



## **International Justice & Human Rights Clinic Comments on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

The International Justice and Human Rights Clinic (“IJHRC”), located at the Allard School of Law, University of British Columbia, offers the following recommendations on the CEDAW Committee’s Draft Recommendation on Trafficking in Women and Girls in the Context of Global Migration (“the Draft”). The recommendations are intended to increase the Draft’s clarity, fill gaps and strengthen important themes on human trafficking for the purpose of sexual exploitation.

### **Explain the Continuum of Sexual Exploitation, Demand, and Perpetrator Agency**

Continuum: The Committee may wish to further explain how human trafficking for sexual exploitation fits within the broader continuum of sexual exploitation that women and girls face worldwide. The Draft could clarify that pornography, prostitution and trafficking are all points on a continuum of sexual exploitation which is fueled predominantly by male demand for sexual gratification and leads to sex inequality globally. To do so, paragraph 22 can be amended to explain the root causes of human trafficking in terms of push and pull factors, as detailed in the table below. When considering the root causes of sexual exploitation, a key acknowledgment is that men’s demand for and use of predominantly women and girls for sexual purposes drives a global prostitution industry in which human trafficking for sexual purposes is situated. The Draft may also wish to further describe the frequency and extent to which trafficked individuals are used to produce pornography.

Demand: The Committee could also increase focus on reducing the demand for trafficking for sexual exploitation, which the UN’s Office of the High Commissioner for Human Rights recommends as a means of trafficking prevention.<sup>1</sup> One way for States to reduce this demand is to pass and enforce laws and policies to reduce the demand for prostitution within their borders. This approach recognizes that a) the demand for prostitution is the same as the demand for human trafficking for sexual purposes and b) human trafficking for sexual exploitation occurs, with few exceptions, within the global and domestic prostitution industries. The distinction between trafficking for sexual exploitation and non-exploitative prostitution could also be more clearly explained.<sup>2</sup>

Perpetrator Agency: The Draft does not sufficiently address the choice and agency of individuals, predominantly men, who buy trafficked individuals for sexual gratification. States’ criminal law provisions on human trafficking should focus on the criminal acts of the trafficker rather than centering on victims’ acts or beliefs, which will not only result in a series of negatives consequences for trafficking victims, but may also be more difficult for prosecutors to prove, given the structure of criminal trials, legal presumptions and the required burden of proof in criminal cases. Paragraph 85, for example, should encourage police and prosecutors to act proactively to gather corroborating evidence, such as financial statements, to construct legal cases based on perpetrators acts rather than building cases requiring extensive scrutiny of victims, who can be retraumatized by the legal process.

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<sup>1</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking, Office of the High Commissioner for Human Rights (2002) online: <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>2</sup> See e.g. Nicole Barrett, “Laws to Combat Sex Trafficking” (2013) at 2, online: [here](#).

## **Reduce adverse collateral effects**

As the Committee notes in paragraphs 86 and 92 of the Draft, measures to mitigate the adverse collateral effects of anti-trafficking regimes are necessary to protect the rights of multiple classes of disadvantaged women. In addition, there is a pressing need for States to evaluate and address the intended and unintended effects of anti-trafficking efforts. Paragraphs 25, 72 and 91 of the Draft contain trafficking victim non-punishment recommendations. The amendments offered in the chart below include additions to address States parties' lack of monitoring, evaluation and transparency in deportation policies. In many countries, granting temporary residency to trafficked persons is highly discretionary, lacks detailed regulation and oversight, and is not put into effect before other significant immigration decisions, such as deportation.

## **Strengthen protections for disadvantaged women**

The Committee has identified several classes of disadvantaged women, who face multiple and intersecting forms of discrimination and are therefore at higher risk of being trafficked. Certain paragraphs of the Draft General Recommendation could be clarified to better account for their situations.

- Precariously housed and homeless women

The CEDAW Committee recognizes the importance of ensuring that women have access to affordable housing to mitigate the impacts of and potential for gender-based violence.<sup>3</sup> The proposed additions below strengthen this position.

- Women substance users

The Committee should include women and girl substance users, a highly vulnerable population, in their recommendations.

