

## **JOINT WRITTEN SUBMISSION TO THE UN CEDAW COMMITTEE CONCERNING THE DEVELOPMENT OF THE FIRST DRAFT OF THE GENERAL RECOMMENDATION ON TRAFFICKING IN WOMEN & GIRLS IN THE CONTEXT OF GLOBAL MIGRATION**

### **I. INTRODUCTION**

This written submission is the outcome of the 2<sup>nd</sup> Global Convening on Trafficking in Women in the Context of Global Migration organized by the International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) and the Global Alliance Against Traffic in Women (GAATW) in collaboration with FEMNET from 2 to 4 December 2019, in Nairobi, Kenya. The Global Convening in Nairobi built on the analyses shared and recommendations developed at the 1<sup>st</sup> Global Convening on Trafficking organized by IWRAP Asia Pacific and GAATW in January 2019 in Bangkok. The Bangkok Global Convening underscored the significance of foregrounding the voices of global south women and of criminalised and marginalized groups of women as a way of challenging evidence uninformed, hegemonic responses to the grave human rights violation that is human trafficking. Consequently, at the Nairobi Global Convening 32 representatives from the women's rights, labour rights, migrant rights and sex workers movements primarily from the African continent continued the consultative process of providing evidence and information to the ongoing development of a CEDAW general recommendation on trafficking in women and girls in the context of global migration. More significantly, they co-created the Feminist Anti Trafficking Manifesto.

The recommendations outlined below were developed by the participants at the Global Convening to feed into the draft CEDAW general recommendation. They complement the [recommendations](#) arising out of the Bangkok Global Convening on Trafficking in the context of Global Migration.

### **II. STATE OBLIGATIONS TO DEVELOP AND IMPLEMENT A SOCIAL JUSTICE AND HUMAN RIGHTS BASED RESPONSE TO TRAFFICKING IN THE CONTEXT OF GLOBAL MIGRATION, AT THE NATIONAL LEVEL**

The following recommendations are being made in light of CEDAW Article 2 and CEDAW General Recommendation 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

1. Revise laws concerning trafficking and migration in line with constitutional obligations ensuring that human rights principles and the interests of marginalized populations are at the centre. Ensure coherence and consistency between different laws so that there are no contradictory provisions that have an adverse human rights impact on marginalized groups.
2. Ensure that law enforcement agencies and justice systems interpret and implement the laws correctly and consistently and in line with human rights principles. [*CEDAW Articles 1, 2 and 15*]

3. Undertake initiatives to ensure that people are well aware of their rights and entitlements under the laws and have access to legal services. There should be a focus on changing the motivations and perceptions of the public to understand trafficking as a social justice and human rights issues. The role of the media should be explored so that they are not permitted to discriminate against and endanger trafficked persons, especially through misrepresentations of trafficked persons. [*CEDAW Article 5*]
4. Ensure that sufficient resources (institutional resources, budgetary allocations, social protection schemes etc) are available so that laws are implemented appropriately for the benefit of trafficked persons. [*CEDAW Articles 2 and 13*]
5. Regulate private actors, including recruitment agencies, employers, transnational companies, suppliers in global value chains, etc. so that they can be held accountable for human rights violations. Ensure that these regulations are properly enforced and not circumvented. [*CEDAW Articles 2 and 15; CEDAW General Recommendations 33 and 35*]
6. Support trafficked persons to acquire skills and economic independence in the location of their choice, based on their wishes. [*CEDAW Article 11*]
7. Establish a referral mechanism for support services for trafficked persons provided both by the State and by CSOs. A robust social protection scheme should be part of the support services available to trafficked persons.
8. Ensure appropriate allocation of resources to countries' missions abroad and provide competent services to their citizens in need.
9. Establish appropriate monitoring and evaluation mechanisms to make sure the laws are properly implemented, and that authorities are properly trained to carry out the monitoring.
10. Put in place a comprehensive data collection system that collects data disaggregated by age, gender and sectors of trafficking. Such a system should guarantee privacy of the data collected. States should collaborate with impacted communities, particularly sex workers concerning data collection.

