**CEDAW: Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

**Comments by Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro**

Responding to the call for submissions by the Committee on the Elimination of Discrimination against Women regarding their draft General Recommendation on trafficking in women and girls in the context of global migration, the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, wishes to make the following suggestions to the draft text:

* Regarding **Paragraph 27,** the Special Rapporteur suggests eliminating the **subparagraph b**. As it is currently written this measure could potentially be very disproportionate, as it could impose a sanction on any consumer of a good produced by a company who may be involved in trafficking, either through their direct operations or those of their suppliers.
* Regarding **subparagraph c**, as the Special Rapporteur has raised in her reports, this measure “remove goods and services” can have drastic consequences on the workers, for example if companies decide to denounce contracts with a supplier found in a case of trafficking. Alternatively, companies need to be encouraged to establish remediation plans with their suppliers should a case of a risk of trafficking been detected in their operations or supply chains. Remediation plans should ensure that workers victims and potential victims of trafficking have access to effective remedies, to immediate and tailored assistance, ensure their labour rights are uphold, including the recovery of lost income and benefits and which includes, especially if contracts are discontinued with that specific supplier, a long term plan to ensure access of workers to the labour market in circumstances in which ethical employment conditions can be met. Alternatively companies should envisage a plan with their suppliers to ensure these identify and prevent any risk of trafficking and establish grievance mechanisms in cooperation with workers representatives to ensure guarantees of non repetition.
* Regarding **subparagraph d**, the Rapporteur suggests to delete it. If the Committee is however determined to keep this subparagraph, the language should reflect that of the Council of Europe Convention on Action against Trafficking in Human Beings.
* Concerning **Paragraph 59**, in particular **subparagraph a** the Special Rapporteur suggests that after “including” a clear call is incorporated for States to enact measures established in the ILO Forced Labour Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The paragraph can refer more specifically to the General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs, discussed and adopted in a tripartite model under ILO auspices. It can also add a reference to the IOM International Recruitment Integrity System (IRIS), and above all a reference to the Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195). Finally, if specific examples of unethical recruitment practices are highlighted, in addition to contract substitution, a nomenclature of the described practice that may be easier to recognize, the specific issue of recruitment fees could be added. Regarding **subparagraph b**, the recommendation needs to acknowledged that in some jurisdictions the practices described in the recommendation text are legal and therefore a call for ratification of relevant Conventions and eradication of unethical practices should be added.
* In **Paragraph 60, subparagraph d**, a clarification would be needed regarding the role of security bonds as a tool to ensure control over migrant workers, in some legislations these are requested by licensing States from labour recruiters as an evidence of their financial capacity to operate, as well as a safeguard to ensure that any compensation awarded to migrants in judicial proceedings is paid.
* Regarding **paragraph 62**, the Special Rapporteur suggests reference is done to the reports the mandate has dedicated to this issue, in particular, her report to the General Assembly in 2019 on Access to remedy for victims of trafficking for abuses committed by businesses and their suppliers. (A/74/189) and her report to the Human Rights Council in 2017 on Strengthening voluntary standards for businesses on preventing and combating trafficking in persons and labour exploitation, especially in supply chains. (A/HRC/35/37). In **subparagraph a**, the Rapporteur suggests that both the concept of due diligence and transparency are further developed. In line with the recommendations in the Special Rapporteur, companies should be required to disclose not only policies and procedures implemented to address risks of trafficking or severe exploitation in their operations and supply chains but also outcomes and the impact of such policies and procedures. (A/74/189, para.83.a)). Regarding **subparagraph c**, the Special Rapporteur suggests the deletion of “including zero tolerance policies to sexual exploitation”.
* **Regarding subparagraph d**, the shortcomings of audit companies in detecting cases of trafficking have been highlighted by the Special Rapporteur in her report A/HRC/35/37, moreover, audit companies do not hold such a power over a supplier. Usually, an audit company is requested to perform an audit by the company audited against a set standard. The information obtained through the audit exercise belongs to the company that requested it and their decision to act on it. Instead the Rapporteur suggests to advocate for a system run by a third party in which workers and their representatives are represented and to which they can continuously feed into.
