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May 15, 2020

Submission to the Committee on the Elimination of Discrimination Against Women: Legal Momentum’s Comments on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration

Legal Momentum thanks the Committee on the Elimination of Discrimination Against Women’s (Committee) for providing this opportunity to comment on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration (General Recommendation). Advocating for gender equality for 50 years, Legal Momentum remains committed to achieving equality for all women and girls by eliminating barriers to equal treatment and advancing access to equal opportunity. Toward this end, Legal Momentum leads targeted initiatives to achieve economic security for the most underserved women and to end abusive practices, including the trafficking of women and girls.

Legal Momentum was encouraged to see the Committee’s emphasis on a prevention framework that prioritizes action to address root causes of trafficking, including systemic discrimination and structural inequality, which are major barriers to achieving substantive equality for women and girls. We agree that to effectively tackle trafficking, women and girls must have sustainable livelihood options, which requires dismantling social and legal structures that limit women’s access to autonomy and resources such as education, vocational training, state benefits, assets, credit, land, and decent work opportunities.

Based on our work to advance women’s economic security through the law, our comments focus on additional measures that States Parties can undertake to better safeguard those women and girls who are most susceptible to trafficking, including women in poverty, women in low-wage work, and women without stable immigration status.

Paras. 25 & 68: The substantive recommendations start by identifying the critical need to enhance data collection; however, collection of incomplete data that fails to capture the full scope of the problem risks presenting a distorted picture. Because so many incidents of trafficking go unreported and persist in the shadows, the Committee should consider starting its recommendations with a focus on developing uniform global standards and methodology for identifying and tracking incidents of trafficking and



training relevant stakeholders. Paragraph 25 should follow paragraph 68, which focuses on the essential first step of creating national guidelines and standard operating procedures on victim identification.

Para. 26: Many critical and broadly applicable recommendations to address root causes of trafficking are excluded from this paragraph but sometimes included in subsequent sections that are tailored for specific communities of women.

We recommend that the Committee consolidate certain broadly applicable recommendations here, including recommendations to:

- eliminate laws that render women more prone to poverty;
- provide services, support, and shelter to victims of trafficking, domestic violence, and sexual assault;
- eliminate exclusions in labor and anti-discrimination protections that create workplaces that foster exploitative workplace practices;
- enhance economic opportunity for women, including through education, paid apprenticeships, and vocational training for women;
- engage in widespread public outreach to low-income communities to ensure that vulnerable women are educated about their rights, the risks and illegality of trafficking, and avenues for redress and assistance.

Para. 26(c): We recommend that the language be revised as follows: “Enhancing women’s [equal] access to political decision-making, [employment opportunities], credit, land, and the modern tools and inputs required for its efficient cultivation;”

Para. 27(c): Legal Momentum welcomes the Committee’s recommendations on regulating supply chains. Additionally, we recommend that States Parties adopt legislation to require industry-wide trainings on trafficking in industries known to be hubs, entry-points, or channels for trafficking. For example, jurisdictions within the United States have enacted legislation to require trainings in the hotel industry, which is a known avenue for trafficking in women and girls.

Para. 29: As a legal organization, we strongly support the need for States Parties to adopt and implement comprehensive gender-sensitive anti-trafficking legislation and welcome this recommendation. Additionally, we recommend that this paragraph call out the need to reform existing legislative frameworks, including criminal and civil laws and administrative regulations, to eliminate discriminatory provisions that render women vulnerable to trafficking.

Para. 31: In line with previous comments, we recommend that national action plans include measures to better identify industries that serve as hubs for trafficking, incorporate uniform and reliable methodologies for identifying incidents of trafficking, and implement broad-based community-focused educational initiatives to educate vulnerable populations about their rights and what constitutes trafficking.

Para 42: As per our comments above, recommendations in this section, such as subparagraph (f) on raising awareness among women, are relevant to all women and not just women and girls who are forcibly displaced. These recommendations should be incorporated into a broader sub-section to eliminate duplication.

Para. 45: We strongly agree with the position that lack of safe and legal routes to migration for women increases the risk and prevalence of trafficking. As part of coordinated global migration strategies, States Parties should be encouraged to recognize broader categories of gender-based persecution as grounds for asylum so that the most vulnerable women need not turn to traffickers as a last resort to escape poverty or gender-based violence.

Para. 50: We welcome the Committee's attention to the disproportionate number of women working in informal and nontraditional employment in gender-segregated labor markets that are exempted from labor and anti-discrimination protections. These sectors not only prey upon the vulnerabilities of women to recruit them, they thrive by limiting women's access to assistance and information about their rights.

In this context, women's lack of language proficiency often serves both as a basis for discrimination as well as a significant barrier to accessing assistance. We recommend that this section highlight the role that language plays in accessing justice and incorporate recommendations in the relevant sections below to encourage States Parties to ensure that they include strategies to enhance language accessibility and dismantle barriers to access for victims who lack language proficiency.

