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18 February 2019

**Re: General Discussion on the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

Dear Distinguished Committee Members,

Equality Now respectfully makes this submission in response to the Call for Submissions by the Committee on the Elimination of Discrimination against Women (“the Committee”) in advance to the Half Day of General Discussion on the Trafficking in Women and Girls in the Context of Global Migration during its 72nd session (18 February - 8 March 2019).

Founded in 1992, Equality Now is an international human rights organisation that works to protect and promote the rights of women and girls around the world in the areas of legal equality, harmful practices, sexual violence and sex trafficking, with a cross-cutting focus on adolescent girls. Equality Now combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit women and girls, and works to ensure that governments enact and enforce laws and policies that uphold their rights. Equality Now has offices in London, Beirut, Nairobi and New York, presence in Amman, New Delhi, Tbilisi, Beijing and Washington, DC and partners and members in almost every country in the world.

We thank the Committee for recognising the need to provide comprehensive guidance to States Parties in a new General Recommendation, in particular 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” (para 3 of the Concept Note), in order to facilitate the elimination of trafficking in women and girls. We think the General Recommendation will re-energise States Parties’ efforts and increase the much

needed legal and political momentum to address trafficking in women and girls, which is a growing global crime and violation of their human rights.

### ***Submission on some of the Sub-themes to be featured in the General Recommendation***

#### *Effective prevention measures for all forms of trafficking in women and girls, including an understanding of the root causes*

Gender-based discrimination, violence and inequality is at the heart of trafficking in women and girls. Overwhelmingly, it is girls and women who are victims of human trafficking. This is a result and manifestation of their generally inferior position in society and the harmful prejudices and gender stereotypes that reinforce this position, and often underpinned by customary and codified laws. In every country some form of legal inequality exists – either the law itself is sex discriminatory (155 out of 173 economies surveyed by the World Bank in 2016 had at least one sexist law),<sup>1</sup> the impact of the law is discriminatory, or laws are not effectively implemented enabling an environment of inequality. This environment allows widespread and systemic violence and discrimination against women and girls, including their trafficking, to be perpetrated with impunity.

The links between gender-based discrimination and inequality, migration and trafficking in women and girls are well established. The main reasons for female migration are also grounded in gender-based discrimination and inequality and manifest as poverty, unemployment and lack of access to resources and opportunities, under-education, and limited political participation. Economic and political instabilities, conflict and humanitarian crises and natural disasters will impact on women and girls disproportionately as they are more likely to be in inferior situations as a result of the underlying gender-based discrimination and inequality, including as they intersect with other discriminations including such as disability and on the basis of ethnicity. Whether women and girls are displaced and fleeing conflicts and disasters, or pushed to leave their homes in search of work opportunities, they face increased risk of experiencing sexual and gender-based violence, including trafficking and exploitation, along and at the end of the migration journey and particularly when they are using irregular migration channels. In host countries, they enjoy very little legal and social protection and may be treated as criminals for violating immigration rules. The Concept Note clearly outlines the nature and emerging forms of trafficking and exploitation that women and girls on the move will experience.

Addressing gender-based discrimination and inequality is therefore a key measure to eliminating trafficking in women and girls, including in the context of global migration. States Parties are obligated under Article 2 of the Convention to respect, protect and fulfil women's rights to non-discrimination and the enjoyment of de jure and de facto equality. The scope of these obligations in relation to women in particular contexts, that are also relevant to this General Recommendation, are elaborated in other General Recommendations. For instance, General Recommendation No. 26 on migrant women, No. 30 on women in conflict and post-conflict situations, No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, and No. 35 on women in prostitution. **We recommend that the**

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<sup>1</sup> World Bank, Women, Law and Business: Getting to Equal Survey, 2016

**General Recommendation re-affirms the Committee’s previous guidance for States Parties to put in place measures to ensure discrimination and inequality are addressed. In particular to ensure that laws permit women’s substantive equality, and that women and girls have equal access to economic and other opportunities and are protected from all forms of gender-based violence, paying particular attention to the needs of more vulnerable groups of women and girls.**

