

## CONCEPT NOTE

prepared for the Committee on the Elimination of Discrimination Against Women  
on its elaboration of a **General Recommendation on Trafficking in Women and Girls in the  
Context of Global Migration**

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## I. Introduction

1. At its 69<sup>th</sup> session, held from 19 February to 9 March 2018, in Geneva, Switzerland, the Committee on the Elimination of Discrimination Against Women (the Committee) decided to elaborate a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.
2. The Committee is mandated by article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention) to develop General Recommendations with the aim of providing authoritative guidance to States parties on legislative, policy and other appropriate measures to ensure the implementation of their obligations under the Convention and its Optional Protocol.
3. The aim of the current General Recommendation under elaboration is to interpret the definition, scope and expectations regarding States parties' obligations in relation to article 6 of the Convention to suppress all forms of trafficking in women and girls, ensuring that the human rights of women and girls are respected, protected and fulfilled in accordance with international law. The discussion will be contextualized to respond to the current realities of unprecedented global migration flows and its link to increased levels of trafficking in women and girls as well as the emerging forms of exploitation to which women and girl victims of trafficking are subjected to.
4. The purpose of this concept note is to set the groundwork for the Committee's elaboration of the General Recommendation by providing a non-exhaustive overview of the legal framework of States parties' obligations to combat trafficking in women and girls and by highlighting priority areas for attention. It will further serve as the basis for discussion prior to the global and regional consultations which will be scheduled throughout 2019.

## II. Legal framework relating to the prohibition of trafficking in persons

5. **Nature of the violation:** Trafficking constitutes a violation of international law. Accordingly, article 6 of the Convention begins: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women [...]". The internationally-accepted legal definition of trafficking in persons is sourced in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>1</sup> (Trafficking Protocol):
  3. (a) "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;
  - (b) 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.

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<sup>1</sup> A/RES/55/25 (2000).

6. **Distinction from migrant smuggling:** Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air that supplements the United Nations Convention against Transnational Organized Crime (Smuggling Protocol) defines smuggling of migrants as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national.” Whilst noting the distinction between the crimes of migrant smuggling and human trafficking, the Committee draws attention to the particular vulnerability of smuggled migrants to becoming victims of trafficking.
7. **International legal framework:** The international legal framework around trafficking, slavery and practices and institutions similar to slavery, is a dense network of conventions, regional instruments and national legislation. It comprises a range of conventions adopted in the United Nations system (and the institutions that preceded it) throughout the 20<sup>th</sup> century, treaties that have been introduced since the beginning of the 21<sup>st</sup> century, particularly those that focus on trafficking in human beings, and jurisprudence of international tribunals. Developments in law, policy and political discourse have been reflective of a number of factors, such as changing manifestations of what is commonly referred to as contemporary forms of slavery, changes in our understanding of what actions are to be considered as these forms of slavery and recognition that legal definitions developed in the early 20<sup>th</sup> century might need re-interpreting to deal with new realities, such as the consequences of conflict or global migration.
8. **Human rights framework:** Under international law, the act of trafficking is defined as both a criminal offence and as a human rights violation. Consequently, States parties are required to address the phenomenon not only from a criminal justice framework but one that respects, protects and fulfills its obligations to uphold the human rights of persons who are most vulnerable to trafficking: its victims and its survivors. The Universal Declaration of Human Rights, article 28, provides that “[e]veryone is entitled to a social and international order in which the rights and freedom set forth in this Declaration can be fully realized”. Declaration rights frequently violated by the criminal act of trafficking, including the prohibition on discrimination (art. 2) and the right to life, liberty and security (art. 3), are mirrored in the core United Nations human rights treaties which additionally prohibit practices that are linked to trafficking, including forced labour, slavery and servitude.<sup>2</sup> Significantly, two of these instruments obligate States parties to focus particular attention on the groups disproportionately affected by trafficking, namely women and children. The 2010 Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) elaborated by the Office of the United Nations High Commissioner for Human Rights further provides an important soft-law framework for integrating a human rights-based approach in all anti-trafficking interventions.
9. **Complementary legal regimes:** The rights of women and girls are guaranteed by an international law regime consisting of complementary protections under the Convention and

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<sup>2</sup> International Covenant on Civil and Political Rights and its First Optional Protocol; International Covenant on Social, Economic and Cultural Rights and its Optional Protocol; International Convention on the Elimination of All Forms of Racial Discrimination; Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; Convention on the Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on armed conflict; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention on the Rights of Persons with Disabilities and its Optional Protocol.

international legal frameworks. This is particularly important in ensuring a gender equality lens is applied systematically to the protection of women and girls in international law. Hence, the component of article 6 of the Convention on combatting trafficking should be read with the following instruments prohibiting the exploitative purposes of trafficking: Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949; Convention to Suppress the Slave Trade and Slavery, 1926, and its Supplementary Convention, 1956; ILO Convention No. 29 Concerning Forced and Compulsory Labour, 1930, its Protocol, 2014, and Forced Labour (Supplementary Measures) Recommendation (No. 203), 2014; ILO Convention No. 105 Concerning the Abolition of Forced Labour, 1957; ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999; and ILO Convention No. 189 Concerning Decent Work for Domestic Workers, 2011, and its Recommendation (No. 201), 2011.

