

Draft General Recommendation on trafficking in women and girls in the context of global migration: Written Comments

Introduction

These comments are submitted in response to the Draft General Recommendation on trafficking in women and girls in the context of global migration (TWGCGM). We are grateful for the opportunity to provide comments and to assist the Committee with this important endeavour.

General Points

The draft is generally 'soft' on the role of States in enabling trafficking. There are many ways in which States are complicit in trafficking, including: allowing for or creating the conditions that enable traffickers to run lucrative businesses, overlooking the links between trafficking and corruption, or leaving trafficking victims vulnerable to traffickers through restrictive immigration laws or by closing safe and legal migration routes. While the draft acknowledges the importance of a human rights and transformative approach, much of it remains focused on criminal law. There is insufficient attention to civil compensation, the intersection with sexual and reproductive health and the responsibility of non-state actors, including corporations.

We suggest the Committee references the jurisprudence on trafficking developed by the UN human rights treaty bodies and regional human rights courts, which contains important pronouncements on State responsibility (as it did in GR 35 updating GR 19). Similarly, the regional trafficking instruments should be referenced in the TWGCGM; for example, in paras 56(a), 9 and 11.

Throughout this draft, the word 'victim' is used. We recommend that the approach taken in GR 35 is adopted and where appropriate the wording should be victim/SURVIVOR.

Significantly, the draft leaves out any mention of the slave trade and to the international legal regime developed for its prohibition and for affording protection from acts of the slave trade. We strongly recommend that Dr Patricia Viseur Sellers' comments on this point are included in the draft.

Suggested Amendments

Para 2: recommend deletion of the word 'potential' before 'adverse impact'. The language here should be strengthened.

Para 3: we welcome the mention of a gender transformative approach but recommend that it be taken up and more fully integrated throughout the draft, in particular in relation to structural inequalities (paras 26 and 28) and reparations and compensation for victims (paras 93 and 96).

Para 4: We suggest that the sentence 8 lines down, beginning 'The Committee advances that a life...' should start a new paragraph. This is a really significant point. States parties are required to pursue all appropriate means to eradicate trafficking AND to ensure that laws, systems, regulations and funding are in place to make this right effective rather than illusory. We suggest adding this second point.

Para 7: This paragraph refers to the Palermo Protocol, which has a focus on criminal prosecution. We suggest that human rights law comes first in the document, which means that current para 9 should move before this paragraph in order to start with the human rights framework rather than with transnational criminal law. Add that while taking a criminal law

approach the Palermo Protocol also has a purpose 'To protect and assist the victims of such trafficking, with full respect for their human rights'

Para 9: Strengthen the human rights language *vis à vis* the crime/prosecution approach, along the lines of 'when dealing with human trafficking, States parties are required to strengthen human rights law alongside and in conjunction with the criminal law model, meaning that they have due diligence obligations towards its prevention and prosecution, as well as towards victims' protection and reparation, regardless of ratification of any of the trafficking treaties.'

Para 12: The inclusion and explanation of the gendered nature of root causes is vitally important. However, currently this is fragmented throughout the draft, notably bifurcating between non-conflict and forcible displacement (associated with conflict) situations (per para 33). This is unhelpful since there is often a continuum which forms part of the root causes of trafficking. Drawing on this continuum, women and girls are commodified, feeding the political economy of war and violence. The forms and methods of exploitation vary from one region to another, according to such factors as gendered power relations, social and gender norms and to the sectors that are perceived to 'need' exploitative activity (CEDAW, GR 30). This suggests that anti-trafficking action should always be context-oriented and target those made most vulnerable, which may vary from one setting to the other.

We suggest that the root causes also include changing contexts such as humanitarian crisis, health emergencies, conflict, exploitation of natural resources (See SR on Trafficking Report A/73/171), as contexts affecting trafficking. These contexts pose an imminent risk of trafficking and preventive measures should automatically be put in place from their outset and maintained throughout the duration of the situation and its aftermath. Further, the draft fails to mention criminal-terrorist networks, gangs and organised crime as root causes of trafficking. In addition, the issue of small arms mentioned at para 34 in the context of conflict is equally important in non-conflict situations. Trafficking of drugs and arms create routes where women and girls are also trafficked and small arms facilitates threatening women and girls, making them vulnerable to trafficking.

Para 13: does NOT relate to root causes of trafficking rather it is about the phenomenon of trafficking, the actors, perpetrators, jurisdictions, etc. and could better fit between paras 2 and 3 as an intro to trafficking. We advise the root causes section address the ways in which women and girls are made vulnerable to being trafficked, including violence, structural discrimination and lack of access to ESC rights, for which transformative equality (*Para 3*) is needed.

Para 14: include also that trafficking of women and girls is gender-based violence **per se** entailing giving effect to the entire canon of human rights for addressing gender-based violence against women. It may also lead to or encompass other forms of gender-based violence.