### **III. STATE OBLIGATIONS TO DEVELOP AND IMPLEMENT A SOCIAL JUSTICE AND HUMAN RIGHTS BASED RESPONSE TO TRAFFICKING IN THE CONTEXT OF GLOBAL MIGRATION, AT THE INTERNATIONAL LEVEL:**

1. Recognize the impact of immigration laws and ameliorate the conditions of migrants with particular attention to sexual and reproductive health and rights. [*CEDAW Articles 3, 7, 11 and 12*]
2. Every point of entry should provide information and services, including comprehensive sexual and reproductive health and rights for all migrants irrespective of citizenship or documentation status. [*CEDAW Articles 3, 9 and 12*]
3. Ensure that bilateral agreements between States adequately specify measures necessary to protect the rights of migrants in both destination countries and sending countries equally. Current frameworks focus on State obligations of sending countries and do not

adequately highlight the obligations of destination countries. [*CEDAW Articles 2 and 3. CEDAW General Recommendation No. 33, para 11*]

4. Ensure that bilateral agreements between States specifically provide for collaboration in investigations particularly in cases concerning cross border migration.
5. Establish an independent labour response office for migrants in all countries where individuals can seek support regardless of citizenship and/ or documentation status. [*CEDAW General Recommendation No. 33, paras 10 & 11*]
6. Ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 as well as regionally applicable treaties concerning international migrants.
7. Refrain from processes and procedures that increase migrant's vulnerability, like border externalization.
8. Anchor all anti-trafficking initiatives in social justice and not criminal justice approaches. [*CEDAW Articles 15 and 5*]
9. Expressly recognize the substantial contributions of migrants in their chosen country. [*CEDAW Articles 13 and 7 and CEDAW General Recommendation 26 on the rights of women migrant workers*]
10. Monitor and regulate financial flows and create mechanisms to confiscate the proceeds of trafficking, while ensuring sex workers earnings are not targeted and make proceeds of trafficking available to victims in the form of compensation.
11. Develop and implement robust international law and policy frameworks that curb tax evasion by corporations and individuals, resulting in diminished national budgets and leading to adverse impacts on women's rights.
12. Collaborate on the use of extradition treaties. Human Rights Treaty Bodies, including the CEDAW Committee should monitor the use of extradition treaties between States and their human rights impact on women and migrants.
13. Expressly recognize good practices concerning anti-trafficking initiatives at the national level, through the practice of the UN Human Rights Treaty Bodies particularly the CEDAW Committee.
14. Ensure coordination, cooperation and complementarity between UN Human Rights Treaty Bodies, including the CEDAW Committee, concerning the development of standards on trafficking in the context of global migration. This relates in particular to the ongoing drafting of the CEDAW general recommendation on trafficking in women & girls in the context of global migration.

#### **IV. STATE OBLIGATIONS TO ADDRESS STRUCTURAL AND SYSTEMIC DISCRIMINATION TO REDUCE WOMEN'S VULNERABILITY TO TRAFFICKING IN THE CONTEXT OF MIGRATION**

In line with the CEDAW principles of substantive equality and non-discrimination, States must undertake the following measures to address the structural and systemic discrimination faced by women that may result in increasing their vulnerability to trafficking in the context of migration:

