

CEDAW General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration

According to Art. 21 of the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Committee of Experts who supervises its implementation, may prepare General Recommendations (GR's) to guide the content of the legal obligations that State Parties have ratified.



General Recommendation No. 38 develops Art. 6: *"States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women"*, in the context of global migration, due to little advance on behalf of State Parties who ratified the convention.

OBJECTIVES AND REACH OF THE RECOMMENDATION:

- ◆ A life free from being trafficked must be recognized as a human right and appropriate conditions must be created for that right to be fully exercised by women and girls. (par. 4)
- ◆ States must pursue all appropriate means to eradicate trafficking and exploitation of prostitution to make this right effective rather than illusory. (par. 4)
- ◆ Pathways of human trafficking often align with mixed migration flows. (par. 5)
- ◆ States are also obliged to discourage the demand that fosters exploitation and leads to trafficking. (par. 6)
- ◆ States must identify, assist and protect trafficking survivors, to prevent their revictimization, and to ensure their access to justice, and punishment of perpetrators. (par. 6)
- ◆ It highlights the particular vulnerability of smuggled women and girls to being trafficked and underlines the conditions created by restrictive migration and asylum regimes pushing migrants towards irregular pathways. (par. 5)

SMUGGLING OF MIGRANTS ≠ TRAFFICKING IN PERSONS

Illicit procedure to facilitate the entry of an illegal person to a country

There could be a cause that excludes the perpetrator from the crime



Human rights violation which commodifies the dignity of the person

Nothing (not even the consent of the victim) excludes the perpetrator of the crime

WOMEN AND GIRLS VULNERABLE TO TRAFFICKING (Art. 20)



Indigenous and ethnic minority communities



Migrant, stateless, refugee, asylum-seeking women



Women and girls with disabilities or without care



Women and girls living in rural and remote areas



Displaced women, from conflict or post-conflict settings

KEY LEGAL

CLARIFICATIONS:

Article 6 has its legal basis on the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others, by which it must be read