* In **paragraph 66,** there is a generalization of the skills and capacities of first responders. While the paragraph may seem relevant for first responders such as border police, other complexities in the identification and referral can arise when first responders within anti trafficking organizations are designed to cater for a specific type of victim and type of exploitation. The paragraph could benefit from such distinction calling for an evaluation and capacity building of skills and capacities of first responders and anti trafficking organizations, to be able to identify and cater for all types of victims and all types of exploitation despite the strong profiling techniques that are sometimes used in identification (in this regard please see recommendations by the Special Rapporteur in her report A/HRC/38/45 in particular paragraph 73.c, which calls for a focus on indicators of migrants’ situations of vulnerabilities that can lead to a risk of trafficking, based on the experience acquired by national agencies, international organizations and civil society.) In addition the paragraph should include other acknowledged difficulties in identification of victims of trafficking especially among mixed migration flows. Both in her thematic reports and country visits, the Rapporteur has identified the challenges in identification that lack of appropriate and confidential spaces in hotspots and in areas of large influx of people have caused. In this regard, the Rapporteur has recommended the creation of safe and confidential spaces to carry out individual interviews. Such interviews should be performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support, also in order to separate potential victims from traffickers. (from A/HRC/38/45, para 73).
* Similarly **paragraph 68, subparagraphs a and b** can be revised under the recommendation from the Special Rapporteur report A/HRC/38/45, para 73. More importantly, these recommendations need to acknowledge that identification, access to assistance and referral should not be exclusively led by law enforcement or immigration authorities or being linked to the initiation or outcomes of criminal proceedings, instead, this process and its outcome needs to be led by multidisciplinary teams and decisions must be based on personal and social vulnerabilities of victims and potential victims. See for example recommendation of the Special Rapporteur on paragraph 78 of A/HRC/38/45.
* Regarding **subparagraph c** beyond the referral from the asylum system protection, the Special Rapporteur suggests adding a clear recommendation to integrate identification of trafficking victims and potential victims into asylum procedures, including in the context of accelerated procedures, as well as advocate for the full integration of both systems of protection through developing regular coordination between the asylum procedures and the trafficking protection systems in order to ensure that people identified as at risk of trafficking during asylum procedures are referred to the trafficking protection system and — when both grounds are recognized — have access to both refugee status and protection as victims or potential victims of trafficking (A/HRC/38/45, para. 76).
* Finally regarding **subparagraph j**, in line with the suggestion above on a multidisciplinary approach, and to further clarify the mention of mobile units, this paragraph should be revised to make clear that such an approach means that identification and referral is performed by multidisciplinary teams including professionals from all relevant fields, the composition of which can be adapted to the circumstances of the case.
* Concerning **paragraph 72, subparagraph f**, in addition to the importance of shelters as the only immediate response especially for sexual exploitation, the Special Rapporteur suggests adding an extra bullet to reflect the recommendation stemming from her report on “Innovative and transformative models of social inclusion of survivors of trafficking in persons into societies”, A/HRC/41/46, in particular paragraph 68. i): “Ensure that trafficked persons are not only provided with temporary shelter, but are also provided with the opportunity to access safe and affordable independent accommodation with no discrimination of any kind, giving due consideration to the specific needs of men and of transgender persons” in view of pursuing an assistance system that aims at ensuring access to empowerment measures in the long term.
* Regarding **paragraph 84,** the Special Rapporteur suggests including an additional point to make a reference to non-judicial mechanisms and how these can represent a valuable option especially in cases of labour exploitation. While adequate and accessible judicial mechanisms are key, there is a need to rely on effective non-judicial mechanisms if judicial mechanisms fail. When non-judicial mechanisms such as national labour inspectorates or labour conciliation mechanisms are well funded and have a mandate to engage effectively with workers, these can represent a strong channel for complaints and have the ability to provide remedy.
* Finally, regarding **paragraph 91** on the application of the non-punishment principle, the Special Rapporteur advocates to include a specific reference on the need to vacate criminal records when despite recommendations on the early application of the principle of non-punishment, criminal proceedings against trafficked persons have been initiated.