Para 15: We consider that this paragraph addresses the international legal framework and should therefore sit before para 10. Currently it confuses different issues that need to be separated. First, there are direct State obligations to prohibit torture and to eradicate and suppress forced prostitution and trafficking. Secondly, there are due diligence obligations on the State to ensure that trafficking is prevented, investigated, prosecuted and punished. On the State's due diligence obligations for the actions of non-state actors, the Committee might cite *Linda Lopez Soto v Venezuela* (Inter-American Court of Human Rights, 26 September 2018). On the obligations of States of origin and destination to investigate and on cooperation between States, the Committee might cite and take into account *Rantsev v Cyprus and Russia* (European Court of Human Rights, Application no. 25965/04, 7 January 2010). Thirdly, the paragraph should address international criminal law separately since this in our view does not reinforce States' due diligence obligations. Individual criminal responsibility and State responsibility should not be conflated in one sentence. Fourthly, this paragraph and the draft more generally should ensure that as well as the prohibition on torture, other rights especially relevant to

trafficking should be expressly mentioned, including the right to life, the right to a dignified life and the prohibition on slavery and sexual slavery under international law.

Paras 16 and 17: heading on the scope of the application of the Convention is currently under VI on root causes. This should be moved to III – the legal framework. Paras 16 and 17 are unrelated to the root causes and are about legal obligations and should be moved to the legal framework section.

Para 18: include being within domestic servitude and cross-refer to GR 26 (2008). Note that it has been over 10 years since GR 26 (which did not address trafficking) but that domestic servitude is recognised as form of trafficking and slavery or slavery like practices. Cross refer also to paragraph 47 of the draft and include in para 29 (c).

Para 23: on child/forced/temporary marriages is important. We welcome its inclusion but recommend the inclusion of the following. When child/early marriages and forced marriages break down, women and girls often face stigma from their communities, cannot return and are left with little to no alternatives. This makes them vulnerable to being trafficked, re-trafficked or forced into prostitution. It is not only the child/early marriages, but the consequences thereof which make women and girls further vulnerable to human rights violations, including trafficking.

Para 25: we strongly recommend that para 25 on statistical methodologies is moved. It does not belong under the root causes. We submit that all recommendations relating to data collection are grouped together and at the end, along with dissemination as in GR 35 where data collection is set out at the end under *Coordination, monitoring and data collection*, in para 48. Similarly para 53 where the first recommendation relates to data collection and research; reorganise by setting out first the State's responsibilities, and place data collection together at the end.

Para 26: recommendations for tackling root causes should thus commence this section.

Para 26(b): insert: 'safe, secure and decent', before the word 'employment'. e) suggest 'combating the practice of child and forced marriage AND ITS CONSEQUENCES'.

Para 27: Replace 'discourage' with stronger language, such as 'eliminate' or 'eradicate'.

Para 29 (d): We welcome the inclusion of information and communications technologies. This is an important contemporary way in which organised networks are carrying out sexual exploitation of trafficking victims as in cybersex dens in South East Asia. We consider that the responsibilities of technology and communications companies should be addressed separately. See for example the Lanzarote Convention (Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse) para 26 which sets out corporate liability.

Para 31(d): the word 'repatriation' should be deleted and replaced with 'voluntary return'.

Para 33: This section links forced displacement only to conflict. But forced displacement has other causes including climate stresses such as desertification, droughts and food insecurity. As set out above (Para 12), we consider that section F. on forcibly displaced women and girls should be included in the root causes section. Paragraph 33 should be developed to include abduction from schools, recruitment and forcible recruitment of women and girls into armed groups including for cooking, sexual exploitation, forced marriage and sexual slavery, as well as combat activities. It is further important to underline the continuum of trafficking in the conflict cycle (cross refer to CEDAW's approach in GR 35 and GR30).

Para 34: welcome the inclusion of small arms, but it should be made clear that this also affects post-conflict and non-conflict contexts. The Committee should therefore make a recommendation under the root causes section in relation to disarmament. Further this paragraph should be expanded to include the war economy and the political economy of violence [See paper by Chinkin and Fernández attached, pages 5, 8, 9, 12].

Para 35: suggest expanding the section on health crises and explain how this directly impacts trafficking trends, including border closures in times of pandemic.

Para 39: add 'Yet the number of women and girls granted refugee status on the basis of trafficking remains low'. There is also a problem that there is no identification, no registration of people or early warning signs of disappearance of women and girls from refugee and IDP camps. IDP camps are trafficking hotspots but this aspect is missing from the draft, including the dangers to women within these places. While the Palermo Protocol is about trafficking across borders, this draft addresses global migration of which IDP and refugee camps form part. Further, the draft seems to focus narrowly on international migration and insufficiently on internal migration. States should be reminded of their obligations to internal trafficking victims.

Para 41: Following 'resolution 1325' add 'and the follow up resolutions'. After the word 'conflict' the words 'and its aftermath' should be added.

