



WILPF submission to the CEDAW Committee on its first version of the draft General recommendation on Trafficking in Women and Girls in the Context of Global Migration

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Introduction

WILPF welcomes the opportunity to comment on this draft general recommendation (GR).¹ In 2019, we contributed to the half day of general discussion with a written submission and an oral statement that highlighted the need for the Committee to address the critical impact that foreign military bases and military interventions have on trafficking of women and girls.² We reiterate that in developing this GR, it is essential that the Committee reflect on that impact.

General comments

In this submission, we focus our input on the paragraphs particularly relevant to the issues raised in that submission as well as to some additional issues. Even though our input is limited to only some of the paragraphs, WILPF shares the concerns expressed by Dr. Patricia Schulz that the current draft GR risks leading to a retrogression in the Committee's approach to women's rights. WILPF has read Dr. Schulz's submission³ and strongly supports her recommendations for a reorienting and restructuring of the draft GR.

We share her concerns that the current draft relies excessively on criminal law; we agree that the focus of this GR cannot be on “discouraging demand that fosters exploitation through trafficking” (e.g. in section IV), a phrasing that inadvertently falls into the trap of reinforcing the view of women and girls as commodities. The focus should instead be on addressing factors that heighten the risks of trafficking. These factors include, but are not limited to, structural discriminations which create vulnerabilities in countries of origin, which lead to, or increase, poverty and marginalisation, the absence of social protection systems, discrimination in access to education and information, discriminatory laws and practices with regard to economic, social and cultural rights, the low economic value ascribed to women's labour, corporate greed, lack of access to decent work opportunities, informal sector work, environmental degradation and land grabbing, which lead to displacement and precarious labour migration, and militarisation. While the draft GR identifies several of these structural issues, the recommendations addressed to States Parties (e.g. *paragraphs 25-27*) are largely about better statistics, national anti-trafficking strategies and legislation and do not address the need to improve the overall socio-economic conditions. The recommendations in this GR need to go beyond “tweaking the system;” they

¹ Draft available at: <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CallTraffickingGlobalMigration.aspx>

² Available at: https://www.wilpf.org/wilpf_statements/submission-to-cedaw-on-trafficking-of-women-and-girls-in-the-context-of-global-migration/

³ Available on the OHCHR webpage:

<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CallTraffickingGlobalMigration.aspx>

need to be transformative. Moreover, focusing heavily on strategies, action plans and statistics blurs the problems; in many countries, developing strategies and action plans can merely be a tick-the-box exercise; becoming largely redundant when, for example, the governments' main concern is to stop migration flows.

The repeated use of 'demand' in the draft GR is not only problematic from a semantic point of view, in that women and girls are inadvertently portrayed as commodities, it also suggests that the GR follows a capitalist logic of supply and demand, which translates into "if there is no demand then logically there will be no supply." Following this logic misses the point that the 'demand' is deeply rooted in, *inter alia*, patriarchy, male privilege, violent masculinities, and commodification of people and their labour. Discouraging the 'demand' by simply strengthening the legal side of it or through 'awareness raising campaigns,' will not be able to address the problem, since such measures only deal with the symptoms and not the root causes. If the Committee is convinced that following the capitalist logic of supply and demand is the right approach to address trafficking of women and girls, then it should clearly spell out that the 'demand' is rooted in the symbiosis between, *inter alia*, capitalism, racism, patriarchy, male privilege, violent masculinities and that the 'supply' is rooted in deep inequalities and poverty in the national context and globally.

In preparing our recommendations for this draft GR, WILPF has partly drawn from the 2018 report by the *Special Rapporteur on contemporary forms of slavery, including its causes and consequences* in which the Rapporteur discusses the gender-related dimensions of contemporary forms of slavery. The report puts a particular focus on structural discrimination against women and girls as both a cause and a consequence of various manifestations of slavery (including institutions and practices similar to slavery) around the world.⁴ WILPF strongly encourages the Committee to refer to that report when reflecting on how to better address root causes of trafficking. For example, the Special Rapporteur highlights "strong linkages between women's poverty and their concentration in sectors characterized by the absence of labour rights and decent work, such as in the care economy and in accommodation and food services, where women workers are subjected to forced labour in jobs at the bottom of the global value chain. At the same time, men and boys have been shown to be particularly vulnerable to contemporary forms of slavery in specific economic sectors such as construction, manufacturing and fishing. The means of coercion used to enforce forms of slavery in both the recruitment and employment phases are also gendered; women and girls are more likely to be subjected to sexual violence and threats of sexual violence, to have travel documents withheld and to be forced to pay financial penalties, whereas men and boys are frequently victims of other forms of physical violence, including threats of violence against themselves and family members, confiscation of wages, confinement to living

