



A CRITIQUE OF CEDAW GENERAL RECOMMENDATION NO. 38 ON TRAFFICKING IN WOMEN & GIRLS IN THE CONTEXT OF GLOBAL MIGRATION

This document presents a substantive critique of CEDAW General Recommendation no. 38, grounded in intersectional feminist principles. It aims to provide an analytical framework to all those engaged in the global fight against trafficking, particularly representatives of social movements conducting advocacy for the progressive interpretation and domestic implementation of international human rights standards on trafficking.

The critique is set out in the form of annotations highlighted in red, amber, and green, made to the text of the General Recommendation. Annotations in **red** signify severe regressions in CEDAW standards that will have adverse human rights impacts on rights-holder groups such as sex workers or trafficked persons; annotations in **amber** signify ambiguous provisions that may contribute to adverse human rights impacts; and annotations in **green** signify progress.

The analysis set out in the pages below is based on lessons we have learned from listening to and working in close partnership with the sex workers' rights movement. We are also grateful to partners in the labour rights, migrants' rights and women's rights movements who have accompanied us in our efforts to hold the line against regression of human rights standards concerning trafficking and attempt to bring transparency and accountability to standard-setting processes. Despite the setback that this General Recommendation presents, we are hopeful that moving forward we will be met with more allies who will join us in uplifting voices and narratives that have been discounted by this document and advocate for progressive, cohesive and rights-affirming legal responses to trafficking.

Committee on the Elimination of Discrimination against Women

General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration

I. Introduction

1. Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) sets out States parties' legal obligation to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". Despite the plethora of existing anti-trafficking legal and policy frameworks at the national, regional and international levels, females continue to comprise the majority of detected victims of trafficking across the world and perpetrators enjoy widespread impunity.

2. In the Committee's view, this situation persists due to a lack of appreciation of the gender dimensions of trafficking overall and in particular, trafficking in women and girls who are exposed to different types of exploitation, including sexual exploitation. A gendered analysis of the crime reveals that its root causes lie in sex-based discrimination, including the failure to address the prevailing economic and patriarchal structures and the adverse and gender-differentiated impact of States parties' labour, migration and asylum regimes that create the situations of vulnerability leading to women and girls being trafficked.

3. Globally dominant economic policies further exacerbate large-scale economic inequality between States and between individuals that manifests as labour exploitation, including denial by corporations, public procurement officials and employers of an obligation to ensure that there are no trafficked persons in their supply/production chain. Globalized macroeconomic and political factors, including the privatization of public goods, deregulated labour markets, the shrinking of the welfare state and austerity measures as part of structural adjustment policies and aid conditionality, often exacerbate unemployment and poverty and produce the economic injustice disproportionately impacting women. Often accompanied by other economic policies, such as reduction in government spending on social services and the privatization of public goods and services, regressive tax shifts and labour market reforms, all severely hamper states' abilities to implement social policies that lay the basis for dismantling structural inequalities, including gendered inequalities and violations of women's human rights in different spheres. Reduced social expenditures furthermore shift the responsibilities for basic social services from the government to women. Those factors reinforce, and are perpetuated by, discriminatory cultural and social norms that engender oppression of different groups of women.

II. Objectives and scope

4. The Committee is mandated by article 21 of the Convention to develop general recommendations with the aim of clarifying States parties' obligation to combat discrimination against women and girls. The Committee advances that a life free from being trafficked must be recognized as a human right and appropriate conditions must be created for that right to be fully exercised by women and girls. States parties must pursue all appropriate means to eradicate trafficking and exploitation of prostitution to ensure that laws, systems, regulations and funding are in place to make this right effective rather than illusory. The Convention's provisions are mutually reinforcing to provide complete protection. This recommendation links article 6 of the Convention with all other articles and the Committee's existing jurisprudence.

5. This general recommendation contextualizes the implementation of States parties' obligations to combat all forms of trafficking as stipulated in Art.6 of the Convention in the context of global migration. Pathways of human trafficking often align with mixed migration flows. The Committee highlights the particular vulnerability of smuggled women and girls

to being trafficked and underlines the conditions created by restrictive migration and asylum regimes pushing migrants towards irregular pathways.

6. This general recommendation affirms as a priority duty of States, both individually and collectively, to prevent women and girls from exposure to risk of being trafficked. States are also obliged to discourage the demand that fosters exploitation and leads to trafficking. It sets out practical guidance on implementing anti-trafficking interventions that are based on a gender transformative and intersectional approach, with the focus on realizing women's and girls' human rights as a strategic priority for achieving sustainable development. It recalls States parties' obligations under international law, including the Committee's jurisprudence, to identify, assist and protect trafficking survivors, to prevent their revictimization, and to ensure their access to justice, and punishment of perpetrators.

7. The Committee acknowledges that the causes, consequences and experience of trafficking differ for the girl child, for adolescent girls and for adult women. It highlights the additional vulnerability of girls due to the intersecting characteristics of sex and age, recalling that child victims are entitled to enhanced substantive and procedural protections under international law. The Committee encourages States parties to address the full spectrum of these differences, ensuring age-appropriate and child-centred anti-trafficking responses, where appropriate.

III. Legal framework

8. Article 6 of the Convention is based on Article 8 of the 1967 United Nations Declaration on the Elimination of Discrimination against Women, which provides that 'All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation prostitution of women'. International law on this question was codified and developed by the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others. This legal basis requires that Article 6 be read as an indivisible provision, which links trafficking and sexual exploitation.

9. While trafficking is defined as a criminal offence in international law, States parties' primary obligation is to address trafficking in a way that respects, protects and fulfils the human rights of persons, particularly of marginalized groups, as set out in the core United Nations human rights treaties, drawing from the Universal Declaration of

This paragraph is arguably the most regressive provision of this general recommendation as it not only situates the legal basis of the GR in the anti-human-rights, racist, colonial, patriarchal and archaic 1949 Convention on Trafficking, but also vitiates 51 years of progress on legal standard setting on trafficking achieved by the Palermo Protocol which, despite its shortcomings, recognises that trafficking occurs for a wide variety of purposes not limited to exploitation of prostitution or other forms of sexual exploitation.

The UN Special Rapporteur on Violence against Women, its Causes and Consequences succinctly summed up the problems with the 1949 Convention on Trafficking in her report on voluntary migration and trafficking in women:

"The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the 'evils of prostitution'. As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights violations." [Violence against women, its causes and consequences - Report of the Special Rapporteur, E/CN.4/2000/68, 29 February 2000]

In addition to its anti-human-rights stance, the 1949 Convention has its underpinnings in the racist and colonial lineage of the international treaties enacted in the early 20th century to address the problem of 'white slavery'. [Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21st century, Cherif M. Bassiouni, Daniel Rothenberg, Ethel Higonet, Cynthia Farenga, Augustus Sol Invictus, Dans Revue internationale de droit pénal 2010/3-4 (Vol. 81), pages 417 to 491. Available at: <https://www.cairn.info/revue-internationale-de-droit-penal-2010-3-page-417.htm>]

Human Rights. The 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking elaborated by the Office of the United Nations High Commissioner for Human Rights, and its 2010 Commentary, further provide an important soft-law framework for integrating a human rights-based approach in all anti-trafficking interventions.