10. **International framework for protection during conflict and humanitarian situations:** The obligation under Article 6 to combat trafficking should further be read with the protections provided by the following instruments: Geneva Conventions (I, II, III and IV), 1949, and the Additional Protocols I and II, 1977, relating to the protection of victims of international and non-international armed conflict respectively; Rome Statute of the International Criminal Court, 1998; Convention Relating to the Status of Refugees, 1951, and its Protocol, 1967; Conventions relating to the Status of Stateless Persons, the 1954, and on the Reduction of Statelessness, 1961.

### III. Rationale for a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

#### A. The link between the increase in trafficking in women and girls and migration

11. **Trafficking affects women and girls disproportionately:** The majority of trafficking victims are female. Women and girls together comprised 71% of all detected and reported trafficking victims between 2012-2014.<sup>3</sup> The main purposes for which women and girls are trafficked are indicative of the gendered-nature of the crime. During the same period (2012-2014) women and girls made up 96 per cent of detected and reported victims trafficked for sexual exploitation, 76 per cent of those trafficked for other forms of exploitation, such as forced marriages or begging, 37 per cent of those trafficked for forced labour, and 18 per cent of those trafficked for organ removal.<sup>4</sup>
12. **Unprecedented global migration flows:** The fight against trafficking in women and girls has taken on a new urgency in the context of the rapid growth of global migration.<sup>5</sup> In 2017, it is estimated that there were 258 million international migrants across the world; an increase of almost 50 per cent since the year 2000 (173 million).<sup>6</sup> According to the United Nations Office on Drugs and Crime, which has been collecting data on the patterns and trends of trafficking in persons since 2003, the connection between the broader migration phenomenon and trafficking in persons is clear: approximately 60 per cent of detected

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<sup>3</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 23.

<sup>4</sup> *Ibid.*, p. 27, figure 9.

<sup>5</sup> “Global migration” refers to internal and transnational migration as well as mixed migration movements, including refugees, asylum seekers, regular and irregular migrants and internally displaced persons.

<sup>6</sup> United Nations, Department of Economic and Social Affairs, Population Division (2017). *International Migration Report 2017: Highlights (ST/ESA/SER.A/404)*.

victims of trafficking in persons are foreigners in the country of detection, of which most are international migrants.<sup>7</sup>

13. **Massive internal movements:** In 2009, it was estimated that there were 740 million internal migrants moving within their countries.<sup>8</sup> The Trafficking Protocol does not require a person to cross an international border to fit within the definition of the crime. 42 per cent of all detected victims between 2012 and 2014 were trafficked domestically.<sup>9</sup> Many such cases of victims exploited in their country of origin involve persons who have been moved from poorer areas of the country to richer areas, from rural zones to cities or tourist centres, or from villages to industrial or economic hubs.<sup>10</sup>
14. **Emerging forms of exploitation for which women and girls are being trafficked:** The Committee is particularly concerned regarding increased reporting of trafficking for purposes of: sham, forced and/or servile marriage<sup>11</sup>; child marriage of girls fleeing humanitarian crises<sup>12</sup>; sexual exploitation in refugee camps, temporary reception centres and informal settlements<sup>13</sup>; recruitment of women forced to sell their babies<sup>14</sup> or give them up for adoption<sup>15</sup>; forced labour; forced begging<sup>16</sup>; exploitation of migrants in situations of debt bondage, including domestic servitude<sup>17</sup>; forced recruitment or abduction into military service or by armed forces<sup>18</sup>; sexual exploitation by peacekeepers<sup>19</sup>; and collecting ransom<sup>20</sup>. Particularly egregious is the reported abduction of women and girls by terrorist groups for purposes of forced marriage, forced pregnancy, sexual slavery, domestic servitude, to serve as combatants including as suicide bombers, for sale or for ransom, and as gifts to fighters to boost their recruitment and retention.<sup>21</sup> Documented cases include the kidnapping of 200 schoolgirls in Chibok by Boko Haram (Nigeria), the capture of Yazidi women and girls by the so-called Islamic State in Iraq and the Levant (ISIL) (Iraq), girls abducted by Al-Shabaab, Ahl al-Sunna wal-Jama'a and soldiers of the National Army (Somalia) and by groups pledging alliance to ISIL (Libya).<sup>22</sup>
15. **Emerging developments driving the demand for trafficking and supply of victims:** In light of the above, the Committee highlights as emerging developments: the growing financial gains derived from trafficking, the scale of possibilities available to disguise such revenues, and the wide impunity enjoyed by perpetrators of the crime; the flow of victims originating from areas of poverty being trafficked into wealthier regions;<sup>23</sup> the link between

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<sup>7</sup> UNODC, *Global Report on Trafficking in Persons 2016*, pp. 7, 13, 57.

<sup>8</sup> United Nations Development Programme (2009). Human Development Report 2009 – Overcoming barriers: Human mobility and development, p. 21.

<sup>9</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 6.

<sup>10</sup> *Ibid.*, p. 40, p. 57.

<sup>11</sup> A/73/263 (2018), para. 15; A/71/261 (2016), para. 54. CEDAW/C/MYS/CO/3-5.

<sup>12</sup> A/71/303 (2016), para. 34; A/72/164 (2017), para. 20; A/72/164 (2017), paras. 27, 40; CEDAW/C/TUR/CO/7.

<sup>13</sup> A/72/164 (2017), para. 35.

<sup>14</sup> A/71/261 (2016), para. 41.

<sup>15</sup> CEDAW/C/MHL/CO/1-3.