⁴ UN Index: A/73/139, 10 July 2018.

quarters or the workplace and deprivation of food or sleep.”⁵ “Stereotypes concerning suitable forms of employment for men or women and sex segregation in the labour market create and perpetuate conditions that lead to exploitation under slavery and slavery-like conditions in specific economic sectors, in particular in those sectors, such as care and domestic work, that have traditionally been viewed as “female”. This can also contribute to gender stereotypes being applied in analysis of and responses to contemporary slavery, thereby causing specific experiences of slavery, such as those of women and girls in forced labour in mining and other sectors commonly understood to be “men’s work”, to become invisible. Gender-based discrimination in education and patriarchal societies placing a higher value in investing in men and boys’ education feeds into these harmful stereotypes, with women and girls more often denied educational opportunities.”⁶

Comments on specific paragraphs

Because of the page limit set in the Committee’s call for input, WILPF is providing input only on some of the paragraphs of the draft general recommendation.

Paragraph 21⁷

WILPF recommends that this paragraph be clearer in highlighting the types of economic policies that are particularly harmful to women and, in particular, of austerity measures, whose disproportionate impact on women and girls has been recognised by human rights mechanisms, including the CEDAW Committee. The Committee has expressed concerns about the disproportionate impact of austerity measures on women in concluding observations and in general recommendations. In its GR35, it emphasised that “significant reductions in public spending, often as part of ‘austerity measures’ following economic and financial crises, further weaken the state responses [to gender based-violence]”, adding that “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.” In its GR 34, the Committee rightly stressed that “discrimination against rural women cannot be fully understood without taking

⁵ UN Index: A/73/139, 10 July 2018, paragraph 9.

⁶ *Ibid*, paragraph 24.

⁷ “21. 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 may limit women’s autonomy and access to key resources, including economic, land, political, educational, information and knowledge. Inequalities are manifested in women’s and girls’ lower access to education and vocational training opportunities, asset and land ownership, access to credit, women’s low participation in decision-making, unequal pay, child/early and forced marriage, pervasiveness of patriarchal gender roles, the concentration of women in insecure and vulnerable work and their lack of decent work opportunities. These effects are compounded by gender-based violence against women and girls, including domestic violence, and marginalization.”

into account the macroeconomic roots of gender inequality” and made several recommendations in this regard.⁸ UN Special Procedures have also highlighted the link between neoliberal policies and marginalisation of women. For example, the Special Rapporteur on contemporary forms of slavery has stated that “the causal relationship between neoliberal globalization and violence against women and girls, including through their exploitation in contemporary forms of slavery, as a result of gender-based discrimination in labour markets and the concentration of women and girls in informal employment has been highlighted in many contexts.” The Special Rapporteur also noted that “Operating in tandem with broader mechanisms of global trade liberalization and investment are domestic macroeconomic policies and budget allocation priorities that also have gendered effects. Austerity measures, regressive tax shifts, labour market reforms, reduction in government spending on social services and the privatization of public goods, which have characterized neoliberal globalization, hinder the capacity of States to effectively tackle the causes and consequences of gendered inequalities and violations of women’s human rights in different spheres. In connection with contemporary forms of slavery, cuts in public spending have reduced the provision of targeted services, such as education and information programmes, as well as social protection floors and victim assistance schemes that could prevent and redress slavery and institutions and practices similar to slavery.”⁹

⁸ “10. Discrimination against rural women cannot be fully understood without taking into account the macroeconomic roots of gender inequality. States often fail to acknowledge the role of rural women and girls in unpaid work, their contribution to the gross domestic product and, therefore, to sustainable development. Bilateral and multilateral agreements on trade, tax and other economic and fiscal policies can have a significant negative impact on the lives of rural women. Environmental issues, including climate change and natural disasters, often provoked by the unsustainable use of natural resources, as well as poor waste management practices, also have detrimental impacts on the well-being of rural women. Gender-neutral policies, reforms and laws may uphold and strengthen existing inequalities related to all of the above.