10. The Committee affirms that discrimination against women and girls includes gender-based violence, the prohibition of which has evolved into a principle of customary international law. Recognizing the gender-specificity of the forms of trafficking in women and girls and its consequences, including harms suffered, the Committee acknowledges that trafficking and exploitation of prostitution in women and girls is unequivocally a phenomenon rooted in structural sex-based discrimination, constituting gender-based violence and often exacerbated in the contexts of displacement, migration, the increased globalization of economic activities, including global supply chains, the extractive and offshore industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism.

11. The internationally-accepted legal definition of trafficking in persons is set out in the United Nations Trafficking Protocol:

Article 3.

1. “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

2. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

12. The Committee emphasises that the realities of trafficking in women and girls extend beyond the scope of the United Nations Trafficking Protocol. It points to the recent trends and the role of information communication technology, social media and chat apps in the recruitment of women and girls and their exploitation. It further acknowledges that the definition of trafficking in persons extends beyond situations where physical violence has been used or where the victim’s personal liberty has been deprived. Its examination of States parties’ reports reveal that the abuse of a position of vulnerability and the abuse of power are the most common means used to commit the trafficking crime and that victims are often subjected to multiple forms of exploitation.

13. Combatting trafficking in women and girls in the context of global migration requires engagement of the larger protection framework stemming from international humanitarian law, refugee law, criminal law, labour and international private law, the statelessness, slavery and slave trade conventions and international human rights law instruments. The Convention reinforces and complements the regional and international law regime for trafficking victims, particularly where explicit gender equality provisions are absent from international agreements. The Committee recognizes that women and girls retain concurrent protection of these legal instruments.

14. Trafficking and sexual exploitation in women and girls is a human rights violation and can be a threat to international peace and security. The positive obligation of States parties to prohibit trafficking is reinforced by international criminal law, including the Rome Statute of the International Criminal Court which recognizes that enslavement, sexual slavery and enforced prostitution may be crimes within the jurisdiction of the Court.

15. Obligations flowing to non-State actors to respect the prohibition of trafficking also arise from the peremptory norm (*jus cogens*) prohibiting slavery, the slave trade and torture, noting that in certain cases trafficking in women and girls may amount to such rights violations.

16. Strategic global action by States to combat trafficking, especially in women and girls, must happen within commitments set out in the Global Compact for Safe, Orderly and Regular Migration, the 2030 Agenda for Sustainable Development, as well as implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons and Security Council resolutions.

17. States parties bear a legal obligation to respect and ensure the rights laid down in the Convention to anyone within the power or effective control of that State party, even if not situated within its territory. The direct obligation of States parties to prevent, investigate, prosecute and punish acts of trafficking in women and girls and offer redress to victims extends to the acts or omissions of all perpetrators, including private persons, family members and intimate partners, State-mandated actors and officials, organizations or businesses as well as non-State actors including armed terrorist groups.

Paragraph 14 addresses trafficking and sexual exploitation in women and girls in conjunction, without substantiating why there is a deviation from Article 6 of CEDAW which refers to '*Trafficking and exploitation of prostitution*'. Further, there is no substantiation provided for departing from the standard set in Article 6 nor is it clear why the general recommendation seeks to address 'sexual exploitation in the context of global migration'. This is puzzling because the concept note and draft general recommendation preceding this document, present no information regarding the intention of the CEDAW Committee to address either exploitation of prostitution or sexual exploitation as part of this general recommendation. The arbitrary inclusion of the term 'sexual exploitation' in various places in the general recommendation completely nullifies the consultative process carried out by the CEDAW Committee between 2018 and 2020, which was based on the assumption that the general recommendation seeks to address trafficking in women and girls in the context of global migration and not trafficking and sexual exploitation in women and girls in the context of global migration.

IV. Root causes of trafficking in women and girls

18. Identifying, addressing and eliminating the following root causes are key to States parties' obligations to prevent trafficking and sexual exploitation in women and girls in the context of global migration: (a) systemic gender-based discrimination creating the economic and social injustice experienced disproportionately by women and girls; (b) situations of conflicts and humanitarian emergencies, including, consequent displacement; (c) discrimination in migration and asylum regimes; and, (d) the demand that fosters exploitation and leads to trafficking.

Paragraph 18 introduces the state obligation to prevent sexual exploitation in women and girls in the context of global migration. As before, there is no substantiation provided for the deviation from the standard set in Article 6 or the concept note setting out the scope of the general recommendation.

Furthermore, the formulation of paragraph 18d is inconsistent with the internationally agreed language of the UN Trafficking Protocol, which in Article 9 (5) obliges states to "*discourage the demand that fosters [...] exploitation [...] that leads to trafficking.*" In other words, in international law it is exploitation that leads to trafficking – not demand. The GR's incomprehensible departure from a carefully crafted provision in international law risks creating even more confusion about an already confusing and misunderstood term.

19. Criminal law alone is unable to address or redress the crime of trafficking due to uneven harmonization of laws, including the definition of trafficking both between countries and within countries, complexity of the financial operations, powerlessness of justice systems which are often corrupt, underfunded and under resourced to fight against powerful trafficking nets. An effective anti-trafficking response ensuring women and girls are able to exercise their fundamental rights must therefore engage all substantive provisions of the Convention read within the international human rights treaty framework.

Paragraph 19 represents a step forward as it recognises the limits of criminal law in addressing trafficking and invokes all the substantive articles of CEDAW to provide a comprehensive response to trafficking.

Note that this progress, however, is overturned in subsequent recommendations seeking prosecution of 'those on the demand side', a legal measure that is documented to increase the vulnerability of sex workers to violence including through abuse of the criminal justice system and whose weaknesses this paragraph points out. Evidence of this has been established through research carried out in [Canada](#), [France](#) and [Sweden](#).

A. Socio-economic injustice

20. Trafficking in women and girls is rooted in sex and gender-based discrimination, gender-based structural inequality and the feminization of poverty. Significantly, women and girls most vulnerable to being trafficked belong to marginalized groups whose life experience is marked by serious rights deprivation. These include: women and girls living in rural and remote areas, indigenous and ethnic minority communities, those with disabilities, with an irregular migration status, as well as those who are displaced, stateless or at risk of statelessness, refugees, asylum-seekers (including those whose claims have been rejected), living in or coming from conflict or post-conflict settings; and, for girls, without care or in alternative care. These groups often experience social, political and economic exclusion in the form of being impoverished, uneducated or under-educated, unregistered or undocumented, unemployed or underemployed, carrying the burden of household and childcare responsibilities, restricted in their access to State benefits, protection and services, having experienced intimate partner and domestic violence, abuse and neglect in their family environment, care institutions or subjected to child and forced and servile marriage or deprivations due to widowhood. These situations can be aggravated by the acquisition of an impairment or a severe illness as consequence of trafficking including sexual exploitation.

21. Women and girls continue to be the prime targets of traffickers for specific forms of exploitation due to pervasive and persistent gender and age inequalities resulting in an economic, social and legal status that is lower in comparison to that which is enjoyed by men and boys. Violations of all Convention rights may be found at the root of trafficking of women and girls and need to be addressed as part of a gender-transformative approach that empowers women and girls by promoting their civil, political, economic, social and cultural rights in line with Sustainable Development Goals 1, 3, 4, 5, 8, 10, 11, 13 and 16.

B. Discrimination in migration and asylum regimes

22. Migration is a constitutive element of modern society and can be empowering for women if they are able to migrate and work in conditions that respect their dignity. While it presents new social and economic opportunities for many women migration may also place their human rights and security at risk, particularly if compelled to travel through irregular channels and/or result in an irregular migration situation. Women and girls face an increased risk of being trafficked at all stages of the migration cycle, in transit, in reception and accommodation facilities, at borders and in destination countries. Upon return they may experience reprisals and revictimisation.