- Transgender, Two-Spirit, lesbian, and bisexual women

The Committee recognizes that these classes of women face unique and compounded forms of gender-based discrimination.<sup>4</sup> The addition of the term “heteronormative” to paragraphs 23 and 24 highlights the harmful effects homophobic gender norms have on lesbian and bisexual women. The additions regarding the violence faced by transgender women also merit special emphasis. Note that amendment 96.f may be read to be trans-inclusive.

- Women experiencing intersecting forms of discrimination

It should be noted in paragraph 12 that racialized women and girls are more likely to be sexually exploited and are more likely to struggle to escape prostitution and sex trafficking.<sup>5</sup>

## **Recommend trauma-informed practices**

In the Draft, the Committee frequently recommends that States parties' anti-trafficking legislation, protocols and practices should be “gender-sensitive” and “victim-friendly”. These qualifiers could be succinctly subsumed by the phrase “trauma-informed, culturally-specific practices”. Adding this language would strengthen the Committee's calls for increased sensitivity to the experiences of disadvantaged women and trafficking victims in legal processes. This sensitivity is significant given how few women and

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<sup>3</sup> General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 31(a)(iii).

<sup>4</sup> General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 12.

<sup>5</sup> See e.g. Cheryl Nelson Butler, “The Racial Roots of Human Trafficking,” (2015) 62:6 UCLA Law Review 1464 at 1464, online: <https://heinonline.org/HOL/P?h=hein.journals/uclalr62&i=1470>.

girls report abuse and trafficking to law enforcement due to the re-traumatizing nature of existing legal processes.<sup>6</sup>

The Draft could also elaborate on supports for trafficking victims in the legal process. Consider recommending in paragraph 88, for example: testimonial aids, such as support persons or testimony behind a screen or by video, to ensure victims are not in unnecessary contact with traffickers; restraining and no-contact orders for traffickers; jury instructions about the nature of trauma and its potential impact on witness testimony, for example, its detrimental impact on memory, which has extensive empirical support; and jury instruction about the nature of addiction and chemical dependency, which is often used by traffickers as a means to maintain control over those they are exploiting.

### Eliminate criminality for compelled illegal acts

The Draft could strengthen recommendations and statements to support findings of non-criminality when trafficking victims carry out illegal, non-violent acts that are compelled by their trafficker, such as selling sex, selling drugs or begging.

We hope these recommendations are helpful for this important project and propose below specific language amendments, with additions listed in green and proposed replacements/removals listed in red.

### Specific language recommendations, by paragraph

Para.	Proposed Additions, Replacements and Removals
3.	Add “and ensure that disadvantaged women are not harmed in the course of enforcing anti-trafficking legislation” between “victims” and “as well”
*New*	Consider adding the following paragraph after paragraph 10: “Noting the compounded levels of violence and vulnerability faced by transgender women, the Committee defines ‘women’ in this General Recommendation to include all self-identified women, including transgender women. States parties are required to address the unique barriers and heightened vulnerability to trafficking faced by transgender women on account of the discrimination they face in employment, tenancy and educational and social contexts.” <sup>7</sup>
12.	Add “women in prostitution, precariously housed women, women substance users” after “displaced women and girls”
14.	Replace the second sentence in paragraph 14 with: “Recognizing the gendered nature of trafficking and its harmful consequences for women and girls in particular, the Committee acknowledges that trafficking in women and girls is a phenomenon rooted in gender-based discrimination and inequality and constitutes a gender-based violence against women.”
20.	Replace “in comparison than that” with “in comparison to that”
21.	Replace the second half of the paragraph with “Inequalities are manifested in women’s and girls’ lower access to education and vocational training opportunities, unequal asset and land ownership, lower access to credit, women’s low participation in decision-making, unequal pay for equal work, child/early and forced marriage, pervasiveness of patriarchal gender roles, the concentration of women in insecure and vulnerable work and their lack of safe work opportunities”
22.	The second half of the paragraph should read: “Additional push factors include persisting norms and stereotypes regarding expectations of female submission to male domination, the need to assert male control or power to enforce heteronormative gender roles, male sexual entitlement to women’s bodies, <del>coercion and control which drive the demand for the gender-stereotyped</del> ”

<sup>6</sup> Department of Justice Canada (2019). *Just Facts: Sexual Assault*. Research and Statistics Division at p. 1, online: <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html>.

<sup>7</sup> General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 12.

