**CEDAW Draft General Recommendation**

**on Trafficking in Women and Girls in the context of Global Migration**

**Comments of the Government of the United Kingdom**

**of Great Britain and Northern Ireland**

1. The Government of the United Kingdom is grateful to the Committee for its work elaborating this draft General Recommendation on trafficking in women and girls in the context of global migration. We welcome this opportunity to provide comments. For ease of comprehension, paragraph references are underlined and proposed new text is italicised.

# Objective and scope

1. In the fourth sentence of paragraph 4 of the draft the Committee “advances that a life free from being trafficked must be recognised as a human right”. While we do not dispute the severity of trafficking, it is not helpful to conceive of new human rights, beyond those which states agree in treaties. It would instead be correct to conceive of trafficking as violating, or potentially violating, a number of existing human rights. Relevant rights may include Article 6 of the Convention for the Elimination of all forms of Discrimination against Women (CEDAW); Articles 8, 9, 12 and 22 of the International Covenant for Civil and Political Rights; and various provisions of the Convention against Torture.

**Root causes and discouraging the demand**

1. The third sentence of paragraph 15 incorrectly suggests that states parties’ obligations in respect of trafficking are reinforced by international criminal law. International criminal law, including the Rome Statute of the International Criminal Court, concerns individual criminal liability: it does not address states’ obligations. In particular, it does not establish any obligation of due diligence to prevent trafficking. We therefore suggest that this sentence be replaced with the following: *“In addition, international criminal law accords individual criminal liability to trafficking in women and girls, which may constitute a war crime, a crime against humanity, an act of torture or an act of genocide.”*
2. Paragraph 16 addresses the territorial scope of CEDAW with respect to states’ obligations to prevent human rights abuses by businesses, and refers to the UN Guiding Principles on Business and Human Rights. It is worth recalling that the commentary to the UN Guiding Principles provides that States are not generally required to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction, though they may do so where there is a recognised jurisdictional basis. In order to mirror Principle 2 of the UN Guiding Principles, therefore, we suggest that the following sentence be added to the end of the paragraph: *“States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations*.*”*
3. While we note that the Committee has consistently adopted the position repeated in the first sentence of paragraph 17 regarding extraterritorial obligations, jurisdiction is governed by international law and is primarily exercised territorially.
4. In the final sentence of paragraph 18, “States parties are required to…” should be replaced by *“As a means of fulfilling their obligations under the Convention, states could…”* to reflect that states have discretion in how to fulfil the relevant obligations.
5. In general, we welcome the comprehensive recommendations in paragraphs 25-32, though it may not be possible for every state to collect or disaggregate all the data suggested.
   1. In connection with paragraph 25(c)(ii), we observe that it is not possible to measure or record consequences without speculation, and therefore suggest the deletion of “consequences” from this paragraph.
   2. We request the deletion in paragraph 25(c)(vii) of “arrested, detained or”, because cases against women and girls arrested or detained for such crimes may be dropped if it transpires that the woman or girl in question has been trafficked. In paragraph 25(f)(ii), *“Where appropriate…”* should be inserted at the beginning of the second sentence.
   3. In paragraph 27(b), “the users of” should be replaced by *“those knowingly using”*.
   4. In paragraph 29(h), “sets” should be replaced by *“considers setting”* as specialised tribunals may not be necessary or appropriate in every state.
   5. In paragraph 31(c), “the national action plans” should be replaced with *“existing national action plans”*.
   6. The chapeau of paragraph 32 should be strengthened by inserting, before “meaningful participation”, *“full, effective and”*. This would ensure that participation occurs across the board, and contributes to outcomes, as well as addressing significant issues.
   7. Paragraph 32(a) should also be expanded as follows: “*States are encouraged to ensure that* the expertise and voices of *women and girls, including* women and girl victims of trafficking, *are* included and accounted for *at all levels of decision-making* and at all stages of efforts to prevent and combat trafficking, including training, programme and research design, development, implementation, monitoring and evaluation, as well as *the development of policy*.”
   8. Paragraph 32(b) should be amended to read: “*Work with* human rights and women’s rights non-governmental organizations *to ensure that they* are well informed, adequately consulted and *can* play an active role in the initial and subsequent development of anti-trafficking strategies and continuing implementation of the Convention and the UN Trafficking Protocol.”
6. Paragraph 34 could be strengthened with an acknowledgement that not all sexual and gender-based violence that occurs prior to, during, or after conflict is directly conflict-related. The first sentence of paragraph 34 should therefore be amended to read “…the ‘normalisation’ of *sexual and* gender-based violence, *including conflict-related sexual violence,* as an additional element…”.
7. Like paragraph 32(a), paragraph 41(a) could be strengthened as follows: “ensure the inclusion and *full, effective and meaningful* participation of women, and particularly victims of trafficking, at all stages, *and in all levels of decision-making*, of the…”.
8. Similarly, *“full, effective and meaningful”* should be added before “participation” in paragraph 42(b).
9. We welcome the recommendation in paragraph 42(h) that law enforcement agents should be trained on the risks of trafficking faced by displaced women, but we note that the underlying document referenced here (CEDAW/C/LIE/CO/4 paragraph 21) suggests that judges, as well as police and prosecutors, should receive this training. We note that, as a matter of the separation of powers and rule of law, governments may not have power to dictate what training judges receive.
10. There is a risk that paragraph 45, as drafted, could unintentionally introduce gender-related persecution as a prerequisite to claiming asylum. We therefore suggest the following rewording: “*Ensure* victims or potential victims are informed of and effectively enjoy the right of access to fair, efficient and clear asylum procedures without discrimination or any preconditions, regardless of country of origin or mode of entry into the State party.”
11. Paragraph 45(c) as drafted misrepresents the scope of the UNHCR Guidelines to which it refers, which do not in fact impose an obligation on states to recognise female victims of trafficking as a ‘social group’. We therefore suggest the beginning of this paragraph is amended to read: “*Recognize the particular circumstances under which* victims of trafficking *may be understood as a* ‘social group’…”.
12. There is a risk that paragraph 46(a) and (b), as drafted, would create a parallel system to existing asylum rules. We suggest that they be reworded to read:
    1. “*Recognise that in certain cases return to their country of origin or country of habitual residence is not an appropriate durable solution for* victims of trafficking and those at risk of trafficking due to fear *of* being retrafficked or subjected to stigma, threats, intimidation, violence and retaliation.”
    2. “Take a gender-sensitive approach to the continuing refugee inflows and asylum claims, including in procedural matters, in line with the provisions of the Convention.”
13. The second sentence of paragraph 51 could be clarified as follows: “The majority*, particularly those with irregular status*, do not have access…”. In the fourth sentence “husband” should be replaced with *“spouse or partner”*. In the final sentence, “does” should be replaced with *“may”*, since not all temporary or seasonal work has this quality.
14. Paragraph 52 is inconsistent with the Global Compact on Migration and should be deleted.
15. We suggest that paragraph 55 should begin “*Support* increased access...”.
16. In paragraph 57(a), we recommend that “more systematic and regular” be replaced by *“better and more effective use of”* in connection with migration pathways. We request the deletion of paragraph 57(e)(b) because of the scope for abuse that such blanket decriminalisation would create.
17. We consider that paragraph 61(d) should be deleted: the problem to be addressed is not visa regimes which grant permits to migrant women who accompany their spouses, but rather the absence of support for women in that category who find themselves in an exploitative or abusive relationship.
18. The recommendations in paragraph 62 should better reflect the framework of the UN Guiding Principles on Business and Human Rights. In particular:
    1. Paragraph 62(a) should be replaced by: “Establish laws *requiring businesses to report on activity to prevent, identify and mitigate modern slavery and human trafficking in their supply chains*”.
    2. Paragraph 62(b) should end with “effectively remedy violations”. The rest of the subparagraph should be deleted.
    3. Paragraph 62(c) should begin: “*Encourage businesses to* establish…”.
    4. Similarly, paragraph 62(d), (e) and (f) should begin: “*Encourage businesses* to…”.
    5. Paragraph 62(g) should begin: “*Consider conducting, and/or funding,*…”.
19. While we fully support the principles encapsulated in paragraph 63, we suggest that “including private households” should be deleted, because it is not always proportionate or practical to for labour inspectors to enter private households. In many countries, including the UK, that is the role of the police.