23. While States have a sovereign prerogative to manage their borders and regulate migration they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. That includes transparency and accountability in the ways

States govern migration and provide safe pathways guaranteeing the human rights of women throughout all stages of migration.

24. Sex-specific or discriminatory migration and asylum policies establishing measures such as increased border control, refusal of entry, pushbacks, expulsion or detention limit the movement of women and girls fleeing from crises and conflict zones. This heightens their vulnerability to all forms of exploitation, particularly at points of transit, not least due to an increased need to use the services of human smugglers or other types of underground or criminal networks in order to move, both internally as well as internationally to evade border controls. Girls unaccompanied or separated from their families or other support structures due to displacement are particularly vulnerable to being trafficked.

25. The Committee reaffirms that displacement has specific gender dimensions and the Convention applies at every stage of the displacement cycle, during flight, settlement and return. It has recognized that gender-based violence against women and girls is one of the major forms of persecution experienced by women and girls that may be grounds for granting refugee status and asylum, and/or residence on humanitarian grounds. Trafficking in women and girls breaches specific provisions of the Refugee Convention and should therefore in specific cases be recognized as a legitimate ground for international protection in law and in practice. Furthermore, women and girl refugees are highly vulnerable to trafficking and are in need of international protection, especially against refoulement.

26. Gender-neutral provisions in States' migration policies contribute to limiting women's access to safe and regular migration pathways and to regular and decent job opportunities in transit and destination countries. Women's ability to migrate is further restricted by gender-based stereotypes, discriminatory laws, discrimination and exploitation in recruitment, lack of available decent work, limited reliable information on migration. 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 difficult for some women to satisfy these criteria.

27. Visa regimes may be responsible for creating an economic and legal dependency on an employer or spouse, creating the conditions for exploitation and for sponsors to operate with impunity. Temporary or seasonal work in which migrant women are often engaged may not offer pathways to more regular, long-term or permanent employment and often does not offer unemployment protection, healthcare and access to other gender-responsive social protection and essential services. Notably, sex-specific migration bans or restrictions, designed to 'protect women from trafficking', often heighten the risk of women becoming victims of trafficking as they seek alternative ways to migrate.

Paragraph 27 represents progress in CEDAW standards as it expressly recognises the role of discriminatory visa regimes that contribute to increasing women's vulnerability to trafficking.

28. A disproportionate number of migrant women are engaged in informal and precarious employment, particularly in sectors categorised as "low-skilled" such as care, domestic, manufacturing services. In these sectors, sex-specific migration rules and policies intersect with racial discrimination to perpetuate sex-based stereotypes about what constitutes "women's work" and discrimination against women. These gender-segregated labour markets do not offer decent and safe working conditions as they are either part of the unregulated informal economy or, where regulated, provide fewer protections than national standards. Women migrants, in particular domestic and farm workers, may be confined to their place of work and have little access to information about their rights and entitlements thereby exposing them to severe human rights violations.

C. Demand that fosters exploitation and leads to trafficking

In this section title, the general recommendation once again deviates from the international law standard set in the UN Trafficking Protocol which sets out that exploitation, not 'demand', leads to trafficking.

29. Strategies aimed at preventing trafficking must take into account demand as a root cause. Failure to recognize the demand is acknowledged to be one of the barriers to States addressing human trafficking. Demand in the context of trafficking is often shaped by desire for financial gain, discriminatory attitudes, including cultural attitudes, and beliefs. Women may be preferred for certain forms of exploitation because they are perceived as weak and less likely to assert themselves or to claim the rights to which they are entitled. Certain ethnic or racial groups may be targeted for trafficking-related exploitation on the basis of racist or culturally discriminatory assumptions relating to, for example, their sexuality, and servility or work capacity. The need to address demand for certain forms of trafficking is particularly urgent.

30. Sexual exploitation persists due to States parties' failure to effectively discourage the demand that fosters exploitation and leads to trafficking. Persisting norms and stereotypes regarding male domination, the need to assert male control or power, enforce patriarchal gender roles, male sexual entitlement, coercion and control which drive the demand for sexual exploitation of women and girls. Massive financial gains with few risks due to the impunity are still widespread. Paragraph 5 of Article 9 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime obliges states to adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. The need to address the demand that fosters sexual exploitation is especially important in the context of digital technology which exposes potential victims to increased risk of trafficking.

31. In the context of labour as a form of trafficking in women and girls, demand for trafficking persists due to insufficient regulatory environment. Where workers are organized and where labour standards for wages, working hours and conditions, and health and safety, are monitored and enforced, where economic and social rights, as well as changes to tax laws so States can finance the public services that women need are adequately implemented, demand for the labour or services of trafficked persons is markedly lower.

32. Medical advancements in organ transplantation give a chance of surviving to critically ill individuals. However, the dramatic scarcity of human organs, on the one hand, and a failure address the legal responsibility of those in the demand and supply chain encourage unregulated and often enforced organ removals.

This note concerns paragraphs 30 & 31. Paragraph 30 postulates somewhat obviously that the patriarchy drives the demand for sexual exploitation of women and girls. By deviating from the scope of Article 6 while the meaning of the term 'sexual exploitation' remains cloudy, the general recommendation opens the doors to causing acute harm to sex workers. Misinterpretation and misapplication of this provision is likely to grossly increase the vulnerability of sex workers to human rights abuses.

Further, it is unclear why the general recommendation distinguishes between the driving factors for trafficking for labour exploitation in the sex industry and other labour sectors (paragraph 31). Patriarchal attitudes and gender stereotypes are the cause of devaluation of women's work which leads to trafficking and labour exploitation. Equally, the absence of regulatory frameworks, which clearly define what sexual exploitation is without conflating it with sex work, contributes to creating impunity for violation of women's rights in this context.

It is unclear what gender specific dimensions of trafficking are sought to be addressed by this provision. The absence of any context setting out the gender dimensions of this rights violation or its relation to trafficking renders this paragraph superfluous.

D. Situations of conflict and humanitarian emergencies

33. The obligations of States parties do not cease in periods of states of emergency resulting from conflict, political events, health crises or natural disasters. Women and girls are in increased situations of vulnerability to gender-based violence including trafficking when they are not able to meet their basic livelihood needs or face economic desperation, which is often exacerbated in these contexts.

34. Trafficking in women and girls is exacerbated during and after conflict and humanitarian emergencies owing to displacement, the breakdown of political, economic and social structures, instability and insufficient governance, including the absence of the rule of law, increased militarism, the availability of small arms, weakening or loosing community and family ties, high incidence of widowhood and the “normalization” of gender-based violence, including conflict-related sexual violence, as an aggravating factor of pre-existing structural gender discrimination against women and girls.

35. Financial flows to certain terrorist groups remains a critical component of trafficking especially sexual exploitation. During humanitarian emergencies governments are often required to divert resources including the use of policing and social services, making it easier for traffickers to hide their operations and rendering victims increasingly invisible as well as making it more difficult for victims to seek protection, services, assistance and support.

E. The use of digital technology in trafficking

36. Digital technologies have opened new possibilities to bring positive impact on the society. At the same time, they are posing new security challenges at both individual and state levels. The use of electronic currencies offers tools to hide personal information such as identification of involved parties and location, and allow to make anonymous payments without disclosing the purpose of transaction. All of this facilitates those involved in trafficking. Demand channels through social media, dark web and messaging platforms provide easy access to potential victims thus increasing their vulnerability.

