**Comments to the draft general recommendation on trafficking in women and girls in the context of global migration of the Committee on the Elimination of Discrimination against Women (CEDAW)**

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**Submitted by the Indigenous Peoples and Development Branch – Secretariat of the UN Permanent Forum on Indigenous Issues/Division for Inclusive Development/UN Department of Economic Affairs**

The Indigenous Peoples and Development Branch/DISD/DESA offers some comments to the draft general recommendation on trafficking in women and girls in the context of global migration of CEDAW. This draws on the recommendations of the Permanent Forum on Indigenous Issues, an ECOSOC advisory body mandated to provide expert advice and recommendations on indigenous issues to the Council, and through the Council to the UN system agencies, funds and programmes.

The suggestions and comments below follow the structure of the draft general recommendation for ease of reference:

**Section IV. Root causes and discouraging the demand that fosters exploitation through trafficking**

**a. Women and girls are disproportionately affected by human trafficking**

**12.** To add a reference to indigenous women in footnote 12

Considering the following:

* Given the large number of indigenous migrants within and beyond national borders and the particular vulnerability of indigenous women migrants, as well as the lack of adequate data and attention to their problems,… including the alarming trend of trafficking indigenous women within and across national borders. (United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para. 12)
* Forced migration from indigenous communities has involved a number of factors, many related to the loss of land. Globalization, economic development and modernization often result in indigenous lands being taken over for business development. In addition, indigenous peoples’ territories are increasingly being designated as protected areas (e.g., with the objective of preventing deforestation), often resulting in displacement of entire indigenous communities whose traditional ways of living are incompatible with the terms of the protective legislation. Limited investment in the protection of indigenous peoples’ lands from factors such as soil erosion and vulnerability to flooding has left many indigenous communities exposed to natural environmental disasters which may lead to forced migration. (United Nations, Indigenous peoples and migration: challenges and opportunities, 2006, E/C.19/2006/CRP.5, para. 19)
* Indigenous women are thus more likely to be the victims of trafficking. Often, those who are trafficked are unaware of the risks involved in their decision to migrate. *(United Nations, Indigenous peoples and migration: challenges and opportunities, 2006, E/C.19/2006/CRP.5, para.25)*
* One of the most insidious problems for indigenous women and girls is the high risk of human trafficking, forced labour and sexual exploitation. One of the contributory factors to human trafficking is the lack of birth registration or citizenship documentation and consequential statelessness in some countries. This also limits women and children’s access to basic public services, including health and education. A lack of resources for anti-trafficking measures contributes to this phenomenon (*United Nations Human Rights Council, Indigenous peoples’ rights in the context of borders, migration and displacement: Study of the Expert Mechanism on the Rights of Indigenous Peoples, 2019, A/HRC/EMRIP/2019/2/Rev.1, para.73)*

**b. Trafficking in women and girls constitutes gender-based violence against women**

**14.** Add a reference to indigenous women in footnote 19, proposed language:

“Indigenous girls and women across the globe face increased vulnerability to gender-based violence and violent crimes associated with racism and hatred (CEDAW, 2015)”

Considering the following:

* The Forum expresses its concerns regarding continued violence against women and, owing to the seriousness of these conditions, reiterates its previous recommendations regarding: human and sex trafficking; prostitution and trans-border issues; the disappearance, or murder, of aboriginal women; issues related to identification and birth certificates; environmental violence; intergenerational trauma; youth suicide; peace and security; conflict prevention and resolution; cultural practices such as female genital mutilation or cutting; bride price and promised brides; racism and discrimination; and data disaggregation. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2012/13, para.19)*
* Indigenous girls and adolescents also are particularly exposed to discrimination and violence due to their age, as is demonstrated by their particular vulnerability to sexual violence and sexual trafficking. *(United Nations, Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, August 6, 2015, A/HRC/30/41, para.15.)*
* Indigenous women and girls who leave their communities are highly vulnerable to trafficking, which can lead to multiple violations of their human rights, including severe economic and sexual exploitation and sexual violence*. (United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, January 5, 2016, A/HRC/31/57, para. 31)*

**c. Scope of application of the Convention**

**17.** Add a reference to indigenous women.

Considering the following:

