

**Organization for Security and Co-operation in Europe**

**Special Representative and Co-ordinator
for Combating Trafficking in Human Beings**

Vienna, 14/05/2020

**Written submission on the "Draft General Recommendation on TWGCGM"**

1. The present is a written submission prepared by the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) in response to the CEDAW Committee’s call for comments on Draft General Recommendation on trafficking in women and girls in the context of global migration.
2. The OSR/CTHB congratulates the Committee for seizing this important matter and expresses its gratitude for the opportunity to provide comments on the draft General Recommendation. The OSR/CTHB recognizes the critical importance of developing clear guidance on ways to combat trafficking in women and girls in the context of global migration.
3. As highlighted in paragraphs 5 and 19, the General Recommendation not only builds upon article 6 of the Convention but also other articles that are relevant to the prevention and protection of women and girls trafficked in the context of global migration. As rightly outlined in the Draft, an effective anti-trafficking response must engage all provisions of the Convention. In particular, the General Recommendation would benefit from **specific and** **explicit references to the following articles: the elimination of stereotyped roles for men and women (Art. 5); the equality of women’s rights to acquire, change or retain nationality (Art. 9); the equality of women’s rights in relation to education (Art. 10), employment (Art. 11) and health (Art. 12); and the recognition of the rights of women in rural areas (Art. 14)**.
4. The OSR/CTHB fully supports the Committee’s effort to highlight the need to address the economic and social context creating the demand for labour or services of trafficked women and girls, in particular through its recommendation in paragraph 27. From our perspective, this recommendation is key to tackling the root causes of trafficking in women and girls. **State parties should be further encouraged to use bilateral and multilateral cooperation to address cross-border demand for trafficking in persons between countries of origin and destination** as per Article 9(5) of the UN Trafficking Protocol. The General Recommendation could also invite State parties to **develop and utilize tools and policies which counter the facilitation of trafficking through the use of technology platforms, such as the Internet and social media**.
5. The OSR/CTHB welcomes the recommendation to strengthen national inter-agency co-ordination and reinforce gender-specific provisions in national action plans (paragraph 30). It further encourages the Committee to highlightthe **multi-agency and cross-sectoral nature of bodies in charge of the coordination and monitoring of the action plan implementation** (paragraph 31(e)). The establishment of focal points could also be recommended to assist in resolving cross-border and cross-sectoral co-operation challenges and facilitate the adoption of multi-agency transnational approaches.
6. The OSR/CTHB kindly suggests to the Committee to include references to the **participation of human trafficking survivors in developing and implementing evidence- and needs-based anti-trafficking responses**. Paragraph 42(b) does make reference to the inclusion and participation of displaced women in developing policies and programmes to address risk factors, however, the valuable contribution of trafficking survivors should be highlighted **at all stages of the development and implementation of anti-trafficking responses**.
7. Paragraph 59(b) recommends to “*prosecute and punish labour recruiters, intermediaries and employment agencies engaged in illegal recruitment processes, including (…) the confiscation of passports*”. Such recommendation should be extended to the **confiscation of passports, other identity documents or work permits by any person other than the document holder and law enforcement authorities**.
8. The OSR/CTHB welcomes the recommendation to establish regulations, policies and procedures for public agencies and private businesses to identify and remove goods and services that result from trafficking in persons from their supply chains (paragraph 27(c)). While paragraph 62 is dedicated to addressing trafficking in corporate supply chains, the OSR/CTHB suggests that **similar recommendations be applied to public procurement and not limited to private businesses.** In addition to the OSCE publication mentioned in footnote #167 “*Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector, Occasional Paper Series no. 7*”, two more recent publications could be included: *Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labour exploitation in supply chains: Second updated edition (Vienna, April 2020)* available at <https://www.osce.org/secretariat/450769> and *OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains (Vienna, February 2018)* available at [https://www.osce.org/secretariat/371771](https://www.osce.org/secretariat/371771%20)
9. The OSR/CTHB welcomes the reference to the adoption of zero tolerance policies in paragraph 68(k). It however notes that this recommendation is currently placed under the *victim identification* (section V.a.), thereby limiting its scope. The OSR/CTHB therefore suggests that this recommendation be placed between the current paragraphs 31 and 32, so as to highlight the obligation for international organizations, civil society organizations and others to endorse comprehensive measures, not only to identify victims but to prevent trafficking and provide assistance and remedies to victims. This would read as follows: **31bis or new 32.** **Adopt a zero tolerance policy on human trafficking and sexual exploitation and abuse, based on international human rights standards, which addresses such groups as national troops, peacekeeping forces, border police, immigration officials, humanitarian actors and other staff members of international organizations, international civil society organizations. Provide those groups with gender-sensitive training on how to identify and protect women and girls at risk and put in place mechanisms to report and sanction perpetrators as well as mechanisms in line with international human rights standards, which cover prevention, identification, victim assistance and protection, and remedies.**