37. The use of digital technology for trafficking poses special problems during global pandemics. Under the COVID-19 State parties face growths of trafficking in cyberspace: an increased recruitment for sexual exploitation on-line, an increased demand for child sexual abuse material and technology facilitated child sex trafficking.

V. Assistance and protection for women and girl victims of trafficking

A. Victim identification

38. International human rights law imposes positive obligations on States to identify victims of trafficking. This duty is placed firmly on States irrespective of the lack of self-identification by a victim. Victims are often hidden in non-public areas such as private residences, isolated factories and farms, and brothels. Front-line professionals often lack the required training to adequately understand, identify and appropriately respond to all types of victims, including to survivors of sexual exploitation and intersecting forms of exploitation. . In mixed migration flows, hotspots lack appropriate and confidential spaces to carry out identification performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support. Survivors are often reluctant to self-identify and disclose their traffickers for fear of retaliation, due to lack of information on the crime and where to report it, and fear of engaging with authorities, including being detained, prosecuted, punished and deported.

B. Victim assistance and protection

39. Trafficking victims have a special status and a right to special assistance and protection measures provided by the State. Long term, needs-based, comprehensive victim-centered assistance and protection measures are often lacking in anti-trafficking responses due to poor victim identification and insufficient definition and implementation of trafficking in national law.

40. Trafficking victims are in need of immediate availability and quality support services, that must be inclusive and accessible, including access to information on their rights, medical, psychological, social and legal services available to them and how to access them as well as to safe and appropriate accommodation. Yet they often face restricted access to essential services, both in the place in which they are identified and in their place of origin for reasons of: cost and language delivery of services, lack of gender or cultural sensitivity and trauma-informed practices; failure of first responders to conduct appropriate risk assessments and referrals; fear of being forced into a rehabilitation program or cooperation with law enforcement authorities in the prosecution of traffickers; fear of prosecution for crimes committed as a consequence of having been trafficked or for immigration offences. Adequate assistance must be provided to women and girls with disabilities who are a particularly vulnerable group to be trafficked.

41. States parties are obligated to protect victims of trafficking in persons, especially women and children, from revictimization. This includes guaranteeing trafficking victims' protection against forcible return.

VI. Victims' access to justice

42. Trafficked women and girls, including those who do not hold an immigration status, must be ensured access to justice on the basis of equality and non-discrimination including the prosecution of their perpetrators and provision of remedies. However, existing justice systems may be more likely to violate women's rights than to protect them, including by subjecting victims to criminalization, stigmatization, revictimization, harassment and possible retribution.

A. Remedies for victims of trafficking

43. Article 2(b) of the Convention obligates States parties to provide appropriate and effective remedies, including restitution, recovery, compensation, satisfaction and guarantees of non-repetition, to women whose Convention rights have been violated. Victims of trafficking often encounter significant difficulties in claiming compensation and other forms of reparation, including damages, for the harm suffered for reasons including where: it is made conditional upon cooperation with law enforcement authorities; victims do not have access to high-quality, gender-sensitive, trauma informed legal aid and representation; residency permits are tied to criminal justice processes and repatriation occurs prior to seeking or obtaining civil remedies; the victim bears the burden of proof in civil claims; survivors of trafficking are not identified as victims of a crime for the purpose of reparations owed under law; or where monetary compensation is unavailable or the proceeds of crimes are not redistributed to victims.

B. Investigations, prosecutions and punishment of perpetrators

44. Obstacles to prosecution include lack of special court procedures to accommodate victims' needs, deficiencies in the quality of justice systems including gender bias and victim-blaming rhetoric in courts resulting in discriminatory judgments or decisions, explicit or implicit social acceptance of gender-based violence against women, delays and excessive length of proceedings, corruption of State officials and their implication in crime and ignorance of demand for all forms of exploitation, including sexual exploitation.

45. The Committee acknowledges the complexity and the high level of skill required to investigate and prosecute allegations of trafficking in women and girls that may implicate criminal networks operating transnationally. The transnational nature of human trafficking and migration requires cooperation by all affected countries and their participation in an effective and appropriate international response to protect the rights of victims. States parties have a duty to accept and facilitate the voluntary return of their nationals trafficked abroad.

46. The Committee condemns the use of anti-trafficking interventions to justify violence against specific groups of women, particularly in the case of violent raids and entrapment operations by law enforcement authorities conducted with a view to dismantling trafficking networks.

VII. Recommendations

A. Addressing the root causes of trafficking in women and girls

47. **States parties must work towards mobilization of public resources and strengthening of public services in areas that support achievement of gender equality, promotion of women's and girls' human rights and their sustainable development in order to reduce the risk of factors leading to trafficking. Full achievement of the Sustainable Development Goals (SDGs) is essential to address the factors that heighten the risks of trafficking, in particular: achieving gender equality and empowering women and girls; promoting peace, justice and strong institutions; reducing inequalities; end poverty in all its forms; ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for women and girls; ensuring healthy lives and promoting the well-being of women and girls of all ages; ensuring decent work and economic participation for women and girls; and promoting climate change measures in gender equality policies.**

(i) Addressing socio-economic injustice

48. **Ensure women's and girls' full, effective and meaningful participation, especially of victims of trafficking, those at risk of trafficking, communities affected by trafficking and/or anti-trafficking measures, in all levels of decision-making and at all stages of efforts to prevent and combat trafficking, in the design of human rights-based gender-sensitive responses, including in the development, implementation, monitoring and evaluation of anti-trafficking legislation, policy and programmes, continuing implementation of the Convention and the United Nations Trafficking Protocol and as an essential component of the peace-making, stabilization and reconstruction process in line with Security Council resolution 1325 (2000) and the follow up resolutions.**

49. **Adopt a gender-transformative approach in order to dismantle the structural and systemic conditions that deprive women and girls of their fundamental rights, the consequence of which places them in situations of vulnerability to all forms of trafficking and sexual exploitation**

50. **Reduce the risk of trafficking by eradicating pervasive and persistent gender inequality resulting in an economic, social, and legal status of women and girls that is lower in comparison than that which is enjoyed by men and boys by adopting economic and public policies that prevent a lack of sustainable livelihood options and basic living standards.**

51. **Eliminate social structures which limit women's autonomy and access to key resources which increases the risk of being lured by promises of a means of escape from impoverished circumstances, including lower access to education and vocational training opportunities, asset and land ownership, access to credit, women's low participation in decision-making, unequal pay, child/early and forced marriage, pervasiveness of patriarchal gender roles, the concentration of women in insecure and vulnerable work and their lack of decent work opportunities.**

52. **Enact legislation to protect women and provide effective assistance to victims of domestic abuse, review family law, address socio-cultural practices, including intra-**

family arrangements which increase exposure of women and girls to trafficking and sexual exploitation.

53. Eradicate patriarchal norms and values formalised in legislation, including family laws, which facilitate trafficking for child/early and forced marriage. Measures must be adopted which prevent families from agreeing to the indefinite or temporary “marriage” of their daughter in exchange for financial gains. Take into consideration that so-called “women shortages” due to family planning policies in some countries has exacerbated this situation.