<sup>16</sup> A/HRC/34/55/Add. 1 (2016), para. 25.

<sup>17</sup> A/HRC/33/46 (2016), paras. 8, 28; A/HRC/35/37/Add. 1 (2017), paras. 13, 17-18; CEDAW/C/BDI/CO/5-6.

<sup>18</sup> A/71/303 (2016), paras. 31-32.

<sup>19</sup> A/71/303 (2016), paras. 43-44.

<sup>20</sup> A/72/164 (2017), para. 21.

<sup>21</sup> A/71/303 (2016), para. 33; A/72/164 (2017), paras. 19, 26; CEDAW/C/NER/CO/3-4.

<sup>22</sup> A/71/261 (2016), paras. 48-49, 67; A/71/303 (2016), para. 29; A/72/139 (2017), para. 39; A/72/164 (2017), paras. 25, 39; S/2017/939, paras. 4-9.

susceptibility to trafficking and uncertain migration status; and the exacerbation of trafficking in communities affected by instability and consequent displacement as a result of conflict or humanitarian emergencies including natural disasters.<sup>24</sup> It further acknowledges the impact of globalization, entailing the increased movement of peoples, goods and services, and the advancement in technological innovations, including the Internet, social media platforms and mobile technology used for the deception, recruitment, coercion, control and sale of potential and actual victims of trafficking<sup>25</sup>, in accelerating the demand for the labour or services provided by trafficking victims, as well as the supply of victims.<sup>26</sup>

16. **Growing international recognition of migrant women’s and girls’ risk to trafficking:** The call for States to take urgent action targeting the trafficking of migrant women and girls is gaining momentum and has featured as integral components of recently developed international non-binding frameworks. The New York Declaration for Refugees and Migrants, adopted by the United Nations General Assembly on 19 September 2016, draws attention to the special situation and vulnerability of migrant women and girls to gender-based violence, including trafficking.<sup>27</sup> It urges States to incorporate a gender perspective into migration policies and to strengthen national laws, institutions and programmes in order to take this reality into account.<sup>28</sup> It further calls for the adoption of a Global Compact for Safe, Orderly and Regular Migration, the final text of which commits States to devote particular attention to migrant women and children who have become victims of trafficking, ensuring their identification, protection and assistance.<sup>29</sup>
17. **Combatting trafficking through sustainable development:** Goal 16 of the 2030 Agenda for Sustainable Development, “Peace, Justice and Strong Institutions”, links efforts to combat human trafficking and sexual violence to the promotion of peaceful and inclusive societies for sustainable development. Target 5.2, of Goal 5 “Gender Equality”, recognizes trafficking as a form of violence against women and calls for State action in its elimination. Characterizing trafficking as a form of gender-based discrimination, attainment of the gender equality objectives of the Sustainable Development Goals can be viewed as an important tool for addressing the root causes of traffic in women and girls.<sup>30</sup> This includes Goals no. 1: “End poverty”, no. 2: “End hunger”, no. 4: “Ensure quality education”, and no. 8 “Promote decent work and economic growth”, which, respectively, address the disproportionate number of: girls growing up in extreme poverty, women facing food insecurity and unsafe drinking water, primary school girls out of school, and women who are unemployed or contributing as unpaid workers for the family.
18. **Mobilization of the international community:** Acknowledgment of the gender-specific phenomenon of trafficking has mobilized the General Assembly to, in 2016, adopt a resolution urging Governments to devise, enforce and strengthen measures to combat and eliminate all forms of trafficking in women and girls (A/RES/71/167). In 2017, the General Assembly adopted a political declaration on the implementation of the United Nations

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<sup>24</sup> A/73/263 (2018), para. 23.

<sup>25</sup> A/71/303 (2016), para. 51; A/73/263 (2018), paras. 26-27.

<sup>26</sup> A/72/139 (2017), para. 24.

<sup>27</sup> New York Declaration for Refugees and Migrants, A/RES/71/1 (Resolution adopted by the United Nations General Assembly on 19 September 2016), para. 35.

<sup>28</sup> Ibid, para. 60.

<sup>29</sup> Global Compact on Safe, Orderly and Regular Migration, Final draft, 11 July 2018, Objective 10.

<sup>30</sup> A/73/263 (2018), para. 17.

Global Plan of Action to Combat Trafficking in Persons<sup>31</sup> wherein Member States reaffirmed their commitment to address the complex factors that contribute to the trafficking in women and girls (A/RES/72/1). Strengthening anti-trafficking strategies that integrate a human rights and sustainable development perspective and which address the demand that fosters all forms of exploitation, including sexual exploitation and forced labour, has been echoed by the Commission on the Status of Women at its sixty-first and sixty-second sessions. The Security Council, in resolutions 2331 (2016) and 2388 (2017), which recognized that trafficking in persons entails the violation or abuse of human rights, addressed the links between trafficking, conflict and insecurity noting the continuum of violence against women and girls in the form of human trafficking during armed conflict. In 2018, the Secretary General reported on the gender dimensions of trafficking and recommended human rights-based and gender- and age-sensitive approaches be taken in all anti-trafficking interventions (A/73/263).