11. States parties should ensure that macroeconomic policies, including trade, fiscal and investment policies, as well as bilateral and multilateral agreements, are responsive to the needs of rural women and strengthen the productive and investing capacities of small-scale women producers. They should address the negative and differential impacts of economic policies, including agricultural and general trade liberalization, privatization and the commodification of land, water and natural resources, on the lives of rural women and the fulfilment of their rights. Similarly, development partners should also ensure that their development assistance policies focus on the specific needs of rural women.

12. States parties should address specific threats posed to rural women by climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agrochemicals, extractive industries, monocultures, biopiracy and the loss of biodiversity, in particular agro-biodiversity. They should alleviate and mitigate those threats and ensure that rural women enjoy a safe, clean and healthy environment. They should effectively address the impact of such risks on rural women in the planning and implementation of all policies concerning the environment, climate change, disaster risk reduction, preparedness and management and ensure the full participation of rural women in designing, planning and implementing such policies. States parties should also ensure the protection and security of rural women and girls in all phases of disasters and other crises, ranging from early warning to relief, recovery, rehabilitation and reconstruction.” *General recommendation No. 34 (2016) on the rights of rural women*, CEDAW/C/GC/30, 7 March 2016, paragraphs 10, 11 and 12.

⁹ UN Index: A/73/139, 10 July 2018, paragraph 20.

Thus, we recommend the following additions — ***in bold and italics*** — to paragraph 21,

“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. ***In particular, austerity measures have proven to be harmful for women, exacerbating unemployment and poverty. They often come in combination with other economic policies, such as regressive tax shifts, labour market reforms, reduction in government spending on social services and the privatization of public goods and services, which severely hamper states’ abilities to implement social policies that lay the basis for dismantling structural inequalities, including gendered inequalities and violations of women’s human rights in different spheres. Social structures may limit ...***”

The reference to “**vulnerable work**” in paragraph 21 **should be changed to “precarious work,”** since the work is precarious while the workers can be in vulnerable situations.

Paragraph 25 (f)¹⁰

This is an example of a paragraph that unhelpfully relies on the ‘demand’ side. Since the analysis is that because of, *inter alia*, inequalities, poverty and general lack of economic and social rights, people are more vulnerable to trafficking, it follows that the strategic response should not be to understand the economic and social context in which a ‘demand’ is created. The focus should instead be on the economic and social context, such as poverty, discriminatory laws, gender and other inequalities, that push people into this.

¹⁰ “25. Review statistical methodologies and conceptual frameworks related to data collection to include indicators that reflect States’ systemic responses to trafficking, including by: (...)

f) Analyzing the data with the objective to inform the development of:

- i. A strategic response to address the economic and social context creating the demand for the labour and/or services of trafficked persons;
- ii. Enacting, modifying and implementing anti-trafficking strategies to combat the internal and cross-border trafficking in women and girls and to address the root causes. Include in the design those affected by anti-trafficking policies, including trafficking victims and women and girls vulnerable to trafficking;
- iii. Legislation aimed at preventing and combating human trafficking and enhancing the protection of victims and the criminal justice response to persistent and emerging human trafficking challenges and trends, including the misuse of technology to commit the crime ;
- iv. Improved measures to identify, assist and protect victims.”

Paragraph 26 “Adress root causes of trafficking by...”

The recommendations provided in this paragraph¹¹ need to be strengthened. They are focused mostly on women and girls in disadvantage and marginalized situations, which is obviously necessary. However, the marginalization of certain groups is also an outcome of a general lack of socio-economic rights; thus, this needs to be recognised in the text and the recommendations need to go deeper and address that. We recommend that, as a minimum, the following paragraph, partly based on paragraph 11 of GR 34, be added to paragraph 26:

***“State parties should integrate baseline data on gender equality, livelihoods and socio-economic status, based on factors such as education, occupation, income, class, and deprivation, with data on trafficking in women and girl, to identify harmful economic policies both at macro and micro level, and develop targeted, evidence-based policy and programming responses addressing the identified root causes of trafficking in women and girls. These policies need to be responsive to the differentiated needs of women and girls based on, inter alia, urban/rural divide, age, ethnicity/nationality, legal status in the country, gender identities and other characteristics that might result in a greater risk of being trafficked, as well as provide an effective response to identified differentiate impact of these policies on the lives women and the fulfilment of their rights, including of agricultural and general trade liberalization, privatization and the commodification of land, water and natural resources.*”**