10. The OSR/CTHB welcomes paragraph 96(f) which seeks to prioritize the protection of the victims’ human rights by de-linking criminal investigation and social protection procedures. Such recommendation could be further strengthened with the **introduction of an alternative social path for formal identification of trafficked persons, supplementary to police-based identification**. The social path will allow for needs-based and unconditional assistance to victims, thus increasing the likelihood for victims’ voluntary and informed engagement with services and co-operation with law enforcement. To this end, national legislation should recognize and regulate the role of social welfare, civil society, municipalities and other local authorities as first responders, and provide for enhanced expertise and resources.
11. While recommending that State parties ensure that all women and girls be treated with dignity and that their rights are respected, protected and fulfilled (paragraph 44), the OSR/CTHB would like to highlight the need for support to **ensure the application of the non-punishment principle** which is mentioned in paragraphs 74 and 91. Further **efforts to guide the judiciary and law enforcement practitioners** on the application of this key principle are needed to contribute to its adequate implementation for the benefit of the victims. In this regard, a reference to following OSCE document should also be added in **footnote #242**: *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* available at <https://www.osce.org/secretariat/101002>. Please note that the ICAT publication mentioned in footnote #242 (on page 30) has been issued and can be found here: <https://icat.network/sites/default/files/publications/documents/19-10800_ICAT%20Issue%20Brief%208_Ebook_final.pdf>.
12. The OSR/CTHB welcomes the Committee’s recommendation related to international and regional agreements on investigating trafficking offences (paragraph 87). In addition to building the capacity and accountability of **specialized law enforcement units, including specialized prosecutors, the OSR/CTHB suggests that these units include female officers to ensure optimal rapport with female victims**.
13. In addition to the victims’ compensation and rehabilitation mentioned in paragraph 96(a), the OSR/CTHB suggests adding a reference to **the restoration of victims’ rights, including maternity and parenting rights**, as an integral part of their effective protection and redress. Female victims of trafficking are often deprived of their rights when child protection authorities consider that the mothers have failed to care for their children while being away and trapped in an exploitative situation.
14. The OSR/CTHB welcomes the focus on financial investigations in paragraph 97 and thanks the Committee for referencing the OSCE publication on this topic. National authorities should be further encouraged to **improve the access of law enforcement and/or financial investigation units to the financial data of individuals suspected of involvement in THB and allow investigators to receive a financial overview of a suspect based on data from all financial institutions in a timely manner**.
15. The OSR/CTHB would like to draw the Committee’s attention to the current wording in paragraph 92 which might lead to confusion and misunderstanding of the real need for protection of women and girls in situations of vulnerability. By its literal wording, the current language appears to immunize females from prosecution for trafficking solely based on their gender. By encouraging States not to investigate, prosecute or detain any woman, the subparagraphs (b), (c) and (d) might be read as a call for impunity, creating loopholes and giving blanket immunity including to those who might have committed trafficking offenses, or any other crime for that matter. Certainly this unintended outcome would undermine the goal of justice for victims and is very likely unconstitutional in a number of Member States. Such an outcome would also fall outside the scope of the General Recommendation and would seem in contradiction with the need to ensure that anti-trafficking efforts are effective in dismantling trafficking networks. This is particularly problematic as UNODC and others have highlighted that 35% of trafficking offenders are females and women traffickers are particularly active in the recruitment phase of human trafficking (UNODC 2018 report). **The OSR/CTHB therefore strongly urges the Committee to reconsider paragraph 92 (a) to (e) so as to provide appropriately tailored language on the need to ensure justice for victims of trafficking and protection for the most vulnerable**. Additionally, highlighting and strengthening references in other paragraphs to the non-punishment principle may be a more effective pathway to clarity on the implicit goals of this paragraph.
16. Similarly, the OSR/CTHB would like to draw the Committee’s attention to the fact that the current wording in paragraph 54 could lead to discrimination and have an unintended impact on non-citizen women. To address this risk of misinterpretation, the OSR/CTHB would suggest the following language for the Committee’s consideration: “**The anti-trafficking responses of States parties should be tailored to the particular needs and vulnerabilities of both women who migrate within the borders of the territory for which they hold citizenship and those who migrate internationally and are non-citizens in the countries of transit and destination, both documented and undocumented”.**