19. **United Nations Human Rights Council:** In 2016, the Human Rights Council adopted two trafficking-related resolutions: on protecting victims of trafficking and people at risk of trafficking, especially women and children in conflict and post-conflict situations (A/HRC/RES/32/3); and on unaccompanied migrant children and adolescents and human rights (A/HRC/RES/33/7) emphasizing their particular risk to trafficking, other abuse and exploitation. The Council has highlighted the necessity of integrating a human rights-based approach into all anti-trafficking measures as well as intensifying efforts to address the demand fostering the trafficking of women and children.
20. **United Nations Special Rapporteurs:** In the 2016-2018 period alone, the United Nations Special Rapporteurs prepared reports: drawing attention to the protection of victims of trafficking and people at risk of trafficking in conflict and post-conflict situations (A/71/303) and protecting refugees, asylum seekers and migrants from trafficking (A/HRC/38/45); studying the vulnerabilities of children to sale, trafficking, and other forms of exploitation in situations of conflict and humanitarian crisis (A/72/164); assessing the relation between sustainable development and the continued prevalence of contemporary forms of slavery, emphasizing gender inequality as a key driver of contemporary forms of slavery (A/72/139); and, highlighting the use of technology in stimulating trafficking in women and girls (A/HRC/38/47).<sup>32</sup>

## **B. CEDAW Committee's development of jurisprudence**

21. The Convention is a dynamic instrument that contributes and adapts itself to the development of international law and policy frameworks. The proposed General Recommendation will build on the Committee's jurisprudence, including its Concluding Observations on the reports of States parties under the Convention, earlier General Recommendations, and its consideration of individual communications and conduct of inquiries under the Optional Protocol.
22. **CEDAW Concluding Observations:** Article 18 of the Convention requires States parties to submit a report every four years to the Committee on the measures taken to implement the

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<sup>31</sup> A/RES/64/293 (2010).

<sup>32</sup> See, respectively, reports of the: Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on violence against women, its causes and consequences.

substantive provisions of the Convention. The cyclical reporting process gives States Parties the opportunity to report on progress made and challenges encountered and to receive country-specific recommendations on advancing women's and girls' rights from an authoritative expert body. The Committee, in existence since 1982, meets regularly and reviews the reports of over 20 countries annually. As the number of parties to the Convention currently stands at 189, the Committee has developed a keen understanding of global trends in the advancement of women's rights. The Committee consistently raises in its constructive dialogues with States parties and its resulting Concluding Observations its concerns regarding the trafficking in women and girls. The proposed General Recommendation will be designed to take into consideration these key concerns.

23. **CEDAW General Recommendations:** The Committee is additionally mandated to develop General Recommendations to guide State parties' implementation of the Convention by providing an in-depth analysis of specific Convention obligations taking into account current realities facing women and girls. Since its inception it has elaborated 37 such General Recommendations, a number of which canvass the intersection between the respective Convention obligations under study and their relation to trafficking in women and girls.
24. **CEDAW Views on Communications and conduct of inquiries under the Optional Protocol:** Under the Optional Protocol to the Convention the Committee is mandated to receive communications from individuals or groups regarding alleged violations of the Convention by States parties.<sup>33</sup> Where serious, grave or systematic violations of the Convention are alleged, the Optional Protocol mandates the conduct of an inquiry.

### **C. Key concerns of the CEDAW Committee raised in its Concluding Observations, General Recommendations and Views on Communications regarding the trafficking of women and girls**

25. **Trafficking is rooted in and perpetuates gender-based discrimination:** The Committee has set out its view that the trafficking in women and girls is unequivocally a phenomenon rooted in gender-based discrimination and inequality and constitutes gender-based violence against women.<sup>34</sup> Women and girls continue to be the prime targets of traffickers, especially for the purpose of sexual exploitation, due to pervasive and persistent gender inequality resulting in their lower economic, social, and legal status than that which is enjoyed by men.<sup>35</sup> In addition to differential treatment in the law, women and girls may be adversely impacted by economic and public policies that result in a lack of sustainable livelihood options and basic living standards. Social structures limit women's autonomy and access to key resources, including economic, land, information and knowledge. These effects are compounded by gender-based violence against women, gender-based discrimination and marginalization. As a result of suffering these inequalities, women are more likely to be impoverished, uneducated and disempowered by societal and family structures. Often lacking access to information on trafficking and how traffickers operate, women and girls are susceptible to being lured by promises of a means of escape from impoverished

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<sup>33</sup> To date, the Committee has only dealt with article 6 in one communication. See: Zhen Zhen Zheng v. Netherlands, Communication 15/2007 (2008) CEDAW/C/42/D/15/2007, para. 9.1, wherein the dissenting opinion emphasized the State party's obligation to exercise due diligence in identifying potential victims of trafficking and to inform them of their rights, procedures for seeking protection, and referral for assistance.

<sup>34</sup> General Recommendations: No. 19 (1992), para. 14; No. 28 (2010), para. 21; No. 30 (2013), para. 39; No. 32 (2014), paras. 14, 15, 55; No. 35 (2017), para. 12; No. 37 (2018), para. 75.

<sup>35</sup> A/73/263 (2018), para. 19.



circumstances. Additional push factors include persisting norms and stereotypes regarding male domination, sexual entitlement, coercion and control which drive the demand for the gender-stereotyped services of trafficking victims, as well as the lure of massive financial gains with few risks due to the high levels of impunity enjoyed by perpetrators.