Furthermore, State parties must work towards mobilization of public resources and strengthening of public services in areas that support achievement of gender equality and promotion of human rights in order to reduce the risk of factors leading to trafficking. These efforts should be supported by a mapping of the care-economy and the position of women in both productive and informal economy.” (NEW)

¹¹ “26. Address the root causes of trafficking by:
a) Identifying and ensuring the equal rights and opportunities for women facing multiple forms of discrimination;
b) Providing women and girls in situations of disadvantage with access to basic services, including education, information, health care and employment opportunities;
c) Enhancing women’s access to political decision-making, credit, land, and the modern tools and inputs required for its efficient cultivation;
d) Stepping up nationwide public awareness-raising campaigns, particularly in rural communities, on the risk of human trafficking, the methods employed by traffickers and measures to reduce these risks;
e) Combating the practice of child and forced marriage through strengthened prevention efforts addressing its root causes, sensitization campaigns and appropriate punishment of such acts;
f) Identifying and addressing any potentially disadvantageous impact of nationality and immigration laws on women and girls who migrate or are trafficked abroad, and their children.”

Paragraph 33¹²

This paragraph starts by noting that “Armed conflict is one of the most important drivers of global displacement ...” and goes on to say that trafficking is “both a human rights violation and a threat to international peace and security.” However, it does not indicate the connection between armed conflict and the increase in trafficking. This link is noted only in paragraph 34. Thus, we recommend *the following addition, which is taken from paragraph 39 of GR 30*:

“Armed conflict is one of the most important drivers of global displacement. ***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.*** Trafficking in women and girls for the purposes of sexual or other forms of exploitation and violence is both a human rights violation and a threat to international peace and security.”

Moreover, given the well-documented and multi-faceted impact of arms on human rights, which includes, but is not limited to, trafficking of women and girls and other forms of gender-based violence, we recommend *adding at the end of paragraph 33 the following text, which is based on paragraph 29 of GR 30*:

“In its General Recommendation 30, the Committee has also stressed that States Parties are required to focus on the prevention of conflict and all forms of violence and that this includes robust and effective regulation of the arms trade, in addition to appropriate control over the circulation of existing and often illicit conventional arms, including small arms, to prevent their use to commit or facilitate serious acts of gender-based violence.”¹³ (NEW)

¹² “33. Armed conflict is one of the most important drivers of global displacement, and trafficking in women and girls for the purposes of sexual or other forms of exploitation and violence is both a human rights violation and a threat to international peace and security. In its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recognized that gender-based violence against women is affected and often exacerbated in the contexts of displacement, migration, the increased globalization of economic activities, including global supply chains, the extractive and offshore industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism.”

¹³ See, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, paragraph 29.

Paragraph 34¹⁴

We welcome the inclusion of paragraph 34, including its references to increased militarism, and the availability of small arms. We believe that it should be further elaborated and clarified and accompanied by an additional paragraph on arms trade regulation. In particular, the reference to “the war-related demand for women’s sexual, economic and military exploitation” gives the impression that women are a commodity, which is a concern that we have also highlighted earlier in the text with regard to the overall approach of the GR. It is also unclear whether by “military exploitation” it is meant women and girls being recruited to fight or being sold and abused by military personnel. Moreover, the current wording gives the impression that the link between a military presence and trafficking and other forms of exploitation is relevant only in situations of armed conflict. Whereas, as indicated in the WILPF submission to the half day of general discussion, in many contexts in which they operate, foreign military bases provide a steady market for women, girls, and men and boys who are forced into sex work for many reasons including due to trafficking. This is irrespective of whether the host country is in a situation of armed conflict.

Therefore, we recommend that the last sentence of paragraph 34¹⁵ be rephrased as follows: “... ***Sexual and economic exploitation of women and girls is an integral part of situations of conflict and other militarized contexts, such as in connection with the presence of foreign military bases.***”

States Parties’ extraterritorial obligations

The CEDAW Committee has developed extensively the issue of States Parties’ extraterritorial obligations under the Convention. In line with the Committee’s own jurisprudence, this recommendation should remind State Parties that obligations under the Convention also apply extraterritorially in relation to the arms trade.