54. Strengthen implementation of a labour rights framework:

(a) **Introduce, strengthen and enforce employment legislation designed to protect all women workers, including migrant workers, irrespective of their documentation status, level of skill or the sector in which they work, or whether they are in the formal or informal economy, duration of their employment, and to minimize the opportunities for exploitation by providing very clear protections, including localized living wage requirements, overtime pay, health and safety, social protection, and decent working conditions, equal pay for work of equal value, particularly in unregulated, informal or unmonitored economic sectors that rely on migrant labour;**

Paragraph 54 sets out the most promising provisions of this general recommendation. By calling on States to enact comprehensive labour law protections guaranteed to women irrespective of their migration status or their location in the informal or formal economy, as well as recognising the necessity of ensuring corporate accountability for rights violations in the context of trafficking, this paragraph lays the foundation for addressing the structural causes of trafficking embedded in the neoliberal economic model. This provision should be utilised by all workers in informal and precarious work, including those in the sex industry, to seek strong labour law protection of their rights.

(b) **Ensure adequately resourcing, increase the number and strengthen the capacity, mandate and investigative powers of labour inspectors to undertake gender-responsive, safe, ethical and confidential inspections and to systematically recognize and report breaches of labour laws and presumed cases of trafficking in women and girls uncovered during both routine and unscheduled inspections, particularly in highly-feminized sectors and including of migrant workers’ seasonal and informal workplaces and accommodation, agricultural farms, and, where appropriate, private households;**

(c) **Establish firewalls among reporting of presumed trafficking arising from labour inspections, victims’ use of public services, including healthcare services’ or other monitoring mechanisms and immigration and/or criminal law enforcement for illegal labour;**

(d) **Encourage businesses to establish safe and anonymous grievance mechanisms for all workers, in cooperation with workers representatives, that are gender-sensitive, to ensure their labour rights are upheld and can be accessed without fear of retaliation;**

(e) **Enforce adequate legal sanctions against employers engaging in abusive employment and labour practices;**

(f) **Provide assistance and training to businesses to ensure compliance with human rights and labour standards, particularly targeting industries known to be hubs, entry-points or channels for trafficking;**

55. Provide special economic and social support to disadvantaged groups of women and girls such as those in extreme rural and urban poverty, stigmatized and racialized groups, sexual abuse survivors and women with disabilities.

(ii) Addressing trafficking through promoting a safe migration framework

56. Establish a gender responsive safe migration framework to protect women and girl migrants, including those with an irregular migration status, from violations of their human rights at every stage of migration, by:

(a) Supporting increased access to pathways for safe and regular migration and to avoid exploitation, including sexual exploitation, considering the specific needs of women and their children, and ensuring the rights of the migrant populations within these pathways to protected formal employment opportunities, legal pathways to education and vocational training, both in their countries of origin and destination;

(b) Facilitating independent attainment of official identification and travel documents for safe passage of women wishing to emigrate without requiring them to obtain permission from a spouse or male guardian;

(c) Applying a robust gender analysis to all migration policies and programmes, including those relevant to employment, labour rights, detention, the provision of passports, visas and residence permits, and bilateral and multilateral agreements such as readmission agreements;

(d) Increasing access to family reunification with a focus on psychosocial and economic dependency, and in consideration of different types of families;

(e) Upholding the rights of children, guaranteeing their right to be heard and considering unaccompanied girls as especially vulnerable and requiring additional protection.

57. In line with the Global Compact on Migration, the Committee encourages States parties to:

(a) Participate in regional processes and sign bilateral agreements with destination countries for employment to ensure coordination between States parties to strengthen cooperation on the regulation of working conditions in compliance with international labour and human rights standards which ensure the protection and promotion of the rights of women migrant workers;

(b) Ensure that representatives of workers are involved in the development of such agreements;

(c) Establish mechanisms in the country of destination to deal with rights violations of women migrant workers during employment, in particular to report exploitation and claim unpaid wages and benefits;

(d) Ensure that diplomatic missions, labour and economic attaches and consular officials are trained on responding to cases of trafficked migrant women workers.

58. Ensure that visa schemes do not discriminate against women and facilitate or result in their trafficking;

(a) Remove any restrictions on women's employment to specific job categories or excluding female-dominated occupations from visa schemes;

(b) Repeal requirements for workers to undergo mandatory testing for pregnancy and eliminating deportation on the grounds of pregnancy or diagnosis of HIV;

(c) Revise the conditions for granting residence permits to women to mitigate consequences of dependency on their spouses.

59. Regulate and monitor labour recruiters, intermediaries and employment agencies:

(a) Support their commitment to move to ethical recruitment measures such as the ILO's Fair Recruitment Initiative, and Know Before You Go campaigns and services for prospective migrant workers, also involving the consular networks of countries of origin;

(b) Establish an enforcement mechanism to ensure that the same contracts are used in the destination country and in workers' countries of origin;

(c) Invalidate contracts where undue pressure was applied to the worker during the process of recruitment;

(d) Prosecute and punish their engagement in exploitative recruitment processes, including for acts of violence, coercion, abuse of power, deception or exploitation, such as intentional provision of misleading information and documentation, the confiscation of passports, other identity documents or work permits by any person other than the document holder and law enforcement authorities, the charging of illegal recruitment fees to workers or deposit requirement, or for issuance of visas, passports, transportation tickets or participation in pre-departure trainings.

60. Mitigate risks of dependency and vulnerability of migrant women workers in relation to their employers:

(a) End discriminatory conditionalities in recruitment, including the practice of making the migration status of workers conditional on the sponsorship or guardianship of a specific employer, such as “tied visas”;

(b) Enforce the right for migrants to seek alternative employers and sectors of employment without seeking their existing employers’ permission or leaving the country;

(c) Discontinue the practice of security bond conditions on employers of migrant workers to ensure they ‘control and supervise’ their foreign employee;

(d) Ensure that employer-provided accommodation and food are reasonably priced and that costs are not automatically deducted from their pay;

(e) Facilitate the inclusion of migrant women workers into the labour market and providing trainings for improving their skills.

(iii) Addressing the demand that fosters exploitation and leads to trafficking

61. Discourage the demand that fosters exploitation of prostitution and leads to human trafficking.

In paragraph 61, the general recommendation makes the first and only mention of a measure to discourage the demand that fosters exploitation of prostitution and leads to human trafficking. The scope of this measure is not at all clear and the consequent ambiguity creates the possibility of it being misinterpreted and misapplied to conflate trafficking and sex work, and thereby cause grave harm to sex workers.

62. Implement educational, social or cultural measures aimed at targeting potential users.

63. Prevent and address Trafficking in all business operations, public procurement, and corporate supply chains by:

Paragraph 63 (a) is yet another vaguely formulated provision that could cause significant harm to sex workers. The throwaway mention of persons involved in the demand side of trafficking is liable to be misapplied to criminalise sex workers and their clients.

(a) Investigate, prosecute and convict all perpetrators involved in the trafficking of persons, including those on the demand side;

(b) Provide, by law, a civil cause of action in both the country of operation and the country of corporation, for workers in global supply chains who suffer harm due to non-fulfilment of mandatory due diligence laws;

(c) Encourage businesses and public agencies to ensure that a dedicated regulatory body in which workers and their representatives are represented has the power and resources to proactively investigate and monitor compliance with mandatory due diligence laws and sanction non-compliant entities;

(d) Conducting, and/or funding, awareness raising campaigns to inform consumers and customers of products and services that may involve exploitative labour, including unethical recruitment practices and slave labour, and where to report suspicions of criminal activities.

