



Written Submission to the Draft General Recommendation on Trafficking of Women and Girls in the Context of Global Migration

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The [International Action Network for Gender Equity and Law](#) (IANGEL),¹ a global network for transformative gender justice, and [Justice At Last](#),² a nonprofit law firm representing and providing legal advocacy for trafficked persons, respectfully submit the following written intervention to inform the CEDAW Committee's elaboration of a General Recommendation on the trafficking of women and girls in the context of global migration.

Guided by the international legal and human rights frameworks that define trafficking as both a criminal offense and as a human rights violation,³ and based on decades of legal practice, this submission highlights the negative impact of criminalization of trafficking survivors, and in particular, the post-criminalization damage from arrests, prosecution, and conviction of survivors for crimes related to their trafficking. Such crimes range from penalties related to migration status, to prosecution for the very activities that trafficking survivors were forced to commit.

Effective, survivor-centered anti-trafficking efforts must thus ensure trafficked persons are not criminalized for crimes underlying their trafficking and provide post-arrest and conviction relief for survivors.

Arrest and conviction histories typically prevent trafficking survivors from obtaining employment, pursuing education, accessing housing or receiving housing assistance, applying for loans and credit, facilitating family stability (e.g., re-establishing parental custody), securing social protection services, and accessing immigration relief or adjusting immigration status. Moreover, the stigma and shame embedded in the trafficking experience are magnified and entrenched by such records and by the judicial and public perceptions that the survivors and victims - rather than the traffickers and their associates - are to blame for the crime.

Laws and processes that ensure records relating to arrests, prosecution, and conviction caused as a result of being trafficked are cleared, vacated, expunged, or sealed create an opportunity for survivors to rectify past injustices and eliminate debilitating obstacles to their recovery and successful reintegration. Without such relief, survivors remain trapped in the very cycles of poverty, deprivation, and hopelessness that fuel the trafficking chain.

Relatedly, given the dynamic of vulnerabilities inherent in human trafficking, survivors must not be required to cooperate with law enforcement in order to have their own legal records cleared, receive legal support, or access other services. Survivors must not be pressured to testify or partake in legal proceedings against their traffickers as a precondition for the survivors themselves to not be criminalized or charged by law enforcement for acts they were forced to commit during their exploitation.

Unjust Criminalization of Trafficking Survivors, Including Girls, Remains Pervasive

Across the world, women and girls find themselves arrested, charged, and convicted for offenses they were forced to commit as a direct result of being victims of human trafficking.⁴ The National Survivor Network Survey, based on replies from 130 human trafficking survivors with diverse backgrounds and origins from 22 countries, found that over 90% of respondents reported having been arrested, and half of the respondents reported being arrested as children.⁵ Over half of all respondents believed that each one of their arrests, charges, or convictions were directly related to their trafficking experience.⁶

Victims often feel pressured to testify against their traffickers to avoid being charged themselves or to get access to services. This further re-victimizes survivors and may alienate them from trusting a justice system that demands their participation without regard to their condition or circumstances. Negative interactions with law enforcement increase the risk that survivors will be re-trafficked, as they may not return to seek legal or psychosocial support.⁷

The U.S.-based National Survivor Network Survey revealed that 22.2% of respondents reported that they felt like they had to testify against their trafficker to get help or services, and 30.5% felt pressure to testify from law enforcement.⁸ One survivor captured the sentiment with “Nobody was concerned about me, my needs or concerns. They only cared about my cooperation.”⁹

Criminalizing Survivors Undercuts Efforts for Recovery and Remedy

Survivors suffer long-term impacts from the arrests and convictions they faced as trafficking victims. For many, such criminalization curtails their economic opportunities as they are unable to obtain employment and access housing as a result of their criminal records.¹⁰ For other survivors, such records mean inability to access loans and credit, education, and other social protection services. In some countries a criminal record precludes survivors from adjusting their migration status or from asserting custody of their children and reuniting with family members. These adverse impacts reinforce survivors’ vulnerabilities and can re-victimize them and their families.