Therefore, we recommend the inclusion of a *paragraph 34 bis* that would read:

“34 bis The accessibility and availability of arms can facilitate or exacerbate, inter alia, trafficking and other forms of gender-based violence both in situations of armed conflict, but also in non-conflict situations. Arms transfers are linked to the deepening, exacerbating, and/or prolonging of violence or conflict. The obligations

¹⁴ “34. Trafficking in women and girls is exacerbated prior to, during and after conflict due to instability and insufficient governance, including the absence of the rule of law, increased militarism, the availability of small arms, the breakdown of social and family structures and the “normalization” of gender-based violence as an additional element of pre-existing discrimination against women and girls. The war-related demand for women’s sexual, economic and military exploitation is a growing trend in situations of conflict.”

¹⁵ “The war-related demand for women’s sexual, economic and military exploitation is a growing trend in situations of conflict.”

of State Parties also apply extraterritorially in relation to the arms trade; thus, they must address the gendered impact of international transfers of arms, especially small and illicit arms, including through the ratification and implementation of the Arms Trade Treaty.”¹⁶ (NEW)

Paragraph 40¹⁷

In line with GR 34, and its paragraph 12¹⁸ in particular, paragraph 40 should be expanded to include additional potential causes of forced displacement, such as land and soil degradation, land grabbing, water pollution, and extractive industries.

Paragraph 41¹⁹

While we welcome the inclusion of a paragraph relating to the importance of women’s involvement in conflict prevention, conflict and post-conflict situations, it is unclear whether what this paragraph seeks to recommend is the involvement of women who have been trafficked. If that is what is aimed, the Committee should then spell out that ***States parties must ensure that survivors of trafficking be involved in the design of human-rights-based gender-sensitive responses regarding, for example, the status, documentation, health and other support needed, rights to repatriation and to compensation; and in the design of measures to prevent trafficking in women and girls.***

¹⁶ For the last part, see General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, paragraph 33 (e).

¹⁷ “40. The Committee observes women’s increased risk of trafficking in humanitarian crises, including forced displacement attributed to global warming, climate-change induced and natural disasters, resulting in heightened stress, lawlessness and homelessness. It notes with concern that individuals may increasingly cross borders to seek protection from climate change-related harm that may be related to both sudden-onset events and slow-onset processes and draws attention to the vulnerability of women asylum seekers in such situations.”

¹⁸ “12. States parties should address specific threats posed to rural women by climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agrochemicals, extractive industries, monocultures, biopiracy and the loss of biodiversity, in particular agro-biodiversity. They should alleviate and mitigate those threats and ensure that rural women enjoy a safe, clean and healthy environment. They should effectively address the impact of such risks on rural women in the planning and implementation of all policies concerning the environment, climate change, disaster risk reduction, preparedness and management and ensure the full participation of rural women in designing, planning and implementing such policies. States parties should also ensure the protection and security of rural women and girls in all phases of disasters and other crises, ranging from early warning to relief, recovery, rehabilitation and reconstruction.” *General recommendation No. 34 (2016) on the rights of rural women*, CEDAW/C/GC/30, 7 March 2016, paragraph 12.

¹⁹ “41. In line with the Committee’s general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations: (a) ensure the inclusion and participation of women, and particularly victims of trafficking, at all stages of the peacemaking, stabilization and reconstruction process, in line with Security Council resolution 1325 (2000); and, (b) generate a gendered analysis of conflict upon which States parties can design effective responses, including those to prevent trafficking in women and girls.”

Paragraph 42²⁰

Given the focus of paragraph 42 on root causes of women's and girls' vulnerability to trafficking, it is essential that it address arms proliferation, militarization, foreign military bases. In particular, we recommend that reference in paragraph 42 (d) to potential trafficking "hotspots," be complemented to include foreign military bases and the heightened risk/hotspot these can be for trafficking; thus, we recommend *the inclusion of the following elements*:

"42 (d) bis Given the heightened risk/hotspot that foreign military bases represent for trafficking of women and girls, ensure Status of Forces Agreement contain legally binding regulation of the conduct of military and contracting personnel in the host country to foreign military bases as they pertain to trafficking and sexual exploitation and monitor its application regularly in order to prevent and address violations; (NEW)

We also recommend that paragraph 42 (i) be expanded to also include soldiers and contractors on military bases and deployed in the country; the paragraph should therefore read:

²⁰ "42. Address the root causes of women's and girls' vulnerability to trafficking, in the context of forced displacement , with specific attention given to asylum seekers, refugees, internally displaced and stateless women:

