Written Comments by La Strada International to the CEDAW Committee for the Elaboration of a General Recommendation on the Trafficking of Women and Girls in the Context of Global Migration

La Strada International (LSI), European NGO Platform against trafficking in human beings, comprising 25 member organisations in 22 European countries, strongly supports the draft General Recommendation (GR). LSI member organisations work independently on grassroots level against trafficking in human beings and support trafficked persons and vulnerable groups, including (female) migrant workers.

La Strada International is in particular pleased that the current draft re-affirms States parties' obligation of due diligence to prevent, investigate, prosecute and punish trafficking in women and girls, as well as the obligation to identify, assist and protect victims and provide access to justice and remedies. La Strada International welcomes all references made to States' responsibility to ensure access to safe and protected formal employment opportunities and the monitoring of and implementation of labour laws and protection mechanisms to ensure health and safety and decent working conditions, particularly in unregulated or unmonitored economic sectors, that rely on migrant women's labour which should be recognised.

We believe that CEDAW's acknowledgement for the need to enforce legal sanctions against employers engaging in abusive employment and labour practices; the need to scrutinize recruitment agencies and to review visa regimes gives the GR a strong added value. The same counts for the acknowledgment of the need to facilitate the self-organisation and unionisation of women migrant workers in unregulated or unmonitored labour sectors and the call to provide opportunities for safe reporting, a fire wall[1] and adequate grievance mechanisms.
Essential is also the Recommendation's reference for ensuring more systematic and regular migration pathways, while eliminating any gender discriminatory restrictions on migration in law, policy or practice that limit opportunities for women's migration. We as Platform see daily how such restrictions increase the vulnerability of persons for exploitation and abuse, including human trafficking.

The fact that the General Recommendation makes clear reference for all States obligations to apply without discrimination both to citizens and non-citizens, including refugees, asylum-seekers, migrant workers, migrants with irregular status and stateless persons, within their territory or effective control, even if not situated within the territory, further enriches the draft Recommendation, as we also note that in particular these groups of persons are very vulnerable to human trafficking and other forms of severe exploitation and abuse. Also the clear condemnation of the use of anti-trafficking interventions to justify violence against specific groups of women, or the misuse of anti-trafficking legislation by authorities to impose increased restrictions on communities or falsely arrest, detain or charge innocent people particularly women from disadvantaged groups and women in prostitution, next to the

[1] https://picum.org/firewall-3/

warning for forced returns and the collateral effects of anti-trafficking efforts[2] make this General Recommendation a useful instrument for civil society actors like La Strada International, who have been advocating for these issues.

While we are very positive about the current draft, we would like to share the following last comments and suggestions for further revision and enhancement of the draft:

- **Demand** - Several times in the General Recommendation (e.g. Para 19, Para 20, 22, 25.f.i, 27, 27.d and Para 34) the need to address the demand-side is made. However CEDAW should note that – although the Trafficking Protocol requests States to discourage the demand that fosters all forms of exploitation[3] - the term demand in relation to human trafficking remains a vague, artificial and political term, and not a very useful term in practice due to the lack of common understanding about 'which demand we talk about and how it fosters forms of human trafficking'. It is essential that States will clearly distinguish between the services or products the demand is related to, and the exploitation and abuse that occurs, as not necessarily and automatically there is a clear connection. We would welcome the deletion of all references to demand. In case the term is used, it should be further explained and CEDAW should avoid any suggestions that demand only plays a role in the sex sector.

  The DemandAT research findings[4] showed us that in particular economic factors, social norms and discrimination, as well as policies and regulations play a major role in the exploitation and abuse of in particular migrant workers, regardless of the sector in which they worked or the services they offered. Instead of criminalising sectors, services or workers or consumers, which frequently leads to human rights violations of precarious and marginalised workers and which La Strada International strongly opposes, States should take measures to make undesirable forms of demand less likely. States should ensure that all workers can be empowered and have access to labour rights without risk of immigration enforcement, and should use market-based incentives such as taxes and subsidies for companies and employers, or measures promoting specific values or behaviours through peer pressure to influence demand for cheap and exploitable labour. In addition, better monitoring of the compliance of labour regulations is needed, next to sanctions for those that do not comply, with clear liability for violations along supply chains and by recruitment agencies. The same for regulations in place to ensure transparency and clean supply chains.