* The Forum expresses concern about the multiple forms of discrimination experienced by indigenous women, based on gender and race/ethnicity, and the complex problems stemming from this discrimination. In addition, globalization presents new challenges and problems for indigenous women in many parts of the world. Indigenous women’s roles have eroded due to the compounding factors of loss of natural resources and depletion of the ecosystems, their transformation into cash economies, changes in local, social and decision-making structures, and their lack of political status within States. Indigenous women, while sharing many of the concerns in the areas of poverty, human rights, and economic and social development with other women throughout the world, also offer a distinct and important perspective on these issues. The fact that “indigenous women” are not a homogeneous category but represent a wide variety of cultures with different needs and concerns, should be a central premise for the design of policies and programmes*. (United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para.3)*

**d. Obligation to identify women and girls subjected to multiple forms and compounded discrimination as rights bearers**

**18.** In footnote 34 add a reference to indigenous women considering the following:

* The Forum recognizes that the instruments relating to human rights, including the fundamental rights of indigenous women and girls, have been elaborated. Nevertheless, indigenous women continue to be one of the most marginalized groups in many countries, being victims of serious acts of discrimination and flagrant violations of their fundamental rights. The continuing gap between the proclamation and the implementation of human rights is largely due to the lack of commitment on the part of Governments to fully promote and protect those rights, as well as to the lack of awareness of human rights and fundamental freedoms in society, including at the community level. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para.41*
* Noting that the Convention on the Elimination of All Forms of Discrimination against Women makes no reference to indigenous women and that it does not take into account the specific nature of the gender dimension of racial discrimination, the Forum recommends that the Committee on the Elimination of Discrimination against Women:

(a) Pay special attention to the issues related to maintaining the integrity of indigenous women and the gender dimension of racial discrimination against indigenous peoples; *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para. 6)*

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

**24.** “Women and girls living in rural and remote areas, indigenous women and girls, those with an irregular migration status, as well as stateless women and girls and those at risk of statelessness[[1]](#footnote-1) who experience social, political and economic exclusion face specific risks of being trafficked. …”

Add a reference to indigenous women in para. 24, considering the following:

* As these global processes have serious negative implications for indigenous women at the national and local levels, laws, policies, budgets and programmes must be put in place at the international, regional/national, and local levels as well if they are to effectively address these problems. Some of the issues at the international level include:

(a) Highlighting the issue of indigenous women’s migration, including human rights violations, trafficking and forced labour, as well as their impact on the spread of the HIV/AIDS pandemic; *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para.7(a))*

* Indigenous women in many areas of the world are suffering from the alarming deterioration of health conditions within their communities. Inadequate and limited access to health services, lack of culturally appropriate approaches to health care, lack of outreach clinics in remote areas, deteriorating quality of air, water and land due to unchecked industrial development are just a few of the factors contributing to this downward trend. Other socio-economic factors, such as the alarming number of indigenous women (especially in Asia) being trafficked and sold into prostitution, have led to the rapid spread of the HIV/AIDS epidemic and other sexually transmitted diseases into indigenous communities, destroying their social fabric. Changes in the traditional social, cultural and political institutions have led to an erosion or loss of practices and culturally appropriate health rules and codes of behaviour which have been instrumental in ensuring gender-sensitive approaches to health *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para. 88)*
* As the Human Rights Council has recognized, the worst effects of climate change are felt by those who are already vulnerable because of factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability. Climate change will contribute to forced migration, but the ability to migrate often depends on mobility and resources. As a result, those who are most vulnerable may be unable to migrate, instead remaining in locations that are subject to the harms caused by climate change. Those who do migrate may be particularly vulnerable to human rights abuses, since they may often be doing so in an irregular process (*Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2016, A/HRC/31/52, paras 27-28)*

**26. Address the root causes of trafficking by:**

Add references to indigenous women considering the following:

* While major anti-poverty campaigns have been launched by international agencies, the social and economic conditions for many indigenous communities in different parts of the world have worsened. Economic globalization can play a major role in the deterioration of the natural environment and subsistence-based food security, and has contributed to the out-migration of indigenous women to urban centres, where they are no longer under the protection of traditional law and become particularly vulnerable to forced labour, trafficking and prostitution. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2004/23, para. 5)*
* The Permanent Forum is alarmed by the continuing acts of violence being perpetrated against indigenous peoples by Member States and others. The Forum therefore acknowledges the need for States to establish a monitoring mechanism to address violence against indigenous peoples, including assassinations, assassination attempts and rapes, and intimidation of indigenous peoples in their attempts to safeguard and use their homelands and territories that transcend national borders, including the non-recognition of their membership identification and documents and the criminalization of their related activities. Specific attention must be paid to such actions being perpetrated by State and local police, the military, law enforcement institutions, the judiciary and other State-controlled institutions against indigenous peoples. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2013/23, para. 41)*