64. Discourage the demand for organ trafficking through effective regulation of altruistic organ matching organizations, addressing, as much as possible, for donor wait

times, as well as monitoring of hospitals for illegal transplantations and identification of clandestine makeshift operating rooms; spread awareness of health risks related to trafficked transplant organs.

(iv) **Addressing trafficking in the context of conflict and humanitarian emergencies**

65. Integrate into conflict and disaster-risk reduction, preparedness and response plans, existing and new risk factors of women and girls to trafficking, including sexual exploitation, ensuring they are provided with comprehensive protection and assistance.

66. Address issues of vulnerability that displaced families experience, including economic insecurity, access to quality education and livelihoods and legal identity documentation, stereotypes about gender roles, harmful masculinities and unequal power relations, perceptions about family honour and girls' protection from being trafficked for sexual purposes.

67. Prevent trafficking and sexual exploitation in all accommodation facilities for displaced women and girls, including by training facility staff to identify potential victims, and ensuring women's and girls' security by establishing single-sex accommodations and facilities, patrolling of police officers, including female officers, ensuring adequate lighting and access to sanitary facilities, and establishing resource centres for women and girls in their vicinity.

68. Adopt a zero tolerance policy on trafficking and sexual exploitation forced labour, slavery, slavery-like practices based on international human rights standards, which addresses groups such as national troops, peacekeeping forces, border police, immigration officials and humanitarian actors and other staff members of international organizations and international civil society organizations.

69. Ensure access to complaint procedures and redress mechanisms in cases of human rights violations.

70. Addressing the gendered impact of international transfers of arms, especially small and illicit arms, including through the ratification and implementation of the Arms Trade Treaty.

(v) **Addressing the use of digital technology in trafficking**

71. Call for responsibility of social media and messaging platform companies for exposure of women and girls to trafficking and sexual exploitation as users of their services. Require that these companies define the relevant controls to mitigate these risks and put in place the appropriate governance structure and procedures which will allow them to be reactive in their response and provide the relevant level of information to the concerned authorities. Require also that companies use their existing capabilities in big data, intelligence artificial and analytics to identify any pattern that could lead to trafficking and identification of the involved parties, including the demand side.

72. States parties should call for the existing digital technology companies to increase transparency. At the same time, States parties should aim to initiate and create, for example as part of the central banks' systems, platforms for the use of electronic currencies that are based on disclosed user information (beneficial owner, ordering customer and services or good related to the transactions). Ensure that anti-money laundering laws are effectively implemented in order to disincentivize the use electronic currencies which are based on user anonymity.

73. Initiate proactive identification of production of on-line sexual abuse material during the COVID-19 and afterwards; cooperate with technology companies in creating automated tools to detect online recruitment and identify traffickers; strengthen partnerships between public and private sectors to address pandemic-related increases of this crime.

74. Call for information sharing between digital interactive platforms in order to facilitate international cooperation in combating trafficking and sexual exploitation and assist law enforcement efforts. Improve data collection, ensure that data is up to date and provide reliable information sharing.

(vi) Awareness-raising

75. Provide accurate information to members of the public particularly targeting women and girls in situations of disadvantage, those living in remote and border areas and those *en route* or in a destination context, about their rights and the means and motivation to avoid human traffickers, including through evidence-informed, accessible communication campaigns based on a clear understanding of community risk factors and the barriers faced by community members in protecting themselves and others from trafficking, particularly in the context of migration, so they can identify and report potential traffickers and access service providers when they feel vulnerable to trafficking or exploitation.

B. Upholding victims' rights

(i) Victim identification

76. Address the adverse collateral effects of anti-trafficking efforts by ensuring that innocent women and girls are not arbitrarily arrested, abused and falsely charged, particularly women from marginalized groups and women in prostitution, including through any raids conducted by law enforcement authorities with a view to dismantling trafficking networks.

By qualifying rights protection for women in the context of anti-trafficking efforts with the word 'innocent', the general recommendation reinforces patriarchal and discriminatory gender stereotypes.

77. Create national guidelines which are updated on a regular basis for early identification, provision of services and referral of victims or presumed victims that are benchmarked against international standards, integrating a rights-based, victim-centered, age- and gender-sensitive and trauma-informed approach and which is uniformly applicable at international borders and throughout the territory of the State party by all relevant state and non-state actors.

78. Identification, access to assistance and referral is to be performed by multidisciplinary teams including professionals from all relevant fields, the composition of which can be adapted to the circumstances of the case, and should not be exclusively led by law enforcement or immigration authorities or being linked to the initiation or outcomes of criminal proceedings but based on the personal and social vulnerabilities of victims and potential victims.

79. Provide updated and consistent training to professionals from all relevant fields on the causes, consequences and incidence of trafficking in women and girls and different forms of exploitation, and on the content and effective implementation of national guidelines on victim identification, provision of services and referral systems to facilitate the safe, confidential and non-discriminatory screening and referral of victims, including non-nationals, after obtaining their informed consent.

80. Strengthen the health systems' capacities for early identification and intervention for women and girls, irrespective of migration status, at risk of trafficking and for trafficking victims, ensuring confidential and safe access to free healthcare, based on trauma-informed and survivor-centered care as informed by international standards.

81. Collaborate with civil society organizations including through strengthening their human, technical and financial resources, to ensure that victims of trafficking are identified, assisted and protected at an early stage, including through the operation of mobile units, and the availability of safe disclosure and safe spaces, particularly targeting sites where displaced and migrant women and girls are accommodated, registered or detained.

82. Assess the impact of the national legal and policy framework, particularly with respect to the application of immigration, asylum, labour, health, education and social protection frameworks on trafficking victims, to ensure they do not adversely affect victim identification, assistance, protection and social inclusion/reintegration, and do not increase women and girls' vulnerability to trafficking, re-trafficking, detention, forced return or other forms of harm.

83. Address disincentives for victims to seek assistance including through establishing a firewall between immigration enforcement, the criminal justice system and all care and support services, and ensuring that victims of and those vulnerable to trafficking can safely go to the authorities, without fear for negative consequences, such as prosecution, punishment, detention or deportation for immigration, labour or other offences related to their being a victim of trafficking.

(ii) Application of other protection frameworks

84. Improve cross-border collaboration, coordination and knowledge exchange among border control, law enforcement, child and social protection authorities and non-governmental organizations, to provide displaced and migrant women and girls with appropriate and sufficient reception facilities and services by reflecting gender and trauma-sensitivity in arrangements for arrivals at land, air and sea borders, including the provision of safe accommodation and adequate treatment taking into consideration the need for skilled personnel to adequately screen and identify for potential victims of trafficking as well as ensuring the necessary measures are in place to respond to the specific protection needs of victims of trafficking, including access to consular protection.

85. Ensure that all governance measures taken at international borders including those aimed at addressing irregular migration and combating transnational organized crime are in accordance with the principle of *non-refoulement* and the prohibition of arbitrary and collective expulsions.

86. Build the capacity and facilitate the periodic updated training of law enforcement staff, including police, immigration and border control officers, as well as professionals working in and around areas where women and girls facing or at risk of distress migration and displacement are located on their role in ensuring adequate protection to this group, by establishing procedures to identify possible trafficking victims, including those suspected of association with or returning from territory under the control of non-state armed groups.