Para 55: Legal Momentum agrees that increasing access to safe and protected formal employment opportunities is critical. As discussed, to achieve this goal, States Parties should be encouraged to eliminate loopholes in labor and anti-discrimination legislation that provide exemptions for certain industries and types of employers. Industries subject to fewer regulations unsurprisingly tend to adopt exploitative working conditions where trafficking can thrive.

States Parties should also be advised to issue model codes of conduct that cover informal industries or smaller employers, such as employers of domestic workers, to provide clear standards and fair workplace practices for employers in these sectors who often go unregulated.

Because vulnerable workers are often reluctant to report violations for fear of retaliation, anonymous reporting mechanism should be available and labor and anti-discrimination enforcement agencies should be legally empowered and funded to conduct independent investigations, and should monitor industry hot spots for trafficking.

Para 56: As stated at various points in our comments, we strongly agree that awareness raising plays an essential role in addressing trafficking in women and girls. States Parties should be encouraged to provide clear, simple, and language-accessible resources that can be distributed to community-based organizations to educate women and girls about what constitutes trafficking, that it is illegal, and what remedies are available.

Para. 57: Victims of trafficking should have specific pathways to legalization that allow victims to report violations without risking deportation so that they can escape the vicious cycle that trafficking thrives upon.

Para. 58: We welcome the Committee’s inclusion of critical workplace protections, including minimum wage requirements, overtime pay, health and safety regulations, and decent working conditions; however, these protections are critical for many victims of trafficking, not just women and girl migrants. These recommendations should be included in a section that applies more broadly to victims generally.

Additionally, minimum wage requirements are often meaningless if they do not mandate wages that can realistically support working people and families. The reference to “minimum wage” should be replaced or supplemented with localized living wage requirements.

The Committee should also encourage States Parties to enact and enforce anti-retaliation protections that apply to all employers and cover all workers, regardless of immigration status.

We especially welcome the reference to providing government agencies with independent enforcement protections under sub-section (b), legal sanctions against employers under sub-section (d), and facilitating the organizing of women workers under sub-section (f). Sub-section (f) should further note that all workers should have the right to organize free from retaliation. States Parties should be encouraged to support community-based organizations that engage with migrant communities, are trusted by women workers, and can provide language accessible guidance and assistance.

Para. 61: As raised above, States Parties should establish special visas for victims of trafficking and we strongly support the recommendation to facilitate access to permanent residency permits for women migrants vulnerable to trafficking.

Para. 62: We welcome the recommendation to establish laws imposing mandatory due diligence requirements to regulate corporate supply chains; however, this recommendation should apply generally to all victims of trafficking and should not be limited to remedies for migrant women and girls. States Parties should also be advised to establish complaint mechanisms and whistleblower protections for individuals to report supply chain violations.

Para. 63: We strongly support the recommendation to adequately resource and strengthen the capacity of labor inspectors to recognize and report labor violations and presumed trafficking. Wage theft is often linked, if not a warning sign of potential trafficking, therefore, States Parties should also be advised to empower their labor enforcement agencies to respond to and investigate wage theft complaints and issue and enforce civil penalties for wage theft violations.

Para. 68: We strongly support the recommendation in subparagraph 68(j) on empowering communities. A localized response is critical to facilitating reporting of violations as well as access to assistance and relief. States Parties should also be advised to engage in broad public outreach to disseminate accessible

information to the most vulnerable communities of women to educate them about what constitutes trafficking.

Sub-paragraph (k) should also include a reference to diplomatic staff, who, in light of their diplomatic immunity, must be trained to refrain from engaging in unlawful conduct, particularly in light of reports regarding unlawful treatment of domestic workers.

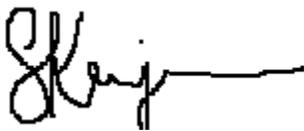
Para 84(b): We agree with the recommendation to establish accessible legal aid systems for victims. States Parties should also be advised to establish comprehensive and holistic support services for victims that will help them navigate social services, immigration, and the criminal justice systems in one central and local place with the assistance of victim advocates who they can trust.

Para. 91(a): All victims of trafficking, not just women victims, should be exempt from criminal and administrative liability for acts committed as a result of trafficking. An approach that limits liability for women victims alone would be discriminatory based on sex.

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Legal Momentum thanks the Committee for considering our comments on these welcome recommendations, which provide a much-needed framework for States Parties to tackle trafficking in women and girls in a meaningful way. The need to advance economic equality for women has never been more urgent, as women brace for additional economic set-backs as a result of the current global pandemic, which is leaving women all the more vulnerable. We hope States Parties will heed this urgent call to alleviate these vulnerabilities and aggressively work towards achieving substantive equality for women and girls.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seher Khawaja', with a long horizontal flourish extending to the right.

Seher Khawaja
Senior Attorney, Economic Empowerment
Legal Momentum