*Responsibility of States Parties, in view of the SDGs, to create conditions to address the root causes of trafficking*

As an overarching principle, the SDGs posit that States have a collective interest and responsibility to ensure that the most vulnerable people and populations, including migrants and refugees, are not left behind by economic, social and environmental progress.<sup>2</sup> Out of the 17 SDGs, trafficking in persons is specifically mentioned in three targets under three goals: 5 (Gender Equality), 8 (Decent Work and Economic Growth) and 16 (Peace Justice and Strong Institutions). However, many other SDG targets and goals are relevant to addressing trafficking in persons, an issue deeply rooted in development issues at-large including gender-based discrimination and inequality, poverty and lack of education and exacerbated by conflict and humanitarian crises, natural disasters and migration.

In addition to SDGs 1, 2 and 4 already articulated in the Committee’s Concept Note (para 17 of Concept Note) others relevant to trafficking in women and girls are:

- *Target 5.3: the elimination of harmful practices such as child, early and forced marriage.* Trafficking for the purposes of child and forced and sham marriages is an increasing form of exploitation that migrant and refugee women and girls are subjected to.<sup>3</sup> Women and girls, whether in their home or destination countries or in refugee camps, require protection from these harmful practices, including in the law.
- *Target 8.5: the achievement of full and productive employment and decent work for all women and men ...and equal pay for work of equal value.* This will address some underlying and systemic factors that create vulnerability to trafficking in the first place. For many women and girls, it begins as a search for work, as a decision to migrate abroad prompted by a lack of opportunities at home and regular avenues by which to migrate. Obstacles for women and girls to have access to a proper education and to properly remunerated jobs should be removed.
- *Target 10.7: the facilitation of orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well managed migration policies.* Strengthening migration management systems and the expansion of safe, orderly

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<sup>2</sup> Report of Peter Sutherland, Special Envoy on Migration to the General Assembly, 13 February 2017 <https://goo.gl/yuzs65>

<sup>3</sup> According to UNODC, Global Report on Trafficking in Persons 2018, trafficking for forced marriage was reported by 12 countries across all regions

and regular migration pathways can reduce the need for dangerous and irregular movements that exposes female migrants and refugees to trafficking and exploitation.

- *Target 10.2: the promotion of social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.* This is relevant to addressing the root causes of trafficking and migration and also ensuring that trafficking victims and migrants, living outside of their home countries, are protected by the host countries.
- *Targets 17.18 and 17.19: promoting global partnerships on sustainable development and building on existing initiatives to develop measurements of progress.* The transnational nature of trafficking in women and girls, especially in the context of global migration trends, requires cooperation among States and their investment in data collection, management and analysis towards improving monitoring and accountability of action against human trafficking.

This list of SDG targets is illustrative and not exhaustive. Achieving many more targets supports the fight against trafficking in women and girls. The SDGs in target 5.2 frame “trafficking and the sexual and other types of exploitation” in women as a form of violence against women, and as illustrated above in other targets as a development issue. Therefore, they are an important tool for highlighting and focusing the world community’s attention to address the root causes as well as the consequences of trafficking in women and girls. **We recommend that the new General Recommendation re-affirms the SDGs’ characterisation of trafficking in women and girls and sexual exploitation as a form of violence against women, and calls on States Parties to put in place measures to address structural factors that increase women and girls’ vulnerability to trafficking and exploitation, also mandated in the Convention, e.g. eliminating harmful practices, increasing access to education, employment and equal opportunities, and also encourage more robust gender disaggregated data collection and analysis.**

*Tackling poor governance, including corruption of State officials, and the link to impunity of perpetrators of trafficking*