26. **Displacement<sup>36</sup> and increased risk:** In 2017, it is estimated that 16.2 million people were newly displaced, of which 11.8 million individuals were displaced within the borders of their own countries and 4.4 million constituted newly displaced refugees and new asylum-seekers.<sup>37</sup> The Committee has identified the status of women’s and girls’ displacement as a key factor in increasing their risk to gender-based sexual violence, including trafficking for purposes of sexual or labour exploitation, slavery and servitude.<sup>38</sup> It has paid particular attention to such heightened risk in situations of disaster and conflict-related displacement and that, to which internally displaced or refugee women and girls, particularly those living in camps, are exposed.<sup>39</sup>
27. **Migration and increased risk:** Migrant women and girls face an increased risk of experiencing sexual and gender-based violence, including being trafficked, along the migration trajectory and particularly if using irregular migration channels.<sup>40</sup> The Committee has drawn attention to the fact that the position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof. To understand the highly gendered phenomenon of migration and the specific ways in which women and girls are impacted the Committee recommends that female migration be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, unpaid care work, the universal prevalence of gender-based violence, including caused by the demand side of the commercial sex industry, and the worldwide feminization of poverty and labour migration.<sup>41</sup>
28. **Link to unsafe migration channels:** Applying a gender-sensitive lens to the phenomenon of migration, the Committee has found that gender-based discrimination in migration policies continues to limit women’s access to safe and orderly migration pathways.<sup>42</sup> Consequently, women do not benefit from established networks to assist with the knowledge and connections needed for safe migration. This situation of disadvantage, compounded by the current climate of reactionary restrictive immigration schemes, drives women to pursue risky migration options thereby creating a vulnerability to being lured by human traffickers.
29. **Sector-specific migration perpetuates victimization:** With limited job opportunities available for women in countries of origin, transit and host countries, many migrant women end up in informal employment, particularly in the care, domestic and male-driven entertainment sectors, including in forced prostitution. The concentration of women in these sectors not only perpetuates traditional gender stereotypes about what constitutes “women’s work” but also provides no or few labour protections, such as workplace inspections,

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<sup>36</sup> “Displacement” refers to any forced or voluntary, temporary or permanent, migration from one’s place of origin.

<sup>37</sup> United Nations High Commissioner for Refugees (2018). Global Trends. Forced Displacement in 2017, p. 2.

<sup>38</sup> General Recommendations: No. 30 (2013), para. 53; No. 32 (2014), para. 14. CEDAW/C/NER/CO/3-4, para. 10(b).

<sup>39</sup> General Recommendations: No. 19 (1992), para. 16; No. 30 (2013), paras. 39-40; No. 37 (2018), paras. 5, 75; A/71/303 (2016), paras. 18-19; A/72/164 (2017), paras. 29, 31.

<sup>40</sup> A/71/303 (2016), para. 22; A/HRC/31/35 (2016), para. 53; CEDAW/C/KOR/CO/8.

<sup>41</sup> General Recommendation No. 26 (2008), para. 5.

<sup>42</sup> A/73/263 (2018), para. 24.

complaint mechanisms and protection from violence and abuse, thereby heightening the exposure of migrant women to severe forms of human rights violations and trafficking, as victims remain unseen, unheard and unprotected.

30. **Trafficking for gender-specific purposes:** Women and girls are being trafficked for the purposes of: sexual exploitation, including forced prostitution, sexual entertainment, travel for sexual exploitation, sexual slavery, forced and “contractual” marriage, begging, domestic servitude and domestic labour, and, organ transplantation.<sup>43</sup> The listed purposes of trafficking perpetuate gender-stereotypes of work and are often driven by male exertion of power and control over women, thereby increasing their risk of gender-based violence and abuse. In the Committee’s view these practices are incompatible with the equal enjoyment of rights by women and their dignity.
31. **Groups most at risk:** The Committee has identified that groups of women who are subjected to multiple and intersecting forms of discrimination and violence are at a higher risk of being trafficked. This includes: migrants<sup>44</sup>; asylum-seekers, particularly those whose claims have been rejected<sup>45</sup>; refugees<sup>46</sup>; internally displaced women<sup>47</sup>; non-nationals<sup>48</sup>; stateless women; women forcibly returned to their country of origin<sup>49</sup>; women in conflict or post-conflict situations<sup>50</sup>; women living in post disaster situations; women living in poverty; rural women<sup>51</sup>; women with disabilities<sup>52</sup>; women from religious, ethnic, and sexual minorities<sup>53</sup>; and, adolescents<sup>54</sup>, particularly girls without care or in alternative care settings.<sup>55</sup> The discrimination experienced by these groups of women and girls is compounded by their concurrent social, economic and political marginalization. Such devaluation of their personhood renders these women and girls as easier targets of trafficking and exploitation.
32. **Situations of conflict and post-conflict:** At the end of 2017, more than 68.5 million people were forcibly displaced worldwide as a result of persecution, conflict, or generalized violence.<sup>56</sup> The Committee has noted that trafficking in women and girls is exacerbated during and after conflict owing to the breakdown of political, economic and social structures, high levels of violence and increased militarism.<sup>57</sup> Conflict and post-conflict situations can create particular war-related demand structures for women's sexual, economic and exploitation of women as combatants and human bombs. Conflict-affected regions can be areas of origin, transit and destination with regard to trafficking in women and girls, with the forms of trafficking varying by region, specific economic and political context and State and non-State actors involved. Women and girls fleeing conflicts are under an urgent need

<sup>43</sup> General Recommendations: No. 19 (1992), para. 14; No. 31 (2014), para. 24; No. 32 (2014), para. 14.