**Victim identification, assistance and protection**

1. We consider that the invisibility of victims poses a greater challenge than the gender-sensitivity of relevant professionals. We therefore suggest restructuring paragraph 66 to read: “A challenge in identifying female victims of trafficking is *that* victims are often hidden in non-public areas such as private residences, isolated factories and farms, and brothels and private apartments used for commercial sexual exploitation. […] Victims may choose not to disclose their traffickers for fear of retaliation against them, their children or other members of their families. *Front-line professionals should adequately understand, identify and respond to incidences of trafficking in women and girls.*”
2. Paragraph 67 should begin “*Take steps to eliminate any* discrimination in access to health care for trafficked women and girls who *can be* at an increased risk…”. Trafficked men and boys also face many of these risks.
3. Many of the recommendations in paragraph 68 could be strengthened:
   1. In paragraph 68(a), “that is benchmarked to” should be replaced by “*that are benchmarked against*”.
   2. Paragraph 68(b) should begin “*Work to increase*…”.
   3. Paragraph 68(c) should be amended to read “…referral of victims of trafficking *including* among women asylum seekers…”.
   4. In paragraph 68(d), “protection and support for both victims of trafficking and for presumed victims” should be replaced by *“safeguarding where there are reasonable grounds to suspect someone is a victim”*.
   5. Paragraph 68(e) should begin “Introduce *or continue* proactive inspections…”, to acknowledge that some states already conduct these.
   6. Paragraph 68(g) should allow greater flexibility in how reporting is to be promoted, by rewording as follows: “Encourage reporting of trafficking *through* education and awareness-raising campaigns about the risks and criminal nature of trafficking and *how to report it*”.
   7. In paragraph 68(h) the nuances of witness protection could be better reflected by rewording as follows: “*Make provision* for the anonymity and protecting of victims of trafficking, and *other* witnesses *where appropriate*, who testify in trials *against* their traffickers.”
   8. Greater flexibility in collaboration could be preserved in paragraph 68(i) as follows: “*Collaborate* with civil society organisations to ensure that victims of trafficking are identified, assisted and protected.”
   9. We consider that the recommendation paragraph 68(j) is insufficiently concrete and could be amended to read: *“Engage, as appropriate, with communities and other organisations, including faith-based actors, to identify trafficked women and girls.”*
4. Paragraph 76 should begin “*Consider granting…*” to better reflect the framing of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

**Victims’ access to justice**

1. We consider that the penultimate sentence of paragraph 83 is too categorical: in many situations, gender should be irrelevant to the grant of legal aid. We suggest this sentence be amended to read: “The remedies must be affordable, accessible and timely, and women *should have access to* free legal aid, advice and representation in judicial and quasi-judicial processes.”
2. Paragraph 96(c) should begin *“Consider* financially *supporting*…” as states may have limited resources available.

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