



CEDAW Secretariat
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Stockholm, Sweden 18 February 2019

Submission by the Institute for Feminism & Human Rights to the CEDAW Committee's Draft General Recommendation on Trafficking of Women and Girls in the Context of Global Migration.

Introduction

The **Institute for Feminism & Human Rights** (IF&HR), which was founded in 2009, is an international not-for-profit policy research institute based in Sweden with members in a number of countries in Europe and internationally.

The IF&HR works to prevent and eliminate the socio-economic, legal and political discrimination of women and girls through the use of Feminist strategies and research methods, and the application of international, regional and national human rights instruments. IF&HR uses the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) as a point of departure in much of its advocacy work in Europe and internationally.

The IF&HR monitors the work to protect the human rights of women and girls in national, regional and international institutions and bodies such as the European Union, Council of Europe and the United Nations.

The IF&HR produces reports and position papers, carries out research, advocacy activities and organizes thematic conferences and, specialized trainings nationally and internationally in six distinctive thematic areas, including violence against women and girls, sexual and reproductive rights, and women and political and economic power.

The Institute for Feminism & Human Rights welcomes the opportunity to make a submission to the CEDAW Committee to further its objective to draft a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.

International legal framework on trafficking in human beings

1. Since the 19th century, the international community has searched for comprehensive solutions to prevent and tackle the trafficking in human beings of women and girls for sexual and other purposes, violations that seriously affect the rights, opportunities, and lives of already oppressed, marginalized, and often racialized women and girls around the world.
2. Historically, as it is today, the development of sustainable laws, policies, strategies and actions to eliminate the discrimination of women, and to proactively advance the rights, fundamental freedoms and opportunities of women and girls globally have been initiated, led and promoted by national and international grass roots women's organizations.

3. The promotion, development and acceptance of the Convention on the Elimination of All Forms of Discrimination of Women (CEDAW) is the result of a global women's movement, that has as its ultimate objective to ensure that all women and girls are able live lives free of discrimination and violence, while fighting against stereotypes, customs and norms that reinforces their oppression and submission, and for the equal treatment, and equal access to opportunities for all women and girls no matter their backgrounds, living conditions and situations.

4. Article 6 of the CEDAW, which makes it an obligation for States Parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women," is a reflection of the dedicated work of the early global women's movement to ensure the successful repeal of national laws that regulated prostitution activities and criminalized women and girls, who were trafficked into and exploited in prostitution.

5. Article 6 of CEDAW fully incorporates the Feminist, human rights principles originating in the work of early women's movement to abolish trafficking in women and girls for the purpose of prostitution, and later formalized in the United Nations Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others in July 1951.

6. United Nations Member States agreed then to base their policies, laws, strategies and interventions against trafficking in women and girls and prostitution on the understanding that these acts are "incompatible with the dignity and worth of the human person." Importantly, this Convention makes it clear that those, who are victims of human trafficking for sexual purposes and prostitution may not be criminalized or suffer other sanctions, and that Member States vigorously must pursue and prosecute all procurers and traffickers, who "[e]xploits the prostitution of another person, even with the consent of that person."¹

7. According to the Vienna Convention on the Law of Treaties, United Nations Member States that have signed, ratified or acceded to international treaties are legally bound to put their provisions into practice and, importantly, "to refrain from acts which would defeat the object and purpose of [the] treaty."²

8. Consequently, by ratifying CEDAW, State Parties have agreed that trafficking in women and girls for sexual purposes, and the exploitation in prostitution are discriminatory practices that are incompatible with the equal enjoyment of rights by women, and that State Parties must put in place comprehensive measures that aim to prevent and eliminate prostitution and trafficking in women and girls.

9. In December 2000, the United Nations Convention against Transnational Organized Crimes and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("the Palermo Protocol") was opened for signature after several years of intense negotiations.

10. The Palermo Protocol recognizes the need for a combined approach that integrates effective prevention of trafficking with the prosecution of traffickers and the protection of the human rights and assistance to victims.

¹ Articles 1 and 2 of the Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others (1949).

² Article 18 of the Vienna Convention on the Law of Treaties (1969).

11. The definition of trafficking in person in article 3 of the Palermo Protocol was particularly contentious with some United Nations Member States arguing for a narrow definition that would give protection only to those victims that were trafficked under duress and through force.

