑](#footnote-ref-23)
24. para. 26(b), CEDAW/C/QAT/CO/1. [↑](#footnote-ref-24)