- a) Systematically collect comprehensive and disaggregated data on the extent and forms of exploitation for which displaced women are trafficked;
- b) With the participation and leadership of displaced women, develop policies and programmes to address existing and new risk factors which increase the vulnerability of displaced women to being trafficked;
- c) Identify potential trafficking "hotspots" along routes linked to forced displacement and monitor them consistently in order to put prevention and response measures in place;
- d) Integrate anti-trafficking measures into conflict and disaster readiness and response plans, including as a result of global warming, climate-change induced and natural disasters;
- e) Adopt a comprehensive gender-sensitive and rights-based migration and refugee policy that takes into consideration the vulnerability of displaced women to trafficking;
- f) Raise awareness among displaced women and girls about all forms of trafficking;
- g) Address issues of vulnerability that are faced by families and particularly women and girls, including economic insecurity, misconceptions about family pride and girls' safety, access to education and livelihoods;
- h) Train law enforcement agents, including police and border control officers, on the risks faced by displaced women to trafficking;
- i) Adopt a policy and legislative framework to provide comprehensive protection and assistance to displaced women at risk of trafficking;
- j) Prevent trafficking in all accommodation facilities for displaced persons, including by improving women's security situation both within and around facilities, through means such as patrolling of police officers, including female officers, ensuring adequate lighting and access to sanitary facilities, and establishing resource centres for women in their vicinity."

“Train law enforcement agents, including police and border control officers, on the risks faced by displaced women to trafficking. ***Ensure that similar training is provided to soldiers and contractors on military bases deployed in the country.***”

This provision should also be complemented by the following *new paragraphs*

“42 (k) Work with international organisations and civil society to conduct gender-sensitive research into the laws regulating the conduct of military and contracting personnel on foreign military bases as they pertain to trafficking and sexual exploitation, including the mechanisms for investigation into any company subcontracted for services for military bases; and include the numbers, disaggregated by sex, of workers employed by these companies; the conduct of military personnel and contractors employed at the military bases; the regulations of their conduct abroad placed upon them by their home governments; and the mechanisms to hold them to account for violations of these laws.” (NEW)

42 (l) “Ensure independent and effective investigation and accountability mechanisms are in place where there are foreign military bases, preferably in the country where the base is located and with the cooperation of the host government, and ensure that survivors of trafficking have effective, accessible and gender-sensitive access to justice” (NEW)

42 (m) “Fulfil all their extraterritorial obligations in relation to their militaries or other presence in a third country.” (NEW)

Rationale: As noted earlier, the CEDAW Committee has developed extensively the issue of States Parties’ extraterritorial obligations. It is important that this GR continue to uphold and clarify further the application of this legal obligation and that, therefore, it also address states’ extraterritorial obligations in relation to their military presences in other countries.

Paragraphs 16 (due diligence obligations)

We recommend changes to paragraph 16 both in order to clarify the reference to the obligation of due diligence and to ensure that such obligation is not limited to the corporations operating extraterritorially. Moreover, the CEDAW Committee’s position on regulation of corporations as well as on extraterritorial obligations is much more progressive than the UN Guiding Principles on Business and Human Rights (UNGPs). The reference to UNGPs in this paragraph actually weakens the remit of the recommendations therein and should, thus, be deleted from the paragraph. It is worth recalling that Committee’s GR34 on rural women,

which addressed the need for State parties to the activities of domestic non-State actors within their jurisdiction, including when they operate extraterritorially, did not include a reference to the UNGPs (see e.g. paragraph 13.)²¹

“16. States parties’ obligation ~~of due diligence~~ to suppress all forms of trafficking in women and girls extends **under the obligation of due diligence** to the acts or omissions of all perpetrators, including private persons, intimate or extended family members and intimate partners, as well as organizations or enterprises. This includes the regulation of the activities of national corporations **including those** operating extraterritorially as affirmed in general recommendations No. 28 (2010) and No. 37 (2018) ~~and reinforced in the United Nations Guiding Principles on Business and Human Rights.~~”

Paras 62 (“Address trafficking in corporate supply chains”)

This paragraph needs strengthening so to address adequately and forcefully corporations and other business enterprises. We suggest more detailed recommendations reflecting current regulatory developments on the adoption of mandatory human rights due diligence laws by States. Such laws must be gender-responsive as underlined by the Working Group on business and human Rights in its gender guidance on the UN Guiding Principles on business and human rights.²² Human rights impact assessments should also take into account the risk of trafficking and its gendered dimensions across the supply chain, including in extraterritorial activities of companies.