1. Eliminate discrimination against women and migrants in all its forms. (*CEDAW Article 2; CEDAW General Recommendation No. 28, para 12*). Remove restrictions on women's mobility and employment. (*CEDAW General Recommendation No. 26, paras 24a, 26a; Report of the Special Rapporteur on the human rights of migrants, A/HRC/41/38, para 80a*). Treat all workers (nationals and migrants) equally; remove sponsorship and visa systems that tie migrants to one employer. (*Report of the Special Rapporteur on the human rights of migrants, A/HRC/26/35, para 90*)
2. Promote campaigns to eliminate stigma, discrimination and violence against sex workers, including from the police and other state actor (*CEDAW, Article 11 (1) (a-f); CEDAW/C/KAZ/CO/5, 28 (f)*) and migrants (*CEDAW General Recommendation No. 26; Report of the Special Rapporteur on the human rights of migrants, A/HRC/41/38, para 80m*). Promote access to information on safe labour migration and rights (*CEDAW General Recommendation No. 26, para 24.b.(i), Report of the Special Rapporteur on the human rights of migrants, A/HRC/26/35, para 78*)
3. Recognise sex work and domestic work as labour (*Thailand Migration Report 2019, page xiii, also CEDAW General Recommendation No. 35, para 29: c.i*)
4. Ratify, implement and monitor relevant international legal instruments such as ILO Convention C 189: domestic workers convention, Convention C029: forced labour convention, Convention C190: Violence and harassment convention.
5. Introduce unconditional universal basic income (*ILO C 189 and Recommendation 201*)
6. Facilitate the establishment of services such as P&G292 in Amsterdam where people can receive assistance with healthcare, protections etc. regardless of their migration status. Ensure access to and affordability of public services and social welfare provisions, such as healthcare, child and elderly care, unemployment benefits. (*CEDAW, Article 13 (1); Report of the Special Rapporteur on the human rights of migrants, A/HRC/41/38, para 80 j and r*)
7. Refrain from prosecuting trafficked persons for crimes they were forced to commit as a result of their victimization.
8. Reform the EU Dublin III agreement in Europe to remove the need for migrants to return to their original country of entry.
9. Raise awareness among employers and businesses, instead of solely focusing such efforts on women and migrants, on national labour laws, provisions for rest, personal documents, etc., and their obligations when employing migrants, in order to make them more sensitive and responsive to the rights of migrant workers.
10. Enforce ethical and fair recruitment practices. (*Report of the Special Rapporteur on the human rights of migrants, A/HRC/41/38, para 80 p*)
11. Ensure support to CSOs to empower / educate/ inform women on the issue of trafficking through the use of accessible language.
12. Ensure better collaborations between state authorities and sex worker and migrant worker groups and CSOs in counter-trafficking measures. (*CEDAW General Recommendation No. 35, Section B, para 30; CEDAW General Recommendation 33 Section F para 39 (b)*).

Finance community led, especially sex worker-led trafficking prevention and support projects.

## **V. STATE OBLIGATIONS TO ENSURE IDENTIFICATION OF TRAFFICKED PERSONS, INVESTIGATION, PROSECUTION AND ACCESS TO JUSTICE, IN CASES CONCERNING TRAFFICKING IN THE CONTEXT OF GLOBAL MIGRATION**

The following recommendations are being made in light of CEDAW Article 15 and CEDAW General Recommendation No. 33 on women's access to justice.

### *Identification of Trafficked Persons*

1. Ensure establishment and implementation of accessible, fair, transparent and prompt identification procedures, based on clearly identified protocols. This includes ensuring that border security agencies are not involved in implementing identification procedures as this may give rise to a conflict of interest. Additionally, the identification procedures must provide for a right of appeal.
2. Establish an effective and prompt referral mechanism to accompany the identification procedures in order to ensure that all trafficked persons receive the assistance and support they are entitled to.
3. Establish mechanisms so that expertise and insights of trafficked persons can feed into identification procedures. For example, the National Society for the Prevention of Cruelty to Children (NSPCC) in the UK have a survivors committee that are not part of formal decision-making processes but feed in important information.
4. Allow for identification of trafficked persons to be performed by all institutions, including non-government organizations, who may come into contact with trafficked persons, rather than a single body (e.g. police or court).
5. Ensure that trafficked persons are involved in the training of relevant authorities. In the US, survivor led trainings have been very impactful. Further, the trainings should be inclusive both in terms of thematic purview, i.e. addressing trafficking for all purposes and be responsive to the needs of women in all their diversity.
6. Ensure that trainings are team-focused and rotating. This is to overcome the challenge of loss of institutional memory when relevant authorities who have been trained on certain aspects of responding to trafficking leave the organization.
7. All identification procedures and subsequent referral mechanisms should include individuals irrespective of their documentation status. Documented and undocumented individuals should both be able to come forward and access support. An essential part of this is putting in place firewalls between immigration enforcement and public service provision, and thereafter informing communities regarding the firewall. [*CEDAW Concluding Observations, Austria, CEDAW/C/AUT/CO/9, A/73/178/Rev.1, 75h*]
8. Ensure that identification procedures do not replicate societal biases and gender and racial stereotypes. [*CEDAW, Article 5*]