	<del>exploitation of trafficking victims, the sexualization of violence against women and girls through pornography, the acceptance of prostitution as labour by certain States, discriminatory views against impoverished and/or racialized women, and the lure of significant financial gains with few risks due to the impunity enjoyed by perpetrators</del>
23.	Add “and heteronormative” after “patriarchal”; replace “has” with “have”
*New*	Add the following two points after 25c) viii: “The number of women in prostitution arrested, detained and/or deported in relation to anti-trafficking legislation, policies or regulations;” and “The number of women in prostitution reporting instances of violence to and by the police;”
25.f)ii	Add “women in prostitution,” after “trafficking victims”
25.f)iv	Add “, including the implementation of trauma-informed training and practices for law enforcement authorities, lawyers, and judges” after “victims”
26.f)	Add “including residency obligations which disproportionately expose women migrants to violence” after “children”
28	Replace “the concentration of women in insecure and vulnerable work and their lack of decent work opportunities” with “the concentration of women in insecure and vulnerable work and their lack of safe work opportunities”
29.g)	Add “which suspend removal order processes until the completion of any proceedings arising from these mechanisms” after “abuse”
29.j)	Add “and trauma-informed, culturally-specific” after “gender-sensitive”
42.e)	Add “, including the implementation of non-punishment legislation for migrant trafficking victims whose entry or conduct while trafficked could attract criminal or administrative liability”
45.b)	Add “trauma-informed” after “efficient”
45.d)	Add “trauma-informed” after “Provide”
50.	Define “the male-centred entertainment sector” because the definition is presently unclear
66	Add “transgender women, women substance users, and women in prostitution” after “immigration status”
67.	Add “trauma-informed, culturally-specific, ” before “gender-sensitive”
*New*	Add the following point before 68.b): “Implement monitoring and evaluation mechanisms to measure the adverse collateral effects of anti-trafficking legislation and protocols on women in prostitution and migrant women;”
*New*	Add the following point before 68.b)iii: “The adverse collateral effects of anti-trafficking legislation and protocols on women in prostitution and migrant women;”
68.b)iii	Add “Trauma-informed, culturally-specific, ” before “gender-sensitive”
68.c)	Add “trauma-informed, culturally-specific” before “gender-sensitive”
68.d)	Add “including the implementation of trafficking victim non-punishment legislation or measures” after “carried out”
68.k)	Add “trauma-informed, culturally-specific, ” before “gender-sensitive”
70.	Add “Many trafficking victims are reluctant to seek support due to potential repercussions due to offences committed while being trafficked. <sup>8</sup> ” after “origin.”
71.	Add “and trauma-informed practices” after “cultural sensitivity”
72.c)	Add “trauma-informed, and culturally-specific” after “gender-sensitive”
72.j)	Add “detention for witness testimony purposes, ” after “protective detention”
72.q)	Add “women in prostitution, precariously housed women, women substance users, ” after “forcibly displaced women”
73.	Add “such as trafficking victim non-punishment legislation” after “violations”
80.	Replace “gender-competent” with “trauma-informed”

<sup>8</sup> General recommendation No. 35 (2017) (CEDAW/C/GC/35), para. 29.

81.	Add “women in prostitution, precariously housed women, women substance users and” after “trafficking victims”
84.d)	Add “trauma-informed, culturally-specific and” after “comprehensive”
84.e)	Add “trauma-informed, culturally-specific practices” after “women’s rights”
85.	Add “potential exposure to criminal or administrative liability by engaging with legal systems” after “prosecutors”; Add “and victim-blaming rhetoric” after “gender bias”; Add “and trauma-informed” after “victim-friendly”;
86.	Add “The Committee notes that women who use substances, women in prostitution, and forcibly displaced and migrant women have been disproportionately subjected to such instances of violent anti-trafficking efforts by law enforcement authorities.” after “networks.”
88.b)	Add “women in prostitution, precariously housed women, and women substance users” after “migrant women”
88.c)	Add “trauma-informed and” after “effective”
92.e)	Add “States must put clear measures in place to prevent anti-trafficking efforts from being used in a gender-discriminatory way or as part of a wider anti-migrant narrative.” after “immigration status”
96.f)	Replace “female victims of trafficking” with “trafficked women and girls”
100.	Add “trauma-informed” after “gender-transformative”