Para 46: this is one of two mentions of children within the draft (with para 24). This is a vital issue. There is mention of the children of trafficking victims and that those children are also trafficking victims. Please see the work of [UNICEF](#) in this regard. There is a lack of child rights perspective in general in the draft. Nor is there any mention of the separation of mothers who are victims of trafficking from their children, which is a problematic practice in some States and it is important that the rights of both are protected. These children become vulnerable to re-trafficking when they are displaced from their parents. **Para 47** while entitled 'Women and girls' lacks focus on the particular vulnerability of girls, and the reparations to which girls are entitled – for example their right to education. Specific mention should be made of State obligations to identify child trafficking victims.

Para 49: mentions the sexual and physical abuse that women face. This is welcome but we suggest the draft generally needs to address sexual and reproductive health, access to safe abortion and other SRH services as vital for women who have been trafficked. Access to contraception and choices over their rights to bodily autonomy (i.e. decisions not to have an abortion) should be explicitly addressed. Health care is addressed at para 67, which is vitally important, but that para does not include safe and dignified conditions for childbirth or forced pregnancy.

Para 50: 'male centred entertainment sector' is unclear. Recommend using 'prostitution', 'brothels' etc ('brothel' is used in para 66). Add to 'no or few labour protections', bond servitude, lack of decent and safe working conditions and that trafficking victims are often forced to work off a 'debt'.

Para 51: Migrant women also face indirect discrimination from migration laws which sometimes have requisites such as a mandatory minimum income in order to obtain a visa. Since women are often employed in low-waged and insecure employment this makes it incredibly difficult for some women to satisfy these criteria.

Para 55: We recommend changing 'home countries', which is not a legal term and could be confusing. The term 'country of origin' is used elsewhere and could be used here.

Para 58(b): We welcome the mention of agriculture. However, the draft could include an emphasis here or in a separate section on the role of businesses, corporations and companies that exploit [seasonal workers](#), sometimes under [bilateral government arrangements](#). **Para 62** addresses corporate supply chains, which is welcome. But a separate section on non-state actors would help to clarify the corporate responsibilities more broadly with respect to trafficking, not only those relating to supply chains. For example, all companies and corporations, including hotels, taxi firms, should ensure that they are aware of their responsibilities to ensure that they are not participating in human trafficking. This is particularly important in the case of hotels where girls and women are taken in situations of internal trafficking, including by

high net worth individuals. **Para 58(f)** could also mention women migrants' rights to free association and freedom of expression.

Section V. Para 66: This is a very important section. As it does not appear until late in the draft we suggest it is moved further up.

Para 68: is very important. We suggest adding the State obligation to ensure that early identification also takes place in IDP camps, for internal trafficking victims/survivors and that the measure can be triggered or requested by the victim/victim's lawyer or NGO and is not only triggered or conducted by the authorities, which seems to be suggested in 68(b). In many countries it is not only State actors who carry out this role but civil society organisations which provide early detection. This paragraph should make it clear that identification and referral mechanisms should come with legal guarantees including the right to appeal the decision, the right to have a lawyer at interview and the right to obtain information regarding the referral and identification procedures.

Para 69: replace 'international law' with 'human rights law'. It is important that a sentence is added to the end of this paragraph which states that everyone has basic human rights entitlements, including to housing, food, shelter, adequate standard of living and protection from gender-based violence, even before they are identified as a victim/survivor of trafficking.

Para 72(f): include specialised units within existing shelters which are safe and appropriate for trafficking victims who are mothers accompanied by children. Similarly, these should be appropriate for girls who are trafficked.

Para 73-74: these are crucial paragraphs and could be moved much further up the draft.

Para 77: This section on victims' access to justice largely addresses criminal prosecutions, which are low in number. In reality, it is often other measures and other forms of access to justice which are important for trafficking victims. This section should take into account CEDAW's GR 33 and ensure that administrative, labour and immigration law are all addressed appropriately.

Para 82: Gender stereotyping should form its own paragraph.

Para 88(f): This should state 'if the women or girl so requests'. Victims may not wish legal proceedings to occur in their home district due to confidentiality and privacy concerns. It is therefore important that this is nuanced and a caveat inserted with respect to anonymity. More generally, trafficking victims should have a right to anonymity in legal proceedings to protect their identity from wider publication.

Para 91(c): is very welcome but is expressed in a procedural rather than substantive manner. Suggest wording that makes it clear that criminal records incurred as a result of their trafficking are cleared rather than recourse for this to occur. (See concluding observations, CEDAW UK (2019) for language).

Para 96: consider changing title to reparation, compensation and rehabilitation. This section should be strengthened beyond criminal justice and suggest structural and transformative remedies. See the recommendations set out in the IACtHR's judgments in [Linda Lopez Soto v Venezuela](#), [González et al. \("Cotton Field"\) vs. Mexico](#), and [Women Victims of Sexual Torture in Atenco v. Mexico](#), and the SR on Trafficking report [A/HRC/41/46](#).

Para 97: This is welcome but confiscations should occur from the outset and then ring-fencing should occur before the money disappears.