**Draft General Recommendation on Trafficking in Women and Girls**

**in the Context of Global Migration**

**Comments by the Government of Finland**

**15 May 2020**

The Government of Finland welcomes this opportunity to contribute to the preparation of General Recommendation on Trafficking in Women and Girls in the Context of Global Migration by the Committee on the Elimination of Discrimination against Women.

The Government supports the draft General Recommendation and its aim to clarify the obligations of States parties to combat discrimination against women and girls in the current context.

The Government considers the General Comments and Recommendations adopted by the UN Treaty Bodies as useful additional tools for developing the implementation of human rights treaties. The General Comments and Recommendations provide new perspectives on the implementation, for responding to challenges of today.

As a general remark, the Government wishes to note that the draft General Recommendation seems extensive and detailed. The Government acknowledges that the draft Recommendation includes a wide range of issues and aspects regarding trafficking in human beings and addresses trafficking as a form of gender-based violence (see, *e.g.,* **paragraphs 14 and 15**).

In this connection, the Government wishes to note that according to a newly published research report[[1]](#footnote-1) asylum-seeking and refugee women encounter various forms of violence, including trafficking, in their countries of origin, on their way to the EU, as well as in the EU. The report also argues that both the asylum system and the criminal justice system often fail to assist and protect asylum-seeking women who have experienced violence. The systems fail to see the continuums of violence and the overall situation of these women, and therefore some women who could be entitled to asylum do not receive it. Moreover, for several reasons, the violent crimes these women have experienced do not proceed in the criminal justice system. Moreover, as it is noted in the draft General Recommendation, the lack of safe and legal routes to migration contributes to an increased risk of being trafficked, as well as of forced and sham marriages (see, *e.g.,* **Chapter IV.g**).

Thus, in the Government’s view, it is important that the General Recommendation address the shortcomings concerning victim assistance and victims’ access to justice. Both the victims’ willingness to report the crimes and their access to services are issues that should be addressed and improved when developing legislation, procedures of the criminal justice system and systems of assistance for the victims of trafficking.

At the same time, the Government notes that gender diversity seems not to be adequately recognised in the draft (*e.g.,* with respect to **paragraph 18**).

The Government wishes to note, moreover, that the draft General Recommendation refers to the international legal definition of trafficking in human beings (see, *e.g.,* **Chapter III**) and mentions the more subtle means of human trafficking, such as the abuse of a position of vulnerability and the abuse of power. In the Government’s view, it would be advisable to provide some examples in order to concretize how States parties have applied and interpreted the definition in practice.

In this connection, the Government wishes to note that in Finland, it is not essential for the fulfilment of the criminal law provision on trafficking in human beings whether a person has lost his or her freedom of movement or has been subjected to physical violence. In accordance with international obligations and EU law, the provisions on trafficking in human beings also criminalize the means of psychological pressure and manipulation, by means of which a person may be considered to have lost the opportunity to act as he or she wishes.

Moreover, the use of psychological means may manifest, for example, as an abuse of authority or other means of control. Trafficking in human beings can occur when the victim has not been able to escape exploitative circumstances, for example because of his or her insecure condition or dependent position. This is often an overall assessment that takes into account, for example, long working days, lack/shortage of holidays and vacations, poor housing conditions, incurred debt relationships, and a lack of language skills and safety nets.

The Government notes that in order to prevent human trafficking effectively, it is important to address the root causes, in general, and the demand that fosters exploitation through trafficking, in particular (see, *e.g.,* **paragraph 2 and Chapter IV.e**). Trafficking in human beings is a highly profitable criminal activity, and it is reasonable to discourage the demand as a part of sustainable strategy against human trafficking.

Thus, in the Government’s view, the recommendation, which strengthens the importance of investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, including those on the demand side, is strongly supported (see in particular, *e.g.*, **paragraphs 5 and 15 as well as recommendation in paragraph 27.d)**).

In addition to the aforesaid, the Government would like to draw the Committee’s attention to certain specific issues in the draft General Recommendation outlined below for its possible further consideration.

**Paragraph 25.b):**

With respect to the recommendation concerning disaggregating data in paragraph 25.b), the Government wishes to draw the Committee’s attention to the fact that, for example, Finland compiles no statistical data on membership of an ethnic group. Under Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation), in principle the processing of personal data revealing racial or ethnic origin is prohibited. At present, Statistics Finland compiles statistics not only on the language and country of birth of persons but also on their citizenship and origin.

**Paragraphs 27.b), 29.i), 57.e), 59.b), 89, 90, 91 and 97:**

The Government wishes to draw the Committee’s attention to paragraphs relating to criminal law legislation and to reconsider the wording of paragraphs 27.b), 29.i), 57.e), 59.b), 89, 90, 91 and 97 in order to ascertain that the recommendation does not go beyond what clearly arises from the Convention.