87. Apply a due diligence framework to the risk assessment conducted by multidisciplinary teams for the identification and protection of trafficked women and girls from further rights violations. This includes:

(a) Providing access to statelessness status determination procedures and granting legal status and protection to stateless women and girls, including protection against forcible return to their country of origin;

(b) Developing regular coordination between the asylum procedures and the trafficking protection systems such that when both grounds are recognized, women and girls have access to both refugee status and protection as victims or potential victims of trafficking;

(c) Carrying out screenings of displaced and migrant women and girls suspected of breaches of national labour, immigration or criminal laws, and those held in places of deprivation of liberty, particularly in detention centers for undocumented migrants;

(d) Establishing indicators to identify trafficked women and girls, especially sexually exploited women and girls, in areas affected by armed conflict to ensure trafficking victims are not inadvertently placed in detention or removal proceedings;

(e) Providing refugees, including victims of human trafficking in armed conflict, with the option to document their cases for future legal action to hold traffickers accountable.

88. Recognize that in specific cases trafficking in women and girls may be considered gender-related persecution, with the result that victims or potential victims are informed of and effectively enjoy the right of access to fair, efficient, trauma-informed and clear asylum procedures without discrimination or any preconditions, regardless of country of origin or mode of entry into the State party or their participation in criminal proceedings. Interpret the ground for persecution of victims under the 1951

Convention in line with the UNHCR Guidelines on international protection: No. 1 (Gender), No. 7 (Trafficking), No. 8 (Child Asylum Claims) and No. 9 (diverse SOGI).

89. States parties are obligated to protect victims of trafficking, especially women and girls, from revictimization. This includes:

(a) **Guaranteeing trafficking victims protection against forcible return to their places of origin where:**

(i) **This is not an appropriate durable solution for victims due to fear of being re-trafficked or experiencing stigma, threats, intimidation, violence and retaliation;**

(ii) **They may face persecution and/ or violations of the right to life or the prohibition against torture;**

(b) **Protecting children born of trafficking from re-victimization and stigmatization, including through clarifying and securing the legal status of undocumented children, providing comprehensive support and ensuring they are not separated from their mothers.**

90. **Girls who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken including a risk and security assessment to ensure a safe return, the availability of long-term reintegration support in the country of return, comprising of access to healthcare, education and/or vocational training, and protection from discrimination and re-trafficking.**

91. **Improve cooperation with receiving states to ensure the voluntary repatriation of citizens and permanent residents who have been trafficked abroad where they wish to return, facilitated through standardized processes and effective communication between authorities and officials involved in this process, ensuring that the receiving country complies with international standards for protection of and assistance to victims of trafficking.**

(iii) **Non-criminalization and non-conditionality**

92. **Based on human rights and humanitarian grounds, provide access to free legal aid, grant where possible a reflection and recovery period and residence permit pending formal identification to enable trafficked women and their dependents to take part in recovery and reintegration measures, that must be inclusive and accessible, that are not made conditional on their participation in the criminal justice process or the obtaining of a conviction against traffickers, including appropriate individualized, gender- and child-sensitive and trauma-informed emergency and longer-term access to accommodation, welfare benefits, educational and employment opportunities, high quality medical care, including sexual and reproductive health services and counseling, no-cost issuance of official identification documents, family reunification measures and to asylum procedures where relevant. Grant girl victims an indefinite period residence permit in line with their best interests to access a durable solution, which is sustainable and secure in the long-term.**

93. **Provide immediate access to a sufficient number of adequately funded, well-equipped, shelters, and separate units for victims of sexual violence and enforced prostitution within shelters and crisis centres, which are safe, accessible, and appropriate for trafficked women and girls, including women accompanied by children, with specially trained staff that focus on the provision of tailored assistance to victims according to standard operating procedures ensuring their dignified treatment in a confidential manner.**

94. **Ensure that assistance services and social inclusion programmes for all women impacted by trafficking are provided on an informed and voluntary basis and victims, neither their children, are not forcibly kept or detained in shelters or “rehabilitation” programmes against their will, in compulsory protective detention, including for witness testimony purposes. In the exceptional case that limitations are placed on women’s freedom of movement for security considerations such limitations should be restricted to the shortest period.**

95. Support community-based programmes for reintegration and social inclusion of women and girl victims of trafficking, including access to safe and affordable independent accommodation, creation of a work quota for victims in state agencies, and inclusion of victims in the list of priority groups for access to social programs, and access to the redemption of tax debts.

96. Ensure that the principle of the best interests of the child is a primary consideration in decision making for all girl victims of trafficking, including non-nationals, that their right to be heard is respected, they are guaranteed access to developmentally- and age-appropriate protection and support services that are integrated, interdisciplinary, and include individualized case management, to family tracing, and reunification of unaccompanied and separated children, and that children are never criminalised or detained. Carry out age assessments only as a measure of last resort and in a manner that is multi-disciplinary, scientifically and culturally appropriate, child- and gender-sensitive and, for all unaccompanied or separated girls, overseen by a qualified guardian.

97. Counter stereotypical attitudes and discrimination towards women and girl victims of trafficking and sexual exploitation, particularly migrants, by providing trauma informed, gender- and child-sensitivity training for individuals tasked with providing assistance and protection services, including to relevant local and State level authorities, public and private recruitment agencies and employers, the police, border officers, immigration, embassy and consular authorities, labour inspectors, social workers, health-care providers and child protection agencies.

98. Ensure that all women and girl victims of trafficking, without exception, are not subject to arrest, charge, detention, prosecution or penalty or are otherwise punished for irregular entry or stay in countries of transit and destination, absence of documentation, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims of trafficking. The non-punishment principle must:

The section addressing non-criminalisation and non-conditionality potentially sets out the most progressive provisions in the general recommendation as it gives full recognition to the reality that the criminal justice system in most instances leads to further victimisation of trafficked women. It also sets out comprehensive measures that take into account the range of factors that impact women's right of access to justice in the context of trafficking.

- (a) Be enshrined in legislation and implemented through proper training to ensure responders are able to identify trafficking victims for such relief;
- (b) Not compel victims to provide evidence or testimony in exchange for immunity from prosecution redress or services;
- (c) Provide recourse for trafficking victims to clear their criminal records in cases where they have been convicted of crimes that were committed as a direct consequence of being a victim of trafficking.

(iv) **Right to information about rights and legal assistance**

99. Provide all women and girls with accessible information in a format they can understand about their rights under the Convention and its Optional Protocol, the legal provisions protecting them from trafficking and exploitation and corresponding remedies to complain about violations of those rights, how to gain access to them, their entitlements to continued assistance and protection including hotlines that are operational 24/7, free to legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law.

(v) **Right to a remedy**

100. Ensure facilitated access to inclusive age- and gender-sensitive complaints and justice mechanisms, including through the provision of procedural and age-appropriate accommodations, for all women and girl victims of trafficking, including non-citizens, by providing effective channels for seeking protection and redress for

violations of their rights by creating adequate conditions to bring complaints without fear of reprisals, arrest, detention or deportation.

101. Ensure that that trafficked women and girls have a legally enforceable right to affordable, accessible and timely remedies through the criminal, civil and labour courts and administrative proceedings, including to compensation, back wages and other tailored reparations, that are not made conditional on confiscation of assets from their traffickers and which shall be guaranteed under the conditions provided for in the domestic law for victims. Compensation as a victim of crime should have no impact on social assistance received by victims or as provided by another other State program.