Large-scale global migration, and the trafficking in women and girls in that context, is happening in situations of extreme political and economic instability and systematic failure to respect the basic human rights of a large part of the world’s population. Women and girls are disproportionately affected because of their inferior social position. In these situations, the rule of law breaks down and the proper functioning of democratic systems and spaces within and outside of the State is affected, resulting in widespread human rights abuses, including the trafficking and exploitation of women. Traffickers exploit women’s vulnerabilities and thrive and operate largely with impunity. General Recommendation No. 35 states, “In the context of shrinking democratic spaces and consequent deterioration of the rule of law, all these factors allow for the pervasiveness of gender-based violence against women and lead to a culture of impunity.”<sup>4</sup> Traffickers must not be allowed to operate with impunity. **We recommend that the**

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<sup>4</sup> General Recommendation No. 35 (2017)

**General Recommendation encourages home countries and those that host refugees and migrants to work better at identifying traffickers and instilling stricter punishments for this crime when it is identified. In particular, that special attention is made to trafficking in women and girls for the purposes of sexual exploitation, as it the most pervasive form of exploitation that refugee and migrant women experience, and requires a different approach as compared to labour exploitation.**

An approach that focuses only on punitive measures against “traffickers” however may exclude from scrutiny the role and responsibility of other players in the trafficking and exploitation chain. Recommendation No. 35 affirmed that “gender-based violence against women, whether committed by States, intergovernmental organisations or non-state actors, including private persons and armed groups, remains pervasive in all countries of the world, with high levels of impunity”. In addition to situations already identified by the Committee in its Concept Note, such as sexual exploitation by terrorist groups and peacekeeping missions, staff within aid agencies<sup>5</sup> have also taken advantage of women and girls’ vulnerability and sexually exploited them. There is an unequal power dynamic between aid agencies and those that they support. Such an unequal power dynamic can, without proper care, policies and safeguards in place, easily lend itself to sexual exploitation especially in the context of displacement including as a consequence of conflict and natural disaster. **We recommend that the General Recommendation clearly articulates the legal responsibility of all state and non-state players, including duty bearers, and encourages them to put in place a zero tolerance approach to exploitation by any of their staff, contractors, partners, grantees, sub grantees, agents and consultants.**

The outrage<sup>6</sup> about the sexual exploitation of women and girls by aid workers and the impunity they enjoyed was based on the clear evidence that they exploited vulnerable women and girls and that the exploiters were in position of power, and therefore the sexual transactions were exploitative and unequal. The abuse of positions of power and exploiting another’s vulnerability does not only happen in lower economically developed countries, but anywhere where men abusing their position of power are buying use of the bodies of women and girls in richer countries. The underlying factors that result in the exploitation are the same. This analysis, and the approach to hold all exploiters in all contexts and situations accountable, acknowledges that the ideology of men’s entitlement and privilege over discriminated against and exploited women is a key cause of gender based violence against women<sup>7</sup>, and this violence includes trafficking and sexual exploitation. **We recommend that the General Recommendation confirms that trafficking in women and girls is as a result of abuse of power and grounded in the ideology of male entitlement and privilege over women and encourages States Parties to put in place punitive measures that address impunity at all levels. This includes strengthening measures to address the demand that fosters trafficking, exploitation and the supply of victims.**

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<sup>5</sup> See UK Parliament, Sexual Abuse and Exploitation in the Aid Sector, 2018  
<https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/840/84002.htm>

<sup>6</sup> See UK Parliament Report above

<sup>7</sup> General Recommendation No. 35 (2017), para 17

*Providing access to justice for victims through ensuring the investigation, prosecution and conviction of perpetrators*

Generally in host States, migrant and refugee women who have experienced trafficking enjoy very limited protection. Restrictive immigration policies prevent many of them from ever acquiring legal status in host countries, resulting in the global situation where huge numbers of human beings remain without documents, without legal access to justice, or most of the human rights that citizens enjoy. Lack of access to public funds and even to a status independent of a husband can keep women in additional vulnerable situations. As the UN Special Rapporteur on Violence Against Women has pointed out “[t]he movement or transport of women is such as to place the victim in unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases trafficked women’s marginalisation and therefore increases the risk of abuse, violence, exploitation, domination or discrimination by both traffickers, police officials, the courts, immigration officials, etc.”<sup>8</sup>