[2] See also COLLATERAL DAMAGE The Impact of Anti-Trafficking Measures on Human Rights around the World © 2007 Global Alliance Against Traffic in Women (GAATW) http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf

[3] Trafficking Protocol, Article 9(5): "5. States Parties shall 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."

[4] See www.demandat.eu – La Strada International was partner in this project.

We also would like to raise some specific issues, to the current references made to 'demand'. **Para 27a and 27b** – It should be noted that in principle any person can unknowingly be a potential user of goods or services produced with exploitative labour; we would recommend that (punitive) measures only address those that knowingly and intentionally make use of exploitative labour, including those that profit from exploitative labour. Further note that in **Para 27a** mentioning is made of trafficked goods of services, while it is not the goods or services that are trafficked, but persons, we care about. **Para 27-d** – it is unclear here who 'those on the demand side' are, this sentence would need further explanation.

- **Para 22** – Next to political, economic, societal and family structures, also wars and political conflicts should be mentioned. We also encourage CEDAW to not use language which denies women's agency and power in making difficult decisions to provide for their families despite risks ('**susceptible to being lured'**).

- **Para 25** – This article should more strongly reflect the need for data protection of personal data. Too often we see that personal data of trafficked persons is collected and transferred without their consent or them being informed and having the possibility to withdraw their data or refuse for it to be shared. E.g. **para 25c** could clearly state the data should be anonymized and **para 25.e** could say 'in full accordance with' (rather than 'with due respect of'). We would also strongly advise against collecting data on ethnicity and disability, as currently is recommended, as we have learnt from the past that this can seriously harm persons. Moreover it should be noted that often data is collected, that is not necessary for ensuring rights protection or prosecution of the crime, which also adds a lot of additional burden on civil society due to increasing data requests from governments.[5]

  In addition it should be noted that some of the suggested data to be collected is currently not available in relation to trafficking or registered trafficked persons and might also not be very realistic to obtain in the future; e.g. **Para 25.c viii** – it might be better to suggest collection of data on the number of exit or entry visas or permits issued or denied to women and girls because of suspicions of trafficking, because many of them might not have been identified as trafficked persons at the moment they obtained or were denied entry visas or permits and as this would be useful to monitor . It would also be very useful to collect data on residence permits granted to victims of trafficking, disaggregated by type of permit, length, and renewal/ extension permissions. We acknowledge the lack of data in general and would welcome more data collection on other forms of human trafficking, next to trafficking for sexual exploitation and labour exploitation, as information about these forms is limited.

[5] See datACT - data protection in anti-trafficking action", a project initated and implemented by KOK and La Strada International (2012 – 2015) aiming to promote the rights of trafficked persons to privacy and autonomy and to protect their personal data. https://www.kok-gegen-menschenhandel.de/en/kok-projects/data-protection-datact

- **Para 41 -** We would like to suggest here the deletion of 'particularly victims of trafficking', as the fact that they have been trafficked makes them not necessarily particular in need of being included in all stages of the peacemaking, stabilization and reconstruction process. We rather suggest a more general reference to the need to engage those impacted by wars and political conflicts. Please make also reference in this para, about the need to cease conflicts and the promoting of peace, as the existence of conflicts is a major root cause for women and girls' vulnerability. The vulnerability to trafficking will not be effectively reduced as long as conflicts continue.

- **Para 42 f** – We would like to add to 'Raise awareness among displaced women and girls about all forms of trafficking' the following: **and refer them to adequate information and support offered via specialized helplines or support structures.**

- **Para 58 b –** please also add **sex work** here, as this is a very vulnerable sector too.