Paragraph 42 also seems to address some recommendations directly to businesses and others to State parties; however, it is not clear as to which ones are addressed to whom; our recommendations below relating to paragraph 62 are addressed to States parties. We also note that the measures included in paragraph 62

²¹ “13. States parties should regulate the activities of domestic non-State actors within their jurisdiction, including when they operate extraterritorially. General recommendation No. 28 (2010) on the core obligations of States parties under article 2 reaffirms the requirement under article 2 (e) to eliminate discrimination by any public or private actor, which extends to acts of national corporations operating extraterritorially. States parties should uphold extraterritorial obligations with respect to rural women by, inter alia: not interfering, directly or indirectly, with the enjoyment of their rights; taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory; and ensuring that international cooperation and development assistance, whether bilateral or multilateral, advance the rights of rural women outside their territory. Appropriate and effective remedies should be available to affected rural women when a State party has violated its extraterritorial obligations.” *General recommendation No. 34 (2016) on the rights of rural women*, CEDAW/C/GC/30, 7 March 2016, paragraph 12.

²² Gender dimensions of the Guiding Principles on Business and Human Rights - Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, UN index: A/HRC/41/43, 23 May 2019. The Gender Guidance for the UNGPs is also available in a user-friendly format at this link: https://www.ohchr.org/Documents/Issues/Business/Gender_Booklet_Final.pdf

(c, d, e)²³ – e.g. a code of conduct on sexual exploitation – are actually too narrow compared to the scope of the human rights violations experienced by trafficked persons. More ambitious measures required of employers should be developed.

In light of these comments, we recommend:

- replacing current paragraph 62 (a)²⁴ with the following paragraphs

62 (a): Adopt effective legislation on mandatory human rights due diligence, public reporting and disclosures of businesses and guarantee its implementation. Such legislation should explicitly integrate requirements to conduct a gender impact assessment as one component of due diligence (NEW)

62 (a bis) Adopt national action plan on business and human rights in accordance with the Guiding Principles on Business and Human Rights incorporating a gender perspective, including with regard to assessing the risk of human trafficking (NEW);

62 (a ter) Support the adoption of the proposed international legally binding instrument to regulate transnational corporations and other business enterprises with regard to human rights, as well as other fundamental standards that guarantee gender equality measures and non-discrimination with regard to business activities (NEW)

- adding “adopt legislation including effective sanctions to” at the start of paragraph 62 (b), so that it reads:

62 (b) Adopt legislation including effective sanctions to ensure that businesses are not involved in, facilitate and/or benefit from trafficking within their supply chains, and effectively remedy violations and punish perpetrators;

- replacing paragraphs 62 (c, d, e) with the following paragraph, which is a recommendation from the above-mentioned report by the Special Rapporteur on contemporary forms of slavery:

²³ “c) Establish a code of conduct drafted, including zero tolerance policies to sexual exploitation, with the direct input of the workers whose interests it is designed to protect; d) Ensure that a dedicated audit organization has the power to suspend suppliers who fail to bring their operations into compliance with the code; e) Provide comprehensive worker-to-worker education;”

²⁴ “62(a) Establish laws governing mandatory due diligence in companies’ supply chains, including supply chain transparency;”

62 (b bis) “Adopt effective and gender-responsive labour inspection systems in highly feminized sectors, raise awareness and conduct training for law enforcement agents, the judiciary, labour inspectors, unions, health-care professionals and other actors concerning the identification of women and girls as victims of trafficking. Give special attention to the risk of trafficking in the informal economy, including by identifying at-risk sectors, in particular those that historically have been highly feminized;”²⁵ (NEW)

- replacing paragraphs 62 (e) (“Provide comprehensive worker-to-worker education”) with the following, also based on a recommendation in the above-mentioned report by the Special Rapporteur on contemporary forms of slavery:

62 (e) Provide capacity-building on human rights and gender equality to companies so that they are aware of the gendered nature and risks of trafficking in supply chains and the strategies for its eradication. Trade unions should take measures to ensure that women and organizations that represent feminized economic sectors prone to trafficking are equally represented within decision-making structures in the union movement. (NEW)

²⁵ UN index: A/73/139, 10 July 2018, paragraph 54 (g).