As one survivor painfully explained “After having ‘escaped’ from my sex trafficker, I have still been enslaved by the charges. Unable to get employment year after year after year resulted in homelessness and suicide attempts. ...I felt like, here you're free, [but] nobody wants to know you, talk to you, help you, date you, hire you, or have you living in their home so you might as well just be dead.”¹¹ In contrast, survivors have shared the powerful message that law enforcement and the courts send when it is acknowledged that they were the victims in this crime and should have never been criminalized to begin with.

Survivors’ Voices Must Inform Prevention, Enforcement, Remedy, and Redress Measures

Given the complexity of the root causes and the increase of human trafficking, the insights and inputs of survivors provide an integral and necessary frame for any effective, long-term approach and intervention, as well as a key strategy for enabling survivors to become leaders who could help governments and organizations carry out more effective anti-trafficking work.¹² Survivors rightly demand that justice systems “Help us seek justice on our terms. Do NOT force us to testify to get help, because then YOU become the trafficker and re-victimize the victim. ... empower us to speak to protect others and many of us will, even though our safety will be at risk.”¹³

Governments should thus ensure that any anti-trafficking legislation, including laws that would clear survivors’ records, start with trafficking survivors’ lived-experience and expert voices. Survivors must

also inform the research and the proposed legislation and programs on ways to address the myriad adverse impacts due to being criminalized for acts they were forced to commit.

Survivors' expertise must also inform, guide, and where possible, co-lead comprehensive trainings on all forms of human trafficking, including those that specifically target investigators, victim specialists, forensic interviewers, law enforcement (including immigration enforcement staff), judicial personnel, lawyers, and criminal justice professionals. In addition, more funding must be allocated to survivor-led service organizations and to embed the voice of survivors in program implementation and in the development of anti-trafficking policies and initiatives, such as by including survivors as paid task force experts to address related issues.

SUGGESTED RECOMMENDATIONS

The following suggested recommendations seek to inform the draft General Recommendation's sub-themes concerning access to justice for survivors, provisions of appropriate assistance and services, challenges and good practices in implementing survivor-centered approaches to combatting trafficking:

1. States parties should not charge victims of human trafficking for acts they were forced to commit as part of their trafficking;
 - Legislation or judicial precedent should clarify that the individual committed a crime under duress or force and as such should not be charged with a crime.
 - Legal systems should consider that women and child defendants accused of trafficking may themselves be victims of trafficking and deserving of specific legal defenses and mitigation.
2. States parties should provide recourse for survivors of trafficking who have been criminalized so they can clear their records from arrests and convictions;
 - A records clearance program must NOT require:
 - the survivor to pay fees to get the records cleared;
 - the survivor to explain explicit details (such as name the exploiter, the exact dates of the exploitation);
 - a burden of proof that exceeds the level of proof applied to convict the survivor.
 - Record clearance should not require unreasonable time to pass since the trafficking occurred and inflexible proof of efforts by survivors to “rehabilitate” themselves.
3. Survivors of trafficking, in particular women and child survivors, must not be compelled to provide evidence or testimony in exchange for not being criminalized or to receive redress or services.
4. Training and capacity development programs should target judicial officers, prosecutors, public defender attorneys, and front-line law enforcement personnel to ensure that they recognize signs/red-flags indicating that a potential defendant, especially women and children, may be a victim of trafficking or exploitation.
5. Survivors' expertise and voices must be included and accounted for at all stages and implementation of anti-trafficking measures and laws, including training creation and implementation, programs and research design and execution, as well as legislative drafting.

RESOURCES on Vacating Survivors' Arrests and Conviction Records

While these resources are based on the experience in the United States, they provide useful principles and guidance on post-conviction relief for survivors of human trafficking in other contexts.

American Bar Association, Commission on Domestic & Sexual Violence, **Survivor Reentry Project Practice Guide - Post Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys** at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.pdf.

(This U.S.-specific guide for lawyers outlines post-conviction practice, trafficking vacatur laws, and best practices for working with survivors of human trafficking).

American Bar Association **Survivor Reentry Project resources**, including vacatur and expungement laws for human trafficking survivors, at https://www.americanbar.org/groups/domestic_violence/survivor-reentry-project/.