In particular, access to justice is most likely to be elusive for refugee victims of trafficking living in refugee camps. CEDAW and the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol are part of a comprehensive international human rights legal framework that aims at ensuring complementarity and cumulative protection for refugees, asylum seekers and stateless persons. Both apply at every stage of the displacement cycle, confirmed in respect of women and girls in General Recommendation No. 32.<sup>9</sup> In respect of children, Article 22 of the Convention on the Rights of the Child provides that children who are seeking refugee status or who are considered a refugee under international or domestic law, especially if they are unaccompanied by a parent or guardian, should receive appropriate protection and enjoy their rights as set forth in the Convention. Moreover, according to the preamble to the Refugee Convention, host States are responsible for the protection and well-being of refugees while UNHCR is charged with ‘supervising their protection’.

However, it has increasingly been the case over the years that UNHCR and other UN agencies manage refugee camps virtually alone, carry out refugee status determination and administer a range of services for refugees in the areas of education, social welfare and health. Although, according to the Refugee Convention, “the ultimate responsibility for the refugees within the mandate of the High Commissioner falls in fact on the countries of residence”<sup>10</sup>, various Memoranda of Understanding between host States and UNHCR setting out the relationship between the two can contradict this and so exacerbates confusion as to which party is to play which role. According to UNHCR’s evaluation and policy analysis unit, UNHCR is “mandated to safeguard the rights and well-being of refugees, to lead and coordinate international action for their worldwide protection and to seek permanent solutions to their plight”<sup>11</sup>

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<sup>8</sup> Report on trafficking in women, women’s migration and violence against women, submitted in accordance with the Commission on Human Rights by Ms. Radhika Coomaraswamy, the Special Rapporteur on violence against women, its causes and consequences, 29 Feb 2000, page 7

<sup>9</sup> CEDAW General Recommendation No. 32, (2014), paras 9 & 10

<sup>10</sup> General Assembly Resolution 832, October 21 1954

<sup>11</sup> See <https://www.unhcr.org/evaluation-and-research.html>

This has given rise to some deeming the UN a ‘surrogate state’ and while it may be seen in some circumstances to take on government-like functions, it lacks the requisite structures and authority to fully take on this role. In some refugee camps<sup>12</sup>, UNHCR has also demonstrated administrative, judicial and semi-judicial powers where decisions affecting human rights had been taken ‘informally’, without recourse to national law. As reported by UNHCR itself, “in many cases various traditional forms of justice are administered within the refugee community itself, and in many instances those traditional forms of justice do not conform to international human rights standards”. **We recommend that the General Recommendation takes account of this lack of clarity (and potential protection gap) in accountability and responsibility with respect to oversight of and assistance to displaced communities and mandates all duty-bearers to act in accordance with international laws and standards and that States Parties and other duty bearers put systems in place to prevent any abuse that could contribute to or facilitate trafficking and exploitation.**

*Case examples of good practices on implementing a gender-based approach to combatting trafficking*

### *The Equality Approach to ending trafficking of women and girls for sexual exploitation*

An effective way to prevent trafficking for the purposes of sexual exploitation is to take a human rights and gender equality-based legal approach, a holistic and comprehensive strategy that recognises both the push and the pull factors that allow trafficking to thrive and contribute to the desire of many to migrate. This approach has three main goals:

1. *Promote equality between men and women:* The approach acknowledges that sex trafficking and prostitution is violence against women, and grounded in gender-based discrimination and inequality, and that gender inequality and discriminatory laws and practices trap women in poverty and fail to protect them from violence, rendering them vulnerable to exploitation and trafficking. Women who lack access to resources, such as housing, land, property, and inheritance, and those fleeing conflict or humanitarian crises are at increased risk. Women and girls trafficked for sexual exploitation are caught in cycles of sexual violence and assault. It is critical to implement legal safeguards for women and girls to alleviate poverty and create greater possibilities for non-exploitative options for girls and women.