**31. Adopt, adequately finance, implement, and regularly review a comprehensive national plan of action to prevent and combat human trafficking, ensuring it is in line with this general recommendation and that it:**

Add a reference to indigenous women considering the following:

* The Forum recommends that all States install gender-sensitive action plans and independent self-reporting mechanisms that give particular attention to indigenous peoples, with the aim of protecting victims, prosecuting perpetrators and preventing human trafficking and related serious exploitation in all its forms, in accordance with the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime; and the Convention on the Rights of the Child. (*United Nations, Permanent Forum on Indigenous Issues, E/C.19/2012/13, para. 27)*

**f. Forcibly displaced women and girls face a higher risk of being trafficked**

Add a reference to indigenous women considering the following:

* The Permanent Forum reiterates the need for States to address the impact of militarization, including suppressing constitutional guarantees, appropriation of land, forcible occupation and displacement, on the land, territorial and other collective rights of indigenous peoples, perpetrated by security forces, including the military, militias and other armed groups. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2012/13, para. 33)*
* Mindful of the systemic discrimination and racism experienced by indigenous peoples, in particular indigenous women in the law enforcement, judicial and correctional institutions of States across the globe, the Permanent Forum urges States that have ratified the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination to comprehensively review the civil rights of indigenous peoples, in particular those of indigenous women and children who are victims of sexual violence, in order to ensure that they have fair, non-discriminatory access to justice. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2012/13, para. 34)*

**g. Women and girl migrants’ increased risk of being trafficked**

Add a reference to indigenous women considering the following:

* The Forum expresses its concerns regarding continued violence against women and, owing to the seriousness of these conditions, reiterates its previous recommendations regarding: human and sex trafficking; prostitution and trans-border issues; the disappearance, or murder, of aboriginal women; issues related to identification and birth certificates; environmental violence; intergenerational trauma; youth suicide; peace and security; conflict prevention and resolution; cultural practices such as female genital mutilation or cutting; bride price and promised brides; racism and discrimination; and data disaggregation. *(United Nations, Permanent Forum on Indigenous Issues, E/C.19/2012/13, para. 19)*
* Due to the loss of livelihood that is often tied to the loss of their land, indigenous peoples become more vulnerable to exploitation and violence. Indigenous women and girls are particularly affected. The link between trafficking and social marginalization is evident, and means that indigenous peoples, and particularly women and children, are the most vulnerable. (*Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, The impact of migration on migrant women and girls: a gender perspective, 2019, A/HRC/41/38, para. 68*)

**Section VI. Victims’ access to justice**

**84. Ensure access to justice for all trafficking victims, including forcibly displaced and migrant women, including those in an irregular situation:**

**h.** Provide forcibly displaced women victims of trafficking with access to justice, including through the deployment of mobile courts to camps, rural areas, **indigenous communities** and border zones. [[2]](#footnote-2)

**Section VII. Dissemination and reporting**

Add a reference to indigenous languages and indigenous peoples’ organizations as follow:

**102.** This general recommendation should be translated into local languages, including ~~indigenous and~~ minority **and indigenous** languages, provide summaries in clear language, and disseminated widely to all branches of government, civil society, the media, academic institutions, women’s rights organizations, **indigenous peoples’ organizations,** the private sector and financial institutions.

Considering the following:

* Stressing the importance of the empowerment and capacity-building of indigenous women and youth, including their full and effective participation in decision-making processes in matters that affect them directly, including policies, programmes and resources, where relevant, that target the well-being of indigenous women, children and youth, in particular in the areas of health, education, employment and the transmission of traditional knowledge, languages, spiritual and religious traditions and practices, and the importance of taking measures to promote awareness and understanding of their rights, *(United Nations, General Assembly, A/74/396)*
* Proclaims the period 2022–2032 as the International Decade of Indigenous Languages, to draw attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize and promote indigenous languages and to take urgent steps at the national and international levels, ….; *(United Nations, General Assembly, A/74/396, para. 24)*

1. A/73/263 (2018), para. 29. [↑](#footnote-ref-1)
2. para. 49(b), CEDAW/C/RWA/CO/7-9; para. 11(c), CEDAW/C/NER/CO/3-4; para. 19(d), CEDAW/C/VEN/CO/7-8. [↑](#footnote-ref-2)