

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

15 May 2020

Equality Now is an international human rights organization 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, and Washington, DC and partners and members in almost every country in the world.

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”) on its Draft General Recommendation on the Trafficking in Women and Girls in the Context of Global Migration (“the Draft General Recommendation”).

We welcome the Draft General Recommendation’s acknowledgment that trafficking in women and girls “is rooted in gender-based discrimination, gender-based inequality, and feminization of poverty compounded by growing global inequalities and the demand for cheap and/or forced labor, including the demand for sexual exploitation” (para 20) and support its recognition that a “gender-transformative approach is required to dismantle the structural and systemic conditions that deprive women and girls of their fundamental rights, the consequence of which places them in situations of vulnerability to exploitation by traffickers” (para 19). Achieving substantive equality for women and girls is critical to addressing trafficking. In addition to the Draft Recommendation’s call for States Parties to enhance the collection, analysis and dissemination of comprehensive data to assess trends on the situation of women and girls and progress achieved towards achieving substantive equality in all areas covered by the Convention (para 25 (a)), **we call on the Committee to also recognize sex-based discrimination as a root cause of trafficking in women and girls, as well as make specific recommendations for States Parties to enact and implement laws that respect, protect and fulfill women’s right to non-discrimination and to the enjoyment of substantive equality as mandated under Article 2 of the Convention.**

We welcome the Draft General Recommendation’s appreciation of the need to take into account regional-specific approaches in addressing the forms of trafficking in women and girls, and the diverse experiences of trafficking for different groups of women and girls, including differences in causes, consequences and experience of trafficking between young girls and teenage girls, and adult women (para 6). Thus, we commend the Draft General Recommendation’s call encouraging States Parties to adopt a nuanced response to combating trafficking whilst also paying particular attention to women and girls affected by migration, and conflict and forced displacement and

Americas

125 Maiden Lane, 9th Floor, Suite B
New York, NY 10038, USA
p. +1 212-586-0906 | f. +1 212-586-1611
info@equalitynow.org

Europe

1 Birdcage Walk, London, SW1H 9JJ, UK
p. +44(0)20-7304-6902 | f. +44(0)20-7973-1292
ukinfo@equalitynow.org

Africa

1st Floor, Bishops Garden Towers, Bishops Road
Mailing : PO Box 2018 - 00202, Nairobi, Kenya
p. +254 20-2719-832 | f. +254 20-2719-868
equalitynownairobi@equalitynow.org

humanitarian crises who often experience multiple and compounded forms of discrimination including sex- and gender-based discrimination, xenophobia and racism.

We also welcome the comprehensive recommendations to States Parties to ensure that victims and survivors of trafficking access the range of immediate and long term services and support including access to information on their rights and how to access them, medical, psychological and legal services and specialized shelter services “regardless of their immigration status without fear of arrest or deportation” (para 72 (d)).

Submissions on some of the sub-themes in the Draft General Recommendation

Trafficking in women and girls for the purpose of sexual exploitation

We commend the Draft General Recommendation’s reference to the full Article 6 of the Convention, which sets out States Parties’ legal obligation to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. We see this as a positive step in addressing all aspects of Article 6 and not just part of it as had been previously expressed in the Committee’s 2019 Concept Note on the General Recommendation.

The Draft General Recommendation contains a number of specific references to trafficking for sexual exploitation. For instance, among other things, it acknowledges that women and girls make up 94% of those trafficked for sexual exploitation (para 12), it outlines the particular vulnerability of marginalized groups such as forcibly displaced women and girls, migrant women, asylum seekers, refugees and stateless women to trafficking (paras 42) and it calls on States Parties to adopt zero tolerance policies on trafficking and sexual exploitation and abuse, which address groups such as national troops, peacekeeping forces, border police, immigration officials and humanitarian actors (para 68 (k)). The Draft General Recommendation also makes the important reference to demand, including the demand for sexual exploitation, as a root cause of trafficking in women and girls, and calls on States Parties to “discourage the demand that fosters the exploitation of women and girls, which leads to trafficking” (para 20)

We commend the Committee for highlighting these issues and making a strong connection between trafficking in women and girls, and demand. However, we would like to highlight the following issues:

While there is strong evidence of the role of migration and conflict in exacerbating trafficking in women and girls for sexual exploitation, it is important to note that there is much more trafficking for sexual exploitation that is happening outside the contexts of migration and conflict. The issues of prostitution and the sex trade and trafficking for sexual exploitation remain intrinsically linked. Globally, trafficking in women and girls is the most prevalent form of human trafficking, and the majority of women and girls are trafficked for sexual exploitation in the global sex trade. Furthermore, in addition to the international human rights instruments mentioned in paras 7-11 as providing the legal framework for the General Recommendation, the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, states that

“Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person” (Preamble).