<sup>44</sup> CEDAW/C/ITA/CO/7; CEDAW/C/URY/CO/8-9.

<sup>45</sup> CEDAW/C/NOR/CO/9.

<sup>46</sup> CEDAW/C/RWA/CO/7-9.

<sup>47</sup> CEDAW/C/NGA/CO/7-8.

<sup>48</sup> CEDAW/C/BRB/CO/5-8.

<sup>49</sup> CEDAW/C/GTM/CO/8-9.

<sup>50</sup> CEDAW/C/BGD/CO/8; CEDAW/C/MMR/CO/4-5.

<sup>51</sup> CEDAW/C/BTN/CO/8-9.

<sup>52</sup> CEDAW/C/MNE/CO/2; CEDAW/C/ROU/CO/7-8.

<sup>53</sup> CEDAW/C/GTM/CO/8-9; CEDAW/C/CRI/CO/7; CEDAW/C/HND/CO/7-8; CEDAW/C/CZE/CO/6.

<sup>54</sup> CEDAW/C/RWA/CO/7-9.

<sup>55</sup> General Recommendations: No. 28 (2010), para. 21; No. 34 (2016), para. 5; No. 37 (2018), para. 75; A/73/263 (2018), para. 21; CEDAW/C/CAN/CO/8-9.

<sup>56</sup> United Nations High Commissioner for Refugees (2018). Global Trends. Forced Displacement in 2017, p. 2.

<sup>57</sup> General Recommendation No. 30 (2013), para. 39; A/71/303 (2016), paras. 25, 40, 66;

and pressure to move which may lead them to make dangerous migration decisions, including by being lured by traffickers. Traffickers can operate with impunity due to the erosion of the rule of law, breakdown of order and lack of State protection for victims, including through the prosecution of traffickers.

33. **Trafficking as a basis for asylum claims:** The Committee has stated that as trafficking is a recognized form of gender-related persecution, women and girls who are victims should be informed of and effectively enjoy the right of access to asylum procedures without discrimination or any preconditions.<sup>58</sup> In light of the fact that large migration flows raise obstacles to identifying, protecting and assisting trafficking victims and upholding the rights guaranteed to trafficking survivors as victims of crime and of human rights violations, the Committee recommends the establishment of adequate screening mechanisms for the early identification of women asylum seekers with specific protection and assistance needs, such as victims of trafficking, especially those trafficked for sexual exploitation. It is therefore important that States should not only ensure humane standards at reception centres for women and girls who are victims of trafficking but should also ensure that border and other personnel are able to conduct appropriate vulnerability assessments to identify victims of trafficking.
34. **Discrimination against victims and survivors:** The Committee affirms that discrimination against women is inextricably linked to other factors in their lives including being a victim or survivor of trafficking.<sup>59</sup> Upon return to their communities of origin survivors may face social stigma, particularly for victims of sexual exploitation, their needs to fully recover from the trauma experience may not be recognized and hence they may not benefit from any assistance including rehabilitation and reintegration programs. Furthermore, some survivors may be prosecuted for migration offences such as unauthorized departure or other offences resulting from being trafficked, including irregular entry into a country and overstay of visas. Survivors may also face specific human rights violations including increased exposure to gender-based violence and restricted access to sexual, reproductive and mental health services, employment opportunities, social security benefits, schooling, housing, legal documents such as birth or marriage certificates, and to the justice system.<sup>60</sup> The Committee notes the link between women's limited access to justice and the high levels of impunity enjoyed by perpetrators of trafficking. It further points to the significant gap in anti-trafficking responses regarding the provision of long term, comprehensive survivor-centred services.

#### **IV. Using the Convention as a framework to assist States Parties meet their obligations and commitments to suppress all forms of trafficking in women and girls**

35. **Engaging the Convention as a whole in achieving the aim of article 6 to combat trafficking:** The Convention is the most authoritative and comprehensive international framework for eliminating discrimination against women in all spheres of life and which promotes the substantive equality of women and men. Its provisions are mutually reinforcing to provide complete protection for women's human rights. Recognizing that article 6 of the Convention explicitly sets out States parties' obligation to suppress all forms of trafficking in women and girls, many other articles of the Convention can be linked with

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<sup>58</sup> General Recommendation No. 32 (2014), para. 15.

<sup>59</sup> General Recommendation No. 35 (2017), para. 12.

<sup>60</sup> A/71/303 (2016), para. 35.

actions that will reduce risk and facilitate access to appropriate prevention, protection, assistance and redress measures.