- **Para 58 c -** It is unclear how addressing trafficking in the care economy will lead to recognition of the care sector or how states should address gender-segregated labour markets. This para would need further explanation, or deletion of the 2nd part of the sentence, as from '**by addressing gender segregated labour markets and human trafficking into the care economy'.**

- **Para 63** - Here we would like to suggest to refer to the need to increase the number of labour inspectorates according the recommended standards of ILO, as well we would like to suggest to make reference here to the need of labour inspectorates to provide adequate information to workers including about their right to claim justice and compensation/back wages. Labour inspection should have the main responsibility to control labour conditions, inspectors should not be required to control the migration status of workers as it undermines their ability to enforce labour conditions and relationship of trust with workers. If they are required to check status, there should be clear and publicized policy of professional confidentiality, where information will not be used for immigration enforcement purposes, to allow safe reporting and complaint mechanisms for all workers.

- **Para 65 –** We would recommend that bilateral agreements signed between States for employment of foreign workers, should include reference for compliance of national labour standards and that representatives of workers are involved in their development. Currently there is not much transparency about bilateral agreements on employment signed between governments and the agreed conditions. States should refrain from signing bilateral agreements with States that make structural use of forced labour.

- **Para 68 e:** We would like to suggest an addition here: Introduce proactive inspections **and criminal investigations** for the identification of trafficked **persons** in **(informal and formal)** workplaces, **including among workers that have been recruited or placed in work via recruitment agencies**.

- **Para 96 a**: Revise for: Obtain **comprehensive and** effective protection and redress including **social inclusion and remedies, including compensation and back wages.**

- **Para 96 c:** Please add: **and ensure that they have access to adequate and specialized free legal support**

- **Para 97** – Please also make reference to the need of **early financial investigations and assets recovery** to contribute to compensation being paid to victims. Too often we see in practice that victims remain empty-handed when traffickers are not found, or are not prosecuted, or have moved their assets abroad and/or have declared themselves bankrupt to avoid confiscation of their assets and having to pay compensation. We would advise that in such cases, governments take responsibility to pay trafficked persons for damage done.[6]

- **Para 103e**: Please mention Convention C189 on Decent Work for Domestic Workers and Convention C190 on Ending Violence and Harassment in the World of Work.

We hope CEDAW will take our written comments into account when finalizing the General Recommendation. We believe this strong general recommendation can support governments and all other relevant stakeholders to more effectively address human trafficking and discrimination against women and girls in the context of global migration and ensure that actions taken are gender-sensitive, rights and needs-based and evidence led.

LSI Members and partners:

1. **ADPARE** (Romania)
2. **Animus Association** (Bulgaria)
3. **Anti-Slavery International** (UK)
4. **ASTRA Anti-Trafficking Action** (Serbia)
5. **Ban Ying** (Germany)
6. **CCEM** (France)
7. **CoMensha** (The Netherlands)
8. **FairWork** (Netherlands)
9. **FIZ** (Switzerland)
10. **Focus on Labour Exploitation (FLEX)** (United Kingdom)
11. **Gender Perspectives/Social Changes** (Belarus)
12. **Hope Now** (Denmark)
13. **HRDF** (Turkey)
14. **KOK** (Germany)
15. **La Strada Czech Republic**
16. **La Strada Moldova**
17. **La Strada Poland**
18. **La Strada Ukraine**
19. **LEFÖ** (Austria)
20. **Migrant Rights Centre Ireland**
21. **Novi Put** (Bosnia and Herzegovina)
22. **Open Gate** (North - Macedonia)
23. **Pag-Asa** (Belgium)
24. **Pro Tukipiste** (Finland)
25. **Victim Support Finland** (Finland)
26. **PICUM (Platform for International Cooperation on Undocumented Migrants)** (Belgium)
27. **Impact: Center against Human Trafficking and Sexual Violence in Conflict** (Netherlands)

[6] See also www.justiceatlast.eu – European Action for Compensation for Victims of Crime.