2. *Address sex trafficking in laws which hold every actor in the exploitation chain accountable (buyers, pimps, traffickers, etc.):* In addition to traffickers and pimps, the approach also specifically focuses on holding “buyers” of commercial sex accountable. Prostitution has always been about poverty and lack of economic choices and, at times of increasing austerity and rising poverty globally, these so-called choices increasingly come down to a decision between prostitution and destitution. Sweden, Norway, Iceland, France, Canada, Northern Ireland, and Ireland have recognised the discrimination and exploitation in this system and effectively addressed the exploitation of prostituted women through the demand for commercial sex and sex trafficking by decriminalising people in prostitution, and criminalising those who purchase sex.

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<sup>12</sup> For example in Kenya’s Dadaab refugee camp

As a result, street prostitution and sex trafficking have decreased. Countries that neglect to focus on the demand that fuels sex trafficking, or have legalised the commercial sex industry, have witnessed increased exploitation of women and greater numbers of trafficked women and girls to fulfil an influx of international sex tourists as well as increased demand locally.

*3. Recognise the vulnerability of exploited people and provide them with support, including to exit the trade:* When trafficking and prostitution are acknowledged as structural discrimination and violence against women and girls, rather than treat them as criminals, this approach decriminalises prostituted people and ensures they are supported. They are not to blame nor are they responsible for the exploitation and violence they are experiencing. This approach acknowledges that violence is inherent in trafficking and prostitution.

**We recommend that the General Recommendation applies the Equality Approach goals and pillars, and call on State Parties to put in place laws and measures for the decriminalisation of women in prostitution globally (General Recommendation No. 35), while at the same time recommending States Parties to address the demand that fosters all forms of trafficking (Article 9 (5) of the Palermo Protocol) to ensure accountability for the exploitation of women and girls.**

### *Scope and Focus of the General Recommendation*

The General Recommendation will elaborate on only part of Article 6 of the Convention, i.e. “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women [...]” (para 5 of Concept Note), and not Article 6 in full which reads, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. It is also to be framed and “contextualised in light of the aggravated risk posed by the realities of global migration.....” (para 3 of Concept Note). It is our belief that the scope and focus may result in the General Recommendation limiting the full understanding of the context of migration which is closely intertwined with trafficking and the exploitation of prostitution of women and girls. The majority of women and girls are trafficked for prostitution,<sup>13</sup> and while there is strong evidence of the role of migration in exacerbating trafficking in women and girls, there is much more that is happening outside the context of migration. **In this first General Recommendation on Trafficking in Women and Girls, we encourage the Committee to take a broader approach to elaborating Article 6, and acknowledge the full spectrum of contexts in which the trafficking and exploitation of women and girls occurs.**

The Concept Note uses the term “forced prostitution”, which is not defined in international law nor is it a term that otherwise has universal acceptance as it may be interpreted to mean that there is some prostitution that is “chosen” and thus invalidates the experiences of the majority of women which show that they do not “choose” but are in prostitution as a result of trafficking, sexual exploitation and/or lack of viable alternatives compounded by factors such as violence, poverty and social exclusion. The veneer of choice also enables society to blame the women, label them, and look the other way while at the same time exonerate those who would exploit the

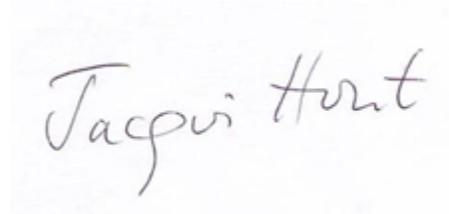
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<sup>13</sup> UNODC, 2018 Global Report on Trafficking in Persons

disadvantage and vulnerability of prostituted women. **We recommend that the General Recommendation uses the agreed international law terminology, namely “exploitation of prostitution of others/women” as found in CEDAW, the Palermo Protocol and the 1949 Convention for the Suppression of the Traffic in Persons.**

Thank you for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,

A handwritten signature in cursive script that reads "Jacqui Hunt". The signature is written in dark ink on a light-colored, slightly textured background.

Jacqui Hunt  
Europe Director