**Paragraph 29.h):**

In the Government’s view, it is not necessary to establish specialized tribunals to effectively prosecute and adequately punish traffickers.

**Paragraph 68.h):**

The Government wishes to draw the Committee’s attention to Article 6 of the European Convention of Human Rights on the right to fair trial. It derives from the Article that only such measures restricting the rights of the defence, which are strictly necessary, are permissible. The use of anonymous witnesses cannot be guaranteed in all cases. The Government proposes, consequently, to amend the wording to hear as follows:

Guarantee *the protection and, where appropriate, the anonymity* of both victims of trafficking and witnesses who testify in trials from their traffickers *without prejudice to the rights of the defence*.

**Paragraph 96.e) and 97.c):**

In the Government’s view paragraphs 96.e) and 97.c) should be deleted or the wording should be softened as systems in place in order to compensate victims of crime, including victims of trafficking, vary from State to State. In Finland, a victim of a crime can be compensated from state funds in accordance with Act on Compensation for Crime Damage. The responsible body is the State Treasury, which is financed through the State budget. Applying for compensation from the State Treasury does not require to first recover the legally imposed amount from the person who is liable to compensate. Furthermore, according to the Act on Victim Charges, offenders of certain more serious criminal acts are liable to pay a fixed amount sum (40 or 80 euros) which will then be used to support crime victims’ services in general. The sum is ordered by a court.

Finally, the Government wishes to submit to your Committee’s attention that in Finland, the Programme of Prime Minister Sanna Marin’s Government (10 December 2019 - ) includes a number of measures aiming to improve victim assistance and protection as well as the enforcement of criminal liability.

For example, the Government aims at drafting new legislation to enhance assistance to victims to improve equal access to municipal social and health care services and to weaken the link between assistance and criminal proceedings.

Moreover, the purpose is also to update the Act on the Integration of Immigrants and Reception of Asylum Seekers so that the link between assistance and criminal proceedings would be weaker and the right of victims to receive assistance irrespective of the initiation, continuation or termination of criminal proceedings would be improved by the legislation. The purpose is also to regulate and maintain provision of safe and supported housing for victims of trafficking in human beings.

The Government also seeks to prevent and combat exploitation of foreign workers by improving legislation and practices. Particular attention will be paid to evaluating and enhancing the practices of immigration authorities and to developing the Aliens Act so that exploited workers are encouraged to report on their experiences to the authorities.

The Government has also appointed a new Anti-Trafficking Coordinator to coordinate anti-trafficking measures within the Government. The Coordinator has been assigned to the Ministry of Justice. In addition, the Government has agreed to develop a new anti-trafficking action plan. The action plan will be prepared by a working group chaired by the Coordinator, and the purpose is that the action plan would be adopted by the Government in the beginning of 2021. The working group will follow the implementation of the action plan to the end of the electoral period.

Furthermore, trafficking in human beings is included in the Government’s action plan on gender equality, which is prepared in 2020.

Preventing gender-based violence and combating trafficking in human beings are set as priorities also for the police in line with the Government Programme. For example, the Strategy on Preventive Police Work defines what preventive action means and sets out the objectives and targets for preventive action and strategic policies for 2019–2023. Accordingly, the police are working to prevent domestic violence and intimate partner violence and violence against women. The police are taking part in the multi-professional MARAK risk-assessment scheme, a key instrument in the prevention of domestic violence and intimate partner violence and violence against women, as well as in the assessment of risk of repeated violence.

In order to enhance prevention, identifying and investigating trafficking in human beings and to ensure a nation-wide approach to combatting the phenomenon, the National Police Board has set up a specialists’ network with members from all police departments. All police departments have been obliged to step up their work against trafficking in human beings. A survey has been carried out in order to clarify the state of play as a ground for further development of the processes and to establish whether a specialized trafficking unit could be created in 2021.

The National Police Board together with the Police University College is ensuring that the topics of gender-based violence and trafficking in human beings are well incorporated in the curriculum of police training. A web-based specialist trafficking training package for all police officers has been launched in the Moodle environment of the Police University College and is open for all police officers.

Both when it comes to gender-based violence as well as trafficking in human beings the police are applying a victim-based approach. In accordance with legislation and special guidelines given by the National Police Board, an assessment of the victim's special needs for protection during the criminal investigation and trial and of the protection measures required, is carried out. Victims are referred to special services provided by, *e.g.*, Victim Support Finland and in trafficking cases to the Assistance system for victims of human trafficking. The police are working in close cooperation with the aforementioned.

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1. Lilja, Inka, Kervinen, Elina, Lietonen, Anni, Ollus, Natalia, Viuhko, Minna & Jokinen, Anniina (2020): Unseen victims. Why refugee women victims of gender-based violence do not receive assistance in the EU. Helsinki: HEUNI Publication Series 91. [↑](#footnote-ref-1)