We think that the Draft General Recommendation could have done more to provide concrete analysis and elaboration on the issue of prostitution and the sex trade and trafficking for sexual exploitation as the most prevalent form of human trafficking, as well as provide specific recommendations to States Parties on addressing these linkages. For example, it makes no specific reference to the chain of exploiters in the sex trade linked to traffickers, e.g. sex buyers, pimps, madams, brothel keepers, and their liability in the sexual exploitation of women and girls. **We call on the Committee to include the 1949 Convention as part of the legal framework for the General Recommendation. In particular, that the Committee upholds the provisions of Articles 1 and 2 of the 1949 Convention which mandate punishment for any person who “procures, entices, or leads away, for purposes of prostitution, another person”, or “exploits the prostitution of another person”, even with the consent of that person, and for any person who “keeps or manages, or knowingly finances or takes part in the financing of a brothel” and “knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others” respectively.**

Further, we believe that the recommendations set out in paragraph 27 on addressing demand fall short of sufficiently dealing with demand for sexual exploitation. They appear to be framed in language that implies and appears more relevant to labor exploitation than trafficking for sexual exploitation as a form of violence against women and girls. For example, the recommendations refer to “...potential users of trafficked goods or services”, and “...instituting regulations....for public agencies and private businesses to identify and remove goods and services that result from trafficking in persons from their supply chains”. **We call on the Committee to pay particular attention to addressing demand for sexual exploitation, which requires a different approach and language to that used for trafficking for labor exploitation.**

Even when one reads the phrase “users of trafficked goods and services” to include those who fuel demand for sexual exploitation, the recommendations for States Parties to ensure their legal accountability appear vague and not decisive enough. For instance, para 27 (d) calls for investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, “including those on the demand side” without elaborating who they are in the context of trafficking for sexual exploitation. In addition, Para 27 (b) calls on States Parties “**where applicable**” to institute penal legislation to sanction the users of goods and services that result from trafficking in persons. The phrase “where applicable” limits the obligation of States Parties particularly as there is no further elaboration of when it may or may not be applicable to institute the laws.

We call on the Committee to frame these recommendations in legally compelling and decisive language in line with international law such as the 1949 Convention, the Palermo Protocol, as well as the Beijing Platform for Action. This would be in line with the Committee’s

previous Concluding Observations which calls on States Parties to discourage and criminalize the demand for prostitution.¹²

The Draft General Recommendation's omission in elaborating on the linkages between trafficking for sexual exploitation and the sex trade results in the exclusion of specific recommendations around protection and support for women and girls in the sex trade. Commendably para 92 (a) calls on States Parties to "ensure that anti-trafficking legislation and directives are not misused by authorities to impose increased restrictions on communities or falsely arrest and charge innocent people, particularly women from disadvantaged groups and **women in prostitution**". However, there are no specific recommendations for States Parties to ensure that those wishing to leave the sex trade are supported to exit. **We call on the Committee to ensure that a recommendation to support women who wish to leave the sex trade is included in the Final General Recommendation.**

An effective way to prevent trafficking for sexual exploitation is to take a human rights and gender equality-based legal approach, a holistic and comprehensive strategy that recognizes both the push and the pull factors that allow trafficking to thrive and contribute to the desire of many to migrate. Thus, in addition to promoting equality between men and women and enacting and implementing laws which hold every actor in the exploitation chain accountable (e.g. sex buyers, pimps, traffickers, etc.), it is important to recognize the vulnerability of exploited people and provide them with support, including to exit the sex trade. Acknowledging trafficking and prostitution as structural discrimination and violence against women and girls, leads to an approach that decriminalizes prostituted people and ensures they are supported rather than treated as criminals. 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 sex trafficking and prostitution and the sex trade. **We call on the Committee to include clear recommendations for State Parties to put in place mechanisms to support women to leave the systems of sexual exploitation.**

The use of the internet and technology by exploiters, combined with the legal, policy and technical challenges associated with policing the world wide web, is resulting in an unprecedented increase in the scope of the internet to facilitate and enable sex trafficking and sexual exploitation of women and girls at a global scale. We welcome the Committee's concerns regarding the role of technology in the recruitment of victims of trafficking (para 12) and the calls on States Parties to collect and review data on this emerging challenge and trend in order to inform the development of appropriate legislation (para 25 (f)(iii)). **We call on the Committee to include a specific recommendation for States Parties to enact legislation that codifies the obligations and**

¹ For example, the Committee has called on Lithuania to "[t]ake appropriate measures to combat exploitation of prostitution, including by criminalizing demand for prostitution, 'ix and to Belgium to "[t]ake measures to discourage the demand for prostitution, including by considering the criminalization of the purchase of sexual services; See CEDAW Committee, Concluding Observations: Lithuania, para 27(g), U.N. Doc. CEDAW/C/LTU/CO/5 (2014)

² The Committee has recommended to Finland to "[p]ursue steps to criminalize the demand for prostitution and take measures to discourage such demand." See CEDAW Committee, Concluding Observations, Finland, para 21(d), U.N. Doc. CEDAW/C/FIN/CO/7 (2014)

accountability of technology companies in preventing and prohibiting online sexual exploitation through the use of their services and products. Secondly, that States Parties put in place mechanisms for effective transnational cooperation among governments and collaboration with technology companies, civil society and survivors, to meet the international and multi-jurisdictional challenges of this global problem.

Conclusion

We commend the CEDAW Committee for reviewing Article 6 of the Convention and for the work that has gone into the Draft General Recommendation. We remain available should the Committee members require additional information.