36. **Article 1 – Defining discrimination against women:** sets out the objective of the Convention to eliminate direct and indirect discrimination of women and girls and achieve substantive equality. Recognizing that trafficking women and girls is rooted in gender-based discrimination and that victimization further compounds such discrimination and negative outcomes in all areas of life, effective anti-trafficking responses require engagement of all substantive provisions of the Convention.
37. **Article 2 and GR No. 28 (2010) – Core obligations of States parties:** specifies the measures States parties must take to protect, respect and fulfill all rights in the Convention. Its implementation establishes the conditions to prevent and combat trafficking in women and girls, inter alia, by: adopting a comprehensive gender-sensitive, anti-trafficking legal framework; reviewing legislation and policy to remove discriminatory provisions, such as gender-specific migration regulations and the criminalization of trafficking survivors; fulfilling its due diligence obligation to protect women by ensuring the investigation, prosecution, conviction and sentencing of trafficking perpetrators and dismantling of their networks; and protecting women from harm inflicted by non-State actors which may occur outside their territories. The ILO estimates that the total illegal profits obtained from the use of forced labour worldwide amount to US\$150.2 billion per year, two thirds of which were generated by forced sexual exploitation.<sup>61</sup> Given the magnitude of the illicit financial flows resulting from trafficking in women and girls, States parties have a responsibility to detect such flows and confiscate and redistribute the proceeds for the benefit of victims.
38. **Article 3 – Gender mainstreaming to ensure the advancement of women:** requires a gender-sensitive response be integrated in all anti-trafficking measures taken by the State party. This necessitates allocating sufficient human, technical and financial resources to ensure implementation of such strategies, including the establishment of effective national mechanisms to identify victims and respond to the needs of survivors, as well as to systematically collect sex and age-disaggregated data on victims of trafficking with the view to include other characteristics that can identify trends in intersecting forms of discrimination that make women and girls vulnerable, as well as the prevalence, means utilized, and causes of trafficking in the State party, the perpetrators’ sex, age, relation to the victim, and on the investigations, prosecutions, convictions and sentencing of perpetrators.
39. **Article 4 and GR no. 25 (2004) – Temporary special measures to achieve substantive equality:** Article 6 requires immediate, as opposed to progressive, implementation therefore requiring States parties to adopt urgent measures to provide redress in areas in which women are experiencing severe inequalities resulting in their heightened exposure to trafficking.
40. **Article 5 and GR No. 19 (1992) and No. 35 (2017) – Modifying harmful social and cultural patterns to eliminate prejudice and gender-based violence against women:** Recognizing that social and cultural norms and gender stereotypes around the expectation of submissiveness and gender roles of women create a context conducive to violence against women, including trafficking, States parties are required to take measures to modify these.<sup>62</sup> In particular, dismantling the gendered norms, assumptions and stereotypes around male

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<sup>61</sup> International Labour Office, *Profits and Poverty: The Economics of Forced Labour* (2014), pp. 13, 15.

<sup>62</sup> A/73/263 (2018), para. 18.

domination, sexual entitlement, coercion and control, is essential in combatting all manifestations of violence against women, including trafficking. The Committee further notes the increased risk to trafficking faced by women who are fleeing situations of discrimination, violence and abuse.

41. **Article 7 and GR No. 23 (1997) – Promoting equal participation in political and public life:** Women’s active participation and leadership in policy and decision-making processes is necessary to ensure that the design and implementation of national strategies to prevent and combat trafficking are gender-responsive.
42. **Article 8 – Equality in international representation:** The participation of women in bilateral, regional and multilateral diplomacy, including in expert meetings where global goals and priorities are established, is particularly relevant in ensuring that cooperation efforts to manage a cross-border phenomenon such as trafficking benefit from a gendered perspective.
43. **Article 9 and GR No. 32 (2014) – Equality in the acquisition, change, retention and transfer of nationality:** is essential to the enjoyment of the full range of human rights by women. Both stateless women and girls, as well as those at risk of statelessness, specifically those who do not have birth or nationality certificates or whose documentation has been lost or confiscated, are often marginalized on account of being unable to prove their identity. They may be denied access to various rights and benefits flowing from status as a national, including rights to education, health care, decent work, property ownership, access to public benefits, choice of residence and freedom of movement.<sup>63</sup> Their consequent impoverishment increases their risk of being trafficked and remaining in situations of exploitation due to, *inter alia*, moving through irregular migration channels, problems gaining access to diplomatic protection, fear of detention pending determination of proof of identity and nationality and of possible expulsion from their country of residence.
44. **Article 10 and GR No. 36 (2017) – Rights to education, within education and through education:** where fully implemented and advanced, empowers women to access economic opportunities that allows them to escape poverty and reliance on unsafe migration channels, including traffickers, to improve their socio-economic conditions.<sup>64</sup> The training and education of women is important for victims’ full recovery, as well as being necessary for women to participate as decision-makers in national and local anti-trafficking strategies.
45. **Article 11 and GR No. 26 (2008) – Equality of opportunity in employment:** encourages women to seek opportunities in the formal labour market and benefit from labour protections. States parties have an obligation to review restrictive migration policies, which have the effect of rendering women and girls more vulnerable to trafficking. Workplaces must be regulated so that labour standards are in adherence to international standards and monitored for compliance, with attention to identifying victims of trafficking. The generation of employment opportunities for victims is important for their full recovery.
46. **Article 12 and GR No. 24 (1999) – Elimination of discrimination in access to health care:** is an urgent issue for women and girl trafficking victims who are at an increased risk of violence, sexual exploitation and contracting sexually transmitted diseases, including

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<sup>63</sup> A/73/263 (2018), para. 29.

<sup>64</sup> Ibid, 20.

HIV, at various stages of the trafficking cycle. This is compounded by the barriers faced in accessing health services, including fear of retaliation from perpetrators, fear of being denounced by health service professionals, linguistic and cultural barriers, as well as administrative barriers for non-citizens, particularly those in irregular migration situations. The training of health workers on trafficking victim identification and providing a gender-sensitive response is key to assisting women and girls exit from exploitative situations.

