



Draft Submission to CEDAW's General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

Submission of The Inter-Agency Coordination Group against Trafficking in Persons (ICAT)

The Inter-Agency Coordination Group against Trafficking in Persons (ICAT)¹ welcomes the elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration by the Committee on the Elimination of Discrimination against Women (CEDAW). Achieving gender equality, the empowerment of all women and girls and the realization of their human rights must be at the core of all international policy commitments, as the cornerstone for addressing all forms of violence against women and girls, including human trafficking.

Tasked with ensuring coordination and coherence across the international system to facilitate a holistic and comprehensive approach to preventing and combating trafficking in persons, including protection and support for victims of trafficking, ICAT wishes to offer its support to the Committee in the process of drafting the General Recommendation by identifying the following priority areas which we hope will inform the drafting of the text. We offer a number of suggestions below for consideration.

Towards a more gender-transformative approach to human trafficking:

Year after year, global evidence continues to show that women and girls are disproportionately affected by human trafficking. This crime remains deeply gendered in its manifestation and impact and constitutes a grave form of violence against women and girls. Women and girls represent 72% of detected victims globally, and girls represent almost 77% of detected children who are trafficked. Moreover, women and girls together represent 94% of detected victims who are trafficked for sexual exploitation², which remains the most commonly detected form of exploitation globally.³

¹ ICAT comprises of 23 member agencies: International Civil Aviation Organization (ICAO); International Centre for Migration Policy Development (ICMPD); International Labour Organization (ILO); International Organization for Migration (IOM); Office of the High Commissioner for Human Rights (OHCHR); Organization for Security and Co-operation in Europe (OSCE); United Nations Development Program (UNDP); United Nations Population Fund (UNFPA); United Nations High Commissioner for Refugees (UNHCR); United Nations Children's Fund (UNICEF); United Nations Office on Drugs and Crime (UNODC); UN Women; United Nations Office on Genocide Prevention and the Responsibility to Protect; Office of the SRSG on Sexual Violence in Armed Conflict; The World Bank; Counter-Terrorism Committee Executive Directorate (CTED); Department of Peace Keeping Operations (DPKO); Department of Political Affairs (DPA); International Criminal Police Organization (ICPO-Interpol); United Nations Educational, Scientific and Cultural Organization (UNESCO); United Nations Interregional Crime and Justice Research Institute (UNICRI); United Nations Joint Program on HIV/AIDS (UNAIDS); and Council of Europe.

² For further information on the concept of exploitation see: https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf

³ UNODC, Global Report on Trafficking in Persons, 2018.

Despite some progress globally in promoting a more gender-sensitive approach to address human trafficking, the evidence consistently shows that these global efforts have had limited success in changing the trends in the disproportionality of women and girls falling victims to this crime. The global community therefore needs to promote a gender transformative approach in its interventions to address human trafficking. A gender transformative approach aims to promote gender equality and the empowerment of women and girls, including by working on reversing the structural, social, economic factors that perpetuate gender inequality and make women and girls disproportionately affected by this crime. A gender transformative approach, among other things, also requires looking at the most marginalized groups of women and girls who might be more vulnerable to trafficking due to intersecting forms of discrimination (ex: rural women, out of school girls, women and girls living in poverty, etc). Given CEDAW's mandate, ICAT would like to see the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration provide an opportunity to move beyond the need to have a gender-sensitive approach, towards ensuring a gender-transformative approach to address the gendered nature of this crime.

Prevention through a gender-transformative approach:

A gender-transformative approach towards prevention of trafficking requires moving beyond awareness raising to addressing the deep-rooted gender inequalities that render women and girls vulnerable to trafficking, including gendered poverty, unemployment, unsafe migration, lack of access to education, violence, and overall gender discrimination. It also requires addressing the harmful norms, gender roles and power relations that are at the root of all forms of violence against women and girls. As the Secretary General's Report on trafficking in women and girls notes, understanding violence against women and girls, including trafficking, as a continuum is to recognize the commonalities and connections between manifestations of violence in diverse contexts. All forms of violence against women and girls are rooted in unequal power relations that are deeply embedded in negative social norms, attitudes and behaviours that normalize and perpetuate violence against women and girls in all its forms. As such, preventing all forms of violence against women and girls, including trafficking, requires addressing the gendered norms, assumptions and stereotypes around male domination, sexual entitlement, coercion and control. Dominant norms and stereotypes regarding masculinities create an expectation that men should or are entitled to exert power to control and coerce women, in particular in relation to sex. Furthermore, norms and gender stereotypes around the expectation of submissiveness and roles of women also create a context conducive to violence against women and girls, including trafficking (A/73/263). A gender-transformative approach requires further efforts in addressing such negative social norms, attitudes, behaviours and stereotypes.