National Association for Criminal Defense Lawyers, Database of U.S. states expungement and sealing laws, at <https://www.nacdl.org/rightsrestoration/>

¹ For more information on and to join the **International Action Network for Gender Equity and Law**, an international network of lawyers dedicated to gender equity and justice that harnesses the power of pro bono legal assistance for women's rights locally, nationally, and around the world, please visit <https://www.iangel.org/>.

² For more information about **Justice At Last**, the only non-profit law firm specializing in legal advocacy for trafficked persons in the San Francisco Bay Area in California, United States, please visit <https://www.justiceatlast.org/>.

³ See CEDAW Committee, Concept Note on the CEDAW General Recommendation on trafficking of women and girls in the context of global migration, at <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DiscussionOnTrafficking.aspx> (last accessed February 1, 2019).

⁴ See e.g., U.S. Department of State, Trafficking in Persons Report (June 2018), available at <https://www.state.gov/documents/organization/282798.pdf>. See e.g. Ireland (“If authorities prosecuted an individual before he or she was formally identified as a trafficking victim, the criminal record could not be expunged”) *Id.* at p. 236; Iraq (“in some instances, judges wrongfully convicted sex trafficking victims of committing prostitution violations that they were forced to commit, including child sex trafficking victims. Sentences for prostitution violations in Iraqi courts ranged from 15 years to life imprisonment, and applied to both adults and children. During the reporting period, foreign labor trafficking victims were vulnerable to paying immigration fines, and the MOI reported that trafficking victims could face penalties for using falsified documents. Although the anti-trafficking law required the government to institute a formal referral process to refer victims to protection services, in practice, government officials did not regularly refer identified victims to care, likely due to deficiencies in the government’s identification procedures”) *Id.* at p. 232; United States (“NGOs also noted a lack of sustained state and local government efforts to provide remedies for sex trafficking survivors who had criminal records as a result of their exploitation”) *Id.* at p. 444.; The New York Legal Aid Society’s Intervention Project 2015-2016 study revealed that 35% of their clients, mostly women, charged with prostitution-related charges had been sex trafficked at least once, and 20% were currently being trafficked. Urban Institute, Consequences of Policing Prostitution (2017) at <https://www.urban.org/sites/default/files/publication/89451/consequences-of-policing-prostitution.pdf>.

⁵ National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking (August 2016), at <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

⁶ National Survivor Network Members Survey.

⁷ International Organization for Migration, The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database (2010), at https://publications.iom.int/system/files/pdf/causes_of_retrafficking.pdf.

⁸ National Survivor Network Members Survey. Trafficking survivors reported pressure from law enforcement to include: “In order to get victim witness assistance I had to sign papers saying I would testify against my trafficker in court. If I accepted financial assistance and then refused to testify the program could then sue me for the assistance money;”

“I was given a mandate that I must testify against my trafficker. I was unable, so I was

Charged;” “I was sentenced to 30 months in prison because I would not testify against my trafficker;”

“They also told me my mom would go to prison for living off the proceeds of a prostitute and she would die in prison.” *Id.*

⁹ National Survivor Network Members Survey.

¹⁰ According to the National Survivor Network Members Survey, 72.7% of respondents reported their arrest/conviction had created a barrier when seeking employment and over 57.6% reported it as a barrier to housing. National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking (August 2016), at <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

¹¹ National Survivor Network Members Survey.

¹² “The concept of feeling valued and accepted came up over and over again in the young women’s interviews.... This taught the young women that their time and talents were valued and should be compensated and supported them in developing economic independence. ...If young women and girls who have experienced unimaginable trauma can view themselves and their futures as full of promise and potential, it is incumbent upon us to not set limits upon them or their leadership abilities and to provide the safety, support and opportunities to help them realize their inherent strength and value.” Rachel Lloyd, From Victim to Survivor, from survivor to Leader: The importance of leadership programming and opportunities for commercially sexually exploited and trafficked young women and girls, at https://issuu.com/gems/docs/from_victim_to_survivor_from_survivor_to_leader/3 (last accessed Feb. 15, 2019).

¹³ National Survivor Network Members Survey.