C. Gender-sensitive court proceedings

102. Guarantee all trafficked women and girls a fair hearing and due process in administrative and judicial proceedings, including detention and expulsion proceedings, ensuring they are heard, informed and consulted throughout the hearing and have access to adequate trauma-informed, culturally-specific and gender- and age-sensitive accommodations, support and protection to enable them to testify against their traffickers.

103. Safeguard the right to privacy of trafficked girls; ensuring they are continuously informed and can exercise their right to be heard. Ensure their right to special protection in court proceedings through the provision of specialized child-sensitive legal assistance to simplify testifying procedures and prevent additional trauma, including by appointing victim advocates, social workers or legal guardians.

104. Fund and support the effective implementation of protection systems for trafficked women and girls, their family members, witnesses and informants, to safeguard against threats and retaliation from trafficking networks both during and after legal proceedings, including through witness protection programmes, needs-based court procedures, and temporary residence permits for non-citizens and their dependents, irrespective of their cooperation in the prosecution.

105. Promptly investigate, prosecute and adequately punish both those directly involved in trafficking and those negligent in dealing with or preventing trafficking cases, including alleged corruption of government officials and the private sector, ensuring the sanctions imposed are commensurate with the gravity of the crime and the degree of responsibility of the offender.

106. Ensure the effective prosecution and adequately punishment of traffickers of women and girls through the design, implementation and periodic evaluation of multisectorial capacity-building programmes for all court officials and support staff on the trauma-informed age-, gender- and culturally-sensitive, human rights-based application of anti-trafficking legislation and treatment of victims.

107. States parties are encouraged to systematize their criminal justice and judicial cooperation, including harmonizing legal procedures for mutual legal assistance, extradition and the confiscation and return of proceeds of crime, with countries of origin, transit and destination for trafficking in women and girls.

108. Build and adequately resource cross-agency investigative teams to track the financial flows generated by trafficking in women and girls and redistribute any confiscated proceeds of such criminal conduct to victims as compensation for the human rights violations that they have suffered.

D. Data collection and legislative, policy and institutional framework

109. Establish partnerships between anti-trafficking, migration and development practitioners, international organizations and women and girl-focused civil society stakeholders, including community based organisations of groups affected by trafficking and/or anti trafficking measures, to systematically collect, exchange, analyse and publish data with the objective of developing an understanding of trends in trafficking of women and girls, and implementing targeted, evidenced-based

strategies in its prevention, in enhancing the prompt gender-responsive, human rights- and needs-based assistance to victims and in ensuring their protection and reparation.

110. Disaggregate data collected on both victims and perpetrators of trafficking on all parameters considered relevant (including by sex, age, disability, ethnicity, nationality, immigration status, location, socioeconomic status and all forms of exploitation) under indicator 16.2.2 of the Sustainable Development Goals, where permitted by national law.

111. All measures for data collection, storage, sharing or dissemination must be carried out in a legal and ethical manner with due accordance to international standards on privacy and confidentiality.

112. Adopt and implement comprehensive victim-centered, child and gender-sensitive anti-trafficking legislation that provides a harmonized approach to criminalizing trafficking at all jurisdiction levels, ensuring that it:

(a) Fully complies with international human rights standards, including the Convention, this general recommendation, the United Nations Trafficking Protocol and applicable regional instruments;

(b) Codifies that victim consent shall not be a defense to trafficking;

(c) Where not already penalized in other national laws, aims to combat trafficking for purposes of, among others, child, forced and servile marriage, domestic servitude, debt bondage, serfdom, begging, forced or compulsory labour, slave trading, slavery, sexual exploitation and commercial sexual exploitation, abusive surrogacy practices and the sale of children, trafficking in organs, tissues and cells, including trafficking in human eggs, and forced criminality;

(d) Addresses contemporary methods of trafficking, including those using information and communications technologies, including social media;

(e) Promotes patrimonial investigation as a key tool to fight trafficking;

(f) Is developed, implemented, monitored and evaluated to assess its impact, with the active participation of women and girls affected by human trafficking.

113. Adopt a result-oriented evidence-led, gender-responsive, rights-based and victim-centered comprehensive anti-trafficking national plan of action, ensuring it is:

(a) In compliance with the United Nations Office of the High Commissioner for Human Rights Recommended Principles and Guidelines: on Human Rights and Human Trafficking, on Migrants in Vulnerable Situations, and on Human Rights at International Borders;

(b) Harmonized with the national action plans on gender equality, on combating violence against women, on women, peace and security, on migration and asylum management and on sustainable development;

(c) Adequately funded and regularly assessed.

114. Establish a National Referral Mechanism with the objective to coordinate the alignment of all relevant national policies in ensuring an effective and human rights-based approach to combatting trafficking in women and girls, ensuring it is operationalized by a dedicated and fully funded Secretariat responsible for the harmonization of clear information management and coordination structures between relevant local and national authorities (including migration, asylum and labour officials), national human rights institutions, the private sector and civil society organizations engaged in combatting trafficking in women and girls, to develop a common response, including comprehensive standard operating procedures outlining relevant legal obligations, referral procedures, roles and responsibilities.

115. Establish an independent National Rapporteur on Human Trafficking to track and report on the progress of gender-transformative anti-trafficking strategies.

E. Dissemination and reporting

116. The Committee underscores the need to accelerate the implementation of all the provisions of the Convention in line with the 2030 Agenda for Sustainable Development and the recommendations emanating from the Beijing +25 review, as a means to induce transformative and radical change in women's exercise of their autonomy and self-determination.

117. States parties are recommended to include information in their periodic reports to the Committee on the strategies implemented to promote and protect the human rights of women and girls in their anti-trafficking response.

118. The United Nations specialized agencies, rapporteurs and experts are invited to provide country and region-specific input to the Committee on the situation of trafficking and sexual exploitation in women and girls in the context of global migration and protection and recovery measures taken as appropriate to the State party under review.

119. States parties' are encouraged to report on their strategies to implement a gender-transformative anti-trafficking response to other mechanisms: Universal Periodic Review process of the United Nations Human Rights Council; High Level Political Forum on Sustainable Development; Global Compact on Safe, Regular and Orderly Migration; and the Mechanism for the Review of Implementation of the Convention against Transnational Organized Crime and the Protocols Thereto.

120. This general recommendation should be translated into local languages and disseminated widely to all branches of government, civil society, the media, academic institutions, women's, girls' and migrant's rights organizations, the private sector and financial institutions.

F. Treaty ratification or accession

121. States parties are encouraged to ratify or accede to the:

(a) **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;**

(b) **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, supplementing the United Nations Convention against Transnational Organized Crime;**

(c) **Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;**

(d) **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;**

(e) **ILO Labour rights framework for the governance of labour migration and protection of migrant workers: Domestic Workers Convention C189 and Recommendation 201 on Decent Work for Domestic Workers; Convention C190 on Ending Violence and Harassment in the World of Work; Forced Labour Conventions (No. 29) 1930 and (No. 105) 1957, Protocol (P029) 2014 and Recommendation (R203) 2014;**

(f) **1951 Convention Relating to the Status of Refugees; 1967 Protocol relating to the Status of Refugees; 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**

(g) **1926 Slavery Convention and its Supplementary Convention of 1956;**

(h) **1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.**

By calling on States to ratify the 1949 Convention, the general recommendation is endorsing its colonial, racist and patriarchal underpinnings and regressing its own standards on trafficking.

122. **States parties are urged to endorse the 2016 New York Declaration for Refugees and Migrants including the Global Compacts on Refugees and for Safe, Orderly and Regular Migration.**