### *Investigation and prosecution.*

1. Ensure that every criminal investigation in a trafficking case is accompanied by a mandatory and simultaneous financial investigation, with a view to identifying - prior to conviction of the accused – the assets that can be used for compensating the trafficked persons (*Report of the Special Rapporteur on trafficking in persons, especially women and children A/HRC/17/35, page 70*). Doing so will not only enable States to identify the criminal networks involved in perpetrating the crime but also find evidence to support the trafficked persons' case. In particular, States must create specialized teams within the police capable of undertaking such investigations. Initially, States may rely on the expertise of private financial investigation firms to build capacity of relevant State authorities.
2. Ensure that criminal investigations target serious criminal activities as well as low-level perpetrators. This is critical to ending impunity in the context of trafficking cases.
3. Ensure that no trafficked person is forced one way or another to engage in or pursue criminal justice procedures. Trafficked persons should never be detained and access to their rights should never be dependent on their cooperation with law enforcement. The interests of the trafficked person must be taken into account in the process of determining to proceed with prosecution in the public interest.
4. Create enabling conditions for trafficked persons to be able to meaningfully participate freely in legal proceedings through ensuring protection of the rights to work, shelter and movement during the pendency of the legal proceedings and beyond.
5. Provide competent legal advice, including legal aid to trafficked persons. [*CEDAW, Article 15; CEDAW General Recommendation 33, CEDAW/C/GC/33*]
6. Provide robust witness protection including a guarantee of non-criminalization. This is particularly relevant in cases where sex workers are witnesses or are reporting crimes. Their criminalization for offences such as soliciting or living on the earnings of from sex work jeopardizes their further involvement in the case and in the sex worker community playing a critical role in identifying and reporting trafficked persons.
7. Develop and strengthen linkages with civil society organizations to continue sensitization efforts on prosecutions and service available for trafficked persons. Some States have successful models of utilizing NGO liaison officers.
8. Ensure independence of police investigations through putting in place strong anti-corruption measures. States should have a zero-tolerance policy for crimes of trafficking but also for abuse of power by those investigating, prosecuting and adjudicating on crimes of trafficking. The anti-corruption measures should include robust monitoring systems.

### *Access to justice and assistance, protection*

1. Ensure that the right of access to justice is provided to all trafficked persons on a non-discriminatory basis, particularly regardless of migration documentation status, citizenship status and the form or purpose of trafficking.

2. Ensure establishment of safe reporting channels supported through trained lawyers and paralegals and linked to CSOs.
3. Create enabling conditions for trafficked persons to access justice through provision of support services including shelter, subsistence allowances to cover the costs of meals, transport, visa renewals, and comprehensive health services, including mental health services and counselling. Ensure that such services are trauma informed and centre the needs of trafficked persons. [*CEDAW General Recommendation No. 35*]
4. Provide robust funding for provision of services and implementation of institutional frameworks for protection.
5. Ensure trafficked persons have the full right to reparation and remedies, including compensation. [*UN General Assembly resolution 60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*]
6. Ensure that protection of trafficked persons does not result in violation of their right to work. No one should be imprisoned for their protection. [*CEDAW Articles 5 & 11*]

## **EXPLANATORY NOTE:**

This written submission is the outcome of a Global Convening on Trafficking in Women in the context of Global Migration, organized from 2 to 4 December 2019 in Nairobi, Kenya. The Global Convening was attended by the following CSO representatives, who jointly developed the recommendations set out in the first part:

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4. Borislav Gerasimov, Global Alliance Against Traffic in Women International Secretariat (GAATW- IS)
5. Eefje de Volder, La Strada International
6. Elizabeth Akol, Health Options and Rights Alliance for Key and Vulnerable Populations (HORAK)
7. Elizabeth Kemigisha, FIDA Uganda
8. Felogene Anumo, AWID
9. Grace Kamau, Africa Sex Workers Alliance (ASWA)
10. Irene Mwenda, African Women's Development and Communication Network (FEMNET)
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16. Nkirote Laiboni, Independent Expert
17. Paul Adhoch, TRACE
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19. Pooja Badrinath, Sexual Rights Initiative (SRI)
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25. Sarah Bessel, Human Trafficking Legal Center
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27. Shristi Kolakshyapati, Women's Rehabilitation Center (WOREC)
28. Susana Fried, CREA
29. Wahyu Susilo, Migrant Care
30. Wangari Kinoti, Action Aid