Addressing the gendered nature of the linkage between migration, labour and human trafficking:

Coherence between laws, programs and policies addressing migration, labour and human trafficking is a crucial aspect in ensuring a comprehensive approach to preventing and combating trafficking in persons. A holistic approach to the linkages between migration, labour and human trafficking requires a deeper understanding of the gendered nature of this nexus.

Despite the potential for migration to promote women's agency and economic empowerment, restrictive immigration laws and a lack of regular channels for labour migration can increase the risk to women migrant workers of exploitation and trafficking. For instance, a lack of regular migration channels can cause women to use irregular migration routes or the services of unscrupulous recruitment agents or smugglers. The risks of exploitation and trafficking for women migrant workers are exacerbated by persistent gender inequalities and heightened further still for those migrant women experiencing multiple and intersecting forms of discrimination.

Additionally, despite many States reporting improved access to justice for migrant women, irregular migration status and the threat of imprisonment and/or deportation continue to exacerbate the vulnerability of migrant women to different forms of gender-based violence. The failure of some States' criminal justice systems to adequately differentiate between irregular migration, smuggling and trafficking continues to be problematic as victims of violence, exploitation or trafficking become recorded, instead, as criminals (A/72/215).

A more gender-transformative approach to migration policies is one of the ways to prevent human trafficking and other forms of violence against women and girls before they occur. Among other things, this would require:

- Putting in place livelihood and income enhancement activities in source countries which can provide women/girls with alternatives to migration due to economic duress;
- Expanding safe and legal pathways to migration that offer women decent work opportunities and pathways to seek protection;
- Improving working conditions in the informal, unregulated sectors in which many women are concentrated, particularly domestic and care work;
- Developing and providing access to programmes that seek to regularize the status of migrants or lead to permanent residence, with specific measures taken to address migrant women and girls with irregular migration status or who are stateless, or where women have been victims of crime, including exploitation and human trafficking;
- Creating awareness regarding the means for safe migration and equipping women with knowledge about their rights when they decide to migrate;
- Registering, licensing and monitoring agencies involved in recruitment or facilitation of labour migration;
- Ensuring the effective separation between immigration enforcement activities and public service provision by State and non-State actors to ensure that migrant women and girls with no legal residency who have been victims of violence, including human trafficking, are able to access essential services, including sexual and reproductive health (SRH), trauma counselling, social services, legal support, and access to justice -- without fear of punishment, detention or deportation;
- Establishing protocols between immigration enforcement, criminal justice and service providers, to ensure that migrant victims can access justice and receive assistance;
- Establishing accessible and confidential gender-based violence prevention and protection services, which are linguistically and culturally appropriate, and include provision of information on the rights of women migrant workers, hotlines, dispute resolution mechanisms,

legal aid, psychological support and trauma counselling, sexual and reproductive health and social services, women-only spaces, and access to women's shelters;

- Address the 'push' and 'pull' factors in migration that are rooted in structural inequalities, both in terms of inequalities between countries, as well as gender inequalities, which promote the demand for trafficking in women and girls, particularly for sexual exploitation. This entails addressing economic inequalities in migration as well as addressing harmful social norms, attitudes and behaviours that normalize and perpetuate violence against women and girls, including by addressing harmful masculinities, gender norms and stereotypes.

Addressing trafficking in women and girls due to conflict and humanitarian crises:

Women and girls can be especially vulnerable to human trafficking during conflicts and humanitarian crises. Trafficking in persons can amount to conflict-related sexual violence when committed in situations of conflict for the purpose of sexual violence or exploitation. In certain circumstances, it can also amount to atrocity crimes, genocide, war crimes and crimes against humanity. This has been acknowledged by Security Council Resolution 2331 that recognized that the targeting of women, girls and boys for sexual violence, which accompanies the rise of violent extremism, is not ancillary or incidental, but widespread, systematic and integrally linked with the strategic objectives of violent extremist and terrorist groups. It is important to ensure that victims of trafficking for the purpose of sexual violence or sexual exploitation perpetrated by terrorist groups are recognized as legitimate victims of terrorism and / or atrocity crimes, receive reparations and are not detained, prosecuted or punished for unlawful activities in which they have been compelled to engage (S/2018/1042 and S/2017/939).

A gender-transformative approach requires integrating gender-specific measures in humanitarian preparedness and response, especially as concerns the protection and recovery of victims. Additionally, as recommended by the Secretary General (S/2018/1042) and the Special Rapporteur on trafficking in persons, especially women and children (A/73/171), response and prevention of human trafficking should be fully mainstreamed into the women, peace and security agenda.

Social inclusion of survivors of trafficking:

Policies and interventions in relation to trafficking, should ensure that the voices of survivors are heard and that their experiences and recommendations are incorporated when designing programmes, policies, services or interventions on trafficking in persons.