12. Eventually, a wide definition that incorporates the human rights principles from the 1949 Convention and article 6 of the CEDAW which also allows for the prosecution of traffickers that abuse their position of power or a victim's vulnerability was accepted, with the recognition that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant, firmly placing the burden of proof on the intention actions of the trafficker,

13. IF&HR urges the CEDAW Committee, in its work to draft a General Recommendation on the Trafficking on Women and Girls in the Context of Global Migration recognizes the following:

- that the General Recommendation incorporates internationally recognized Feminist and human rights principles with the recognition that no woman and girl can consent to be trafficked for sexual purposes or to be exploited in prostitution; and

- that States Parties, in order adequately to discharge their responsibilities must ensure that measures are taken to implement penal sanctions against the chain of perpetrators, including traffickers, procurers and prostitution users, fully and effectively regardless of the consent of the victims, while ensuring that those who are victims of these violations are not criminalized or suffer any administrative punishments.

Pro-violation groups

14. The last 20 years, the international human rights community has seen attempts by pro-violation advocacy groups and constituencies,³ including by otherwise respected international human rights organizations, to narrow down and reinterpret the meaning and concrete implementation of a robust human rights legal and policy framework in regard to the prevention and elimination of trafficking for human beings of women and girls for sexual purposes and of the prostitution of others, including the attempted reframing of the obligatory article 6 of the CEDAW.

15. Notably, such pro-violation groups may be (but are not always) be composed of individuals and groups that directly or indirectly aim either to increase their exploitative access to, or to derive material benefit from the exploitation of those vulnerable women and girls, who, as a result of systemic socio-economic, legal, political or other inequalities directed towards women and girls and political instabilities flee their home countries, to find themselves as victims of trafficking in human beings for the purpose of prostitution.

16. IF&HR urges the CEDAW Committee to resist the reframing of the intent of article 6 of CEDAW, and the dramatic promotion and resulting normalization of arguments put forward by pro-violation groups about prostitution as a woman's individual choice, and as legitimate and empowering work.

17. IF&HR recommends that the CEDAW Committee identify human trafficking and prostitution as intimately linked crimes, understand them as serious forms of violence, and as

³ The term "pro-violation group/constituency" is a standard term in human rights law theory, which recognizes that certain constituencies, when their interests are threatened, [...] lobby for and consent to policies associated with [human rights] norm violations.

systemic human rights violations, often of the most marginalized, racialized and oppressed women and girls.

18. In particular, IF&HR strongly urges the CEDAW Committee to ensure that the General Recommendation on Trafficking of Women and Girls in the Context of Global Migration is informed by a comprehensive Feminist, human rights-based analysis of the phenomenon of trafficking in human beings of women and girls for sexual purposes and prostitution as discrimination against women and girls, while taking into consideration the systemic impact on all women and girls and society at large.

Demand for women and girls

19. The 2000 Palermo Protocol requires all State Parties to “adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

20. Despite this obligation, few United Member States that are parties to the Palermo Protocol have shown the required due diligence to put into place multiple measures, including legislation, that target the root cause of trafficking in women and girls for the purpose of exploitation in prostitution – the demand.

21. On 1 January 1999, the legislation that prohibits the purchase of a sexual service came into force in Sweden.

22. The initiation, development and wide acceptance of the legislation was a collaborative effort between the Swedish women’s movement and the political parties in Sweden.

23. The legislation is informed by the obligations of Sweden under article 6 of the CEDAW, reflects the definition of violence against women in the United Nations Declaration of the Elimination of Violence Against Women (1993), as well as articles 34 and 35 of the United Nations Convention on the Rights of the Child.

24. It is recognized that trafficking in human beings and prostitution are serious barriers to the participation of women and girls in society, to women’s and girls’ citizenship, and to the full advancement of women and girls in a democratic and non-discriminatory society.

25. The Swedish approach to the prevention and elimination of prostitution and trafficking in human beings is based of a number of human rights principles, including the understanding that trafficking in human beings and prostitution are serious barriers to gender equality, which are harmful to the prostituted woman or child, but also to society at large.

26. The offence, which states that “[a] person who obtains a casual sexual relation in exchange for payment shall be sentenced for the purchase of a sexual service to a fine or imprisonment for at the most one year.” This also applies “if the payment has been promised or made by someone else.”⁴

27. The offence applies to all forms of sexual services, whether they are purchased on the street, in apartment brothels, in a hotel or a massage parlour, in someone’s home, or in other similar circumstances. Importantly, and in order to allow law enforcement to intervene before

⁴ Swedish Penal Code, chapter 6: On sexual crimes, section 11.

a woman is exploited, attempts to purchase a sexual service are punishable under the criminal law provision.

28. Since the coming into force of the offence in January 1999, 8642 offences under the prohibition of the purchase of a sexual service have been reported.

29. According to the data, all offenders have been men or boys, who have purchased and sexually exploited women, girls, men and boys, the majority being in a vulnerable situation due to their background, nationality, disability, ethnic group, economic situation or sexual orientation.