47. **Article 13 – Equality in economic and social life:** when women are able to avail themselves of their economic and social rights, including rights to financial family benefits and the same right as men to participate in business and economic life by obtaining loans and other forms of financial benefits, financial literacy and training in microenterprise development, they are enabled to achieve economic empowerment, thereby reducing their vulnerability to being lured by traffickers. Social protection floors and/or the development of universal basic income serve as effective preventive measures against vulnerability to trafficking.
48. **Article 14 and GR No. 34 (2016) – Elimination of discrimination of rural women:** States parties have an obligation to address the exacerbated inequality of rural women, which is linked to their heightened risk of falling prey to traffickers, through taking targeted measures to advance their rights including by facilitating the equitable access of rural women to education and training, employment opportunities, health care services, and to land ownership and use of national resources.
49. **Article 15 and GR No. 33 (2015)– Equality before the law, exercise of legal capacity and freedom of movement:** States parties are under an obligation to establish victim and witness protection measures to encourage reporting of trafficking without fear of repercussion, and which offers rehabilitation and reintegration measures and redress, including legal assistance and compensation for victims. The granting of such measures for victims should not be tied to the granting of temporary residence permits, or to the victim's decision to cooperate with the prosecution authorities.
50. **Article 16 and GR No. 31 (2014) – Eliminating discrimination in marriage and family relations:** Recognizing that trafficking in women and girls for purposes of forced marriage is a growing phenomenon, States parties are required to take strengthened measures to prohibit and sanction child marriage and marriage without the full, free and informed consent of both parties.

## V. Objective and scope of the General Recommendation

51. The objective of this General Recommendation is to uncover the root causes of women's and girls' increased risk to trafficking and remaining as trafficking victims, in order that these be identified, recognized and addressed by States Parties. The discussion will be contextualized in light of the aggravated risk posed by the realities of global migration and accordingly will strive to bring coherence, accountability and mutual reinforcement of State party undertakings in multilateral processes which address the issue. This includes the 2030 Agenda for Sustainable Development, of which the implementation of several goals is critical to the elimination of trafficking of women and girls, and the Global Compact for Migration, which links efforts to combat the trafficking in women and girls to achieving safe, orderly and regular migration.

52. The General Recommendation will define the scope and expectations regarding States parties' obligations under the Convention to respect, protect, promote and fulfill their requirement to: take all appropriate measures to prevent all forms of trafficking in women and girls; provide gender-responsive measures to protect and assist women and girls who have been trafficked; ensure the gender-sensitive rehabilitation of survivors, avoidance of re-victimization, and access to remedies; and tackle the wide impunity enjoyed by perpetrators of trafficking in women and girls, including by addressing the demand-side of the crime. It will further serve as a guide to ensure that all measures taken, by States parties and other stakeholders, are grounded in the human rights principles of substantive equality and non-discrimination, participation and empowerment, accountability and access to justice, transparency and the rule of law
53. The scope of the General Recommendation will be restricted to focusing on the gender equality and non-discrimination obligations that must be upheld by States parties in all anti-trafficking interventions. It will not broach a policy discussion on the theme of prostitution.

## **VI. Day of General Discussion**

54. List of sub-themes to be featured in the General Recommendation for which stakeholder input is sought:
  - Effective prevention measures for all forms of trafficking in women and girls, including an understanding of the different root causes;
  - Responsibility of States parties, in view of the Sustainable Development Goals, to create conditions to address the root causes of trafficking;
  - Tackling poor governance, including corruption of State officials, and the link to impunity of perpetrators of trafficking;
  - Clarifying the intersections of States parties' legal obligations on combatting trafficking and promoting safe, regular and orderly migration;
  - Understanding of the mechanisms and cooperation needed to detect perpetrators of trafficking, both nationally and internationally;
  - Clarity on the number of trafficking victims placed in detention and the number of perpetrators also detained;
  - Providing access to justice for victims of trafficking through ensuring the investigation, prosecution, conviction and sentencing of perpetrators, as well as ensuring that all seized and confiscated proceeds of trafficking are redirected to support victim reparations and prevention measures;
  - The provision of appropriate assistance and services to victims of trafficking, including both short term as well as comprehensive, survivor-centered, long term services;
  - Challenges in implementing anti-trafficking strategies, including legislation, national action plans and operationalization of specialized mechanisms;
  - Case examples of good practices on implementing a gender-based approach to combatting trafficking.

## VII. Annex

### A. Definition of Terms

- **Forced labour:** Article 2 of the 1930 ILO Forced Labour Convention (No. 29) defines forced labour as “...all work or service which is exacted from any person under the menace of penalty and for which the person has not offered herself / himself voluntarily.”
- **Worst forms of child labour:** is defined in Article 3 of the 1999 Worst Forms of Child Labour Convention as comprising of: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”
- **Slavery:** Article 1 of the 1926 Convention to Suppress the Slave Trade and Slavery defines slavery as “...the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”
- **Practices similar to slavery:** Identified in Article 1 of the 1956 Supplementary Convention on Slavery, these also refer to exploitative relationships between people that have elements of ownership.
- **Servitude:** Refers to “all conceivable forms of domination and degradation of human beings by human beings”.<sup>65</sup>
- **Debt bondage:** Article 1(a) of the 1956 Supplementary Convention on Slavery defines debt bondage as “...the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”
- **Servile forms of marriage:** Article 1(c) of the 1956 Supplementary Convention on Slavery defines servile forms of marriage refers to any institution or practice, whereby “(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person.”

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<sup>65</sup> Manfred Nowak, UN Covenant on UN Civil and Political Rights: CCPR Commentary, 2<sup>nd</sup> ed. (2005), p. 99.