While States have increasingly recognized the need to support victims of trafficking, most responses to trafficking in women and girls still focus on the delivery of short-term services that are often contingent upon victims' cooperation with processes of the criminal justice system or their migration status. Victims who do not receive adequate support and assistance risk being re-victimized, re-traumatized, or re-trafficked, including by willingly returning to their traffickers due to lack of alternative options for livelihood. Providing immediate essential services to victims of trafficking that is not made conditional upon migration status or cooperation with the criminal justice system is essential. However, a gender-transformative approach requires that we move beyond an understanding of services as the short-term immediate response to the victims' needs, towards a holistic approach that aims to transform/reverse the risk factors of vulnerability. In this

regard, states must ensure that victims of trafficking receive comprehensive and long-term support that aims at their social inclusion by providing sustainable measures that promote their independence and empowerment. Both short-term and long-term support should include, at a minimum, the following standards:

- Ensuring that sustainable solutions are guided by an individual assessment of the victim's case and best interests' determination, regardless of the victim's status or age, and that the victim participates in this process, including the girl child to a degree appropriate to her age and maturity;
- Ensuring that victims have access to comprehensive multi-sectoral services that are age and gender-responsive: psycho-social counselling; legal assistance, sexual and reproductive health and social services; women-only spaces; peer support and access to women's shelters or transitional housing. In the case of the girl child, ensuring that a qualified guardian is appointed, and that the victim has access to family- or community-based alternative care, rather than shelters;
- Providing measures that promote victims' economic independence, such as through income-generating activities, and support and assistance in finding decent employment and long-term housing arrangement, and for both women and girls, access to (re)training and education;
- Ensuring that victims of trafficking are not detained, prosecuted or punished for any unlawful activities they were involved in as a direct consequence of their situation as trafficked persons, including violations and offences linked with prostitution, petty crime, or immigration laws;
- Introducing measures that address stigmatization, especially for victims of sexual exploitation and those who have been exposed to HIV or other sexually transmitted infections including by establishing rights-based, confidential SRH services, peer support groups, working directly with families, communities and civil society;
- Ensuring that service providers are well-coordinated and easily accessible;
- Granting legal status with options that lead to permanent residency to victims of trafficking and ensuring return and reunification, only if in accordance with the survivor's choice and best interests and when long-term support that promote their social inclusion are available. In the case of repatriation, adequate procedures should be implemented to monitor the effectiveness of rehabilitation programmes and prevent re-victimization.

Addressing impunity:

Traffickers continue to face a very low risk of conviction globally as do the users of trafficked goods and services who fuel the financial motive for exploitation.⁴ Despite some progress in the response to human trafficking, impunity remains widespread.

This can be due to many reasons, including:

- Challenges associated with the identification of victims. Female victims can face particular issues with reporting, which can be due to different factors, such as:

⁴ UNODC, Global Report on Trafficking in Persons, 2018

- stigma and bias by police officers, prosecutors and judges;
- the misidentification of victims as suspects;
- lack of female officers;
- lack of SGBV and TIP trained police investigators;
- lack of SGBV and TIP investigation teams within the police;
- lack of SGBV and TIP trained prosecutors and judges;
- privacy concerns;
- fear of stigmatization from their community, particularly for victims of trafficking for sexual exploitation;
- attachment to their traffickers or, equally, fear of their traffickers;
- The lack of, or inadequate criminal laws that comprehensively address all forms of trafficking in persons, as well as lack of consistency between laws addressing violence against women and girls and laws addressing trafficking in persons;
- The lack of, or inadequate measures that are gender-responsive to protect victims from retaliation and intimidation;
- Insufficient measures that are gender-responsive to support victims during the criminal justice process, including measures that enable victims who are witnesses, and other witnesses, to testify in a manner that acknowledges their particular needs;
- Insufficient gender-responsive training and awareness among criminal justice system participants about the specific needs of victims of trafficking and/or the legal and other measures in place to respond to this crime;
- The lack of political will to address human trafficking and inadequate resources allocated for effective law enforcement response against this crime.

As such, states should ensure that specific laws are in place to enable the successful prosecution of human trafficking cases, including by criminalizing all forms of trafficking in persons, especially women and girls, in a manner that accords with the United Nations Convention against Transnational Organized Crime and the Protocols thereto. This should include criminalizing those who knowingly use the goods and services of trafficked persons. Those laws must be fully implemented and enforced, to ensure that all victims of trafficking have access to justice, that crimes are effectively investigated and that perpetrators are prosecuted and held accountable for their crimes, and that criminal proceeds are seized or confiscated. Legislation should impose fines on traffickers that contribute to victim restitution and civil remedies should be available for those who have been trafficked.⁵

States should also ensure that all criminal justice system participants are properly trained on effective anti-trafficking measures with particular attention paid to the specific needs and realities of women and girls. States should also introduce gender-responsive measures to improve detection, such as increasing women's participation in law enforcement.

⁵ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000), UN Doc. A/45/49 (Vol.1), Art. 6, para 6