30. Women and girls, who are victims of trafficking in human beings and in prostitution are not to be criminalized or subjected to any form of administrative punishments, and have a right to exit programs in order to live lives without being subjected to violence through the harm of prostitution.

31. A 2010 comprehensive evaluation of the effects of the offence shows that the prohibition on the purchase of sexual services acts as a deterrent for prostitution users. Individuals with experience in prostitution, as well as the police and social workers conclude that these men now are more cautious, and that the demand has decreased considerably since the prohibition came into force in 1999.

32. In addition to comprehensive legislation that targets the demand and the chain of perpetrators, the Swedish approach for the prevention and elimination of prostitution and trafficking in human beings also involves the development and implementation of comprehensive policies and strategies across all policy areas in relation to prostitution and trafficking in human beings for sexual purposes, and makes the implementation a political priority.

33. This work is incorporated into of the overall systemic, multiple efforts to ensure and mainstream, throughout all political areas, comprehensive and equal rights and opportunities of all women and girls, including to ensure their full access, without discrimination, to reproductive rights and services, education and employment, economic stability, and to political power and participation.

34. International research shows that the overwhelming majority of prostitution users are male,⁵ of all ages, from all ethnic backgrounds, the majority being married or in a relationship, and have children, are often but not always well-educated and earn a medium to high income.⁶ Prostitution using men indicate that they like to read or discuss all aspects of prostitution-related activities in online forums tailored to individuals, who purchase sexual services.⁷ When asked

⁵ See e.g.: Immigrant Council Ireland et al., *Stop Traffic! Tackling Demand for Sexual Services of Trafficked Women and Girls* (Dublin, Ireland: ICI, 2014) at 32: “The overwhelming majority of buyers, who participated in the survey were male. The results from the online survey show that 98 per cent of respondents in Ireland were male, 93 per cent were male in Cyprus and 92 per cent in Finland. All of the interviewees in Bulgaria and Lithuania were male buyers.”

⁶ See e.g. Ekberg, Gunilla S. and Werkman, Karin, *A Snapshot Study on the Prevalence, Laws, Policies and Practices regarding Prostitution and Trafficking in Human Beings for the Purpose of Sexual Exploitation in Belgium* (Brussels, Belgium: SORBUS Research, 2016).

⁷ *Supra*, at 111.

about what would make them refrain from purchasing a sexual service, men highlight two measures: public exposure and a legal prohibition.⁸

35. The Swedish National Rapporteur on Trafficking in Human Beings, an independent public function, who monitors and evaluate the situation of trafficking in human beings to, through and in Sweden, concludes that the Swedish approach, and in particular the offence that prohibits the purchase of a sexual service, functions as an effective barrier to the establishment of traffickers and organized crime networks in Sweden.

36. IF&HR strongly urges the CEDAW Committee to ensure that article 9.5 of the Palermo Protocol, which requires Member States to implement measures, including legislation that discourage the demand is firmly incorporated into the General Recommendation on the Trafficking in Women and Girls in the Context of Global Migration.

37. IF&HR underlines the importance of taking into consideration and incorporate fact-based information about the experiences of United Nations Members States that have developed and implemented legislation, policies, strategies and actions that aim to discourage the demand, including both individual and systemic effects on gender equality.

Prostitution markets

38. In the beginning of the 20th century, it was recognized internationally, through the League of Nation, that the existence of legal brothels and other prostitution-related activities in a country functioned as attractive markets for those, who recruited, trafficked and profited off the exploitation of women and children for prostitution purposes. By closing these markets through legal means, not only the demand, but also the involvement of organized crime groups in the facilitation of such markets would go down to a minimum.⁹

39. These observations are soundly confirmed in recent academic research, and in monitoring of trafficking reports which shows a direct link between the regulation or legalization of prostitution-related activities through e.g. local licensing systems, and an increase in prostitution-related organized crime group involvement, including in the national and cross-border trafficking of mostly women and girls for the purpose of prostitution and sexual exploitation.¹⁰

40. IF&HR urges the CEDAW Committee to acknowledge in the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration that States Parties that tolerate the existence of any form of legal, regulated or decriminalized prostitution activities, and other slave-like practices like human trafficking on their territory are in violation of their obligations under article 6.

⁸ *Supra*, at 109; Stop Traffic! Tackling Demand for Sexual Services of Trafficked Women and Girls at 72-73; Kafa (Enough) Violence & Exploitation, Exploring the Demand for Prostitution: What Male Buyers Say about Their Motives, Practices, and Perceptions (Beirut, Lebanon: Kafa, 2014) at 57.

⁹ League of Nations *Commission of Enquiry into Traffic in Women and Children in the East, 1932, C.849.M393.IV*

¹⁰ 23 See e.g. Seo-Young Cho, Axel Dreher and Eric Neumayer, “Does Legalized Prostitution Increase Human Trafficking?” (2013) 41 *World Development* 67, and the annual situational reports by the Swedish National Rapporteur on Trafficking in Human Beings.

Women and girls in the migration stream

41. In international law and policy, the basic human rights of victims are to be at the forefront of any law, policy, strategy and action that aims at preventing and combating crime, including crimes involving the trafficking in human beings and exploitation in prostitution.¹¹

42. In 1992, the CEDAW Committee concluded in its *General Recommendation 19: Violence Against Women*, that prostitution and trafficking in human beings are forms of violence against women.

43. It is widely documented in a multitude of international studies that the long-term effects for women and girls that are victims of trafficking for the purpose of prostitution and sexual exploitation are devastating. In addition to serious, often long-term health, physical and psychological and emotional consequences, victims experience financial precariousness, difficulty to access educational opportunities, and low employment rates.

44. A report published in 2018 by the Mixed Migration Centre of the Danish Refugee Council, outlines in some detail the risks and hard conditions that women and girls, who flee national and regional emergencies are subjected to, with a focus on the serious human rights violations committed against trafficking victims by smugglers and traffickers.¹²

45. It is recognized globally that women and girl migrants, who are survivors of trafficking in human beings increasingly face serious barriers to the protection, access to justice, safe accommodation and specialized victim support services as a result of hostile national and regional immigration policies.

46. In 2013, and partly in recognition of a dramatic increase in the trafficking for sexual and other purposes of women and girls fleeing armed conflict, natural disasters and other national and regional emergencies, and who seek protection in Sweden, the Swedish Migration Agency appointed a central coordinator against trafficking in human beings, supported by a number of regional coordinators.

47. The mandate of the central coordinator involves coordinating different measures including training of officers on how to identify victims, and other measures to prevent and eliminate trafficking in human beings within the work of the public agency, and to develop different wholistic measures for their protection and safety in partnership with other public authorities and civil society organizations in Sweden, and at the Swedish embassies and consulates.

48. As a result, the number of reported cases of women and girls, who have been trafficked into prostitution during the migration process increased from 16 in 2012, to 216 in 2018, with a total number of reported cases with female victims of human trafficking, mainly for sexual purposes, between 2013 and 2018 being 996 – 837 women and 159 girls under 18 years of age.¹³

¹¹ See e.g. the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), the Palermo Protocol, and, regionally, e.g. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

¹² Danish Refugee Council/Mixed Migration Centre, Experiences of female refugees & migrants in origin, transit and destination countries: A comparative study of women on the move from Afghanistan, East and West Africa (September 2018).

¹³ Data provided by the Swedish Migration Agency

49. These women and girls report that they were controlled and subjected to unbearable and continuous sexual, physical and psychological violence, torture and deprivation throughout the migration process by smugglers turned traffickers, other male migrants, including in some cases family members turned procurers, but also by those men that purchased and sexually exploit them.

50. These cases also show that a considerable number of smugglers turned traffickers, whether organized or operating on their own initiative, elected to travel through, advertise (online or through word of mouth) and sell these victims into prostitution in countries with already well-established prostitution markets, in particular countries, with legally regulated prostitution activities.

51. In some reported cases, the smugglers turned traffickers used victims' children as hostages to ensure that women submitted to prostitution and sexual exploitation throughout the migration process.

52. IF&HR strongly urges the CEDAW Committee to emphasize the obligations in international law of United Nations Member States under the CEDAW and the United Nations Convention Relating to the Status of Refugees to adhere to the principles of human rights and *non-refoulement*, and to ensure the protection, safe harbour, and comprehensive access to specialized victim support services, exit programs, and health care for women and girls, who are victims of trafficking in human beings in the migration context.

53. Importantly, IF&HR urges the CEDAW Committee to underline that the due diligence requirement under international law involves United Nations Member States ensuring, without limitations in national immigration policies and laws, access to justice, including the investigation into and prosecution of smugglers, traffickers, procurers and other individuals that are responsible for and facilitate the trafficking of women and girls for the purpose of exploitation in prostitution, including those men that demand, purchase and sexually exploit women and girls that are trafficked for the purpose of prostitution and sexual exploitation in the migration process.

The Institute for Feminism & Human Rights commend the CEDAW Committee for the initiative to apply Article 6 of United Nations Convention for the Elimination of All Forms of Discrimination of Women in a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.

We remain available should the CEDAW Committee or individual members have questions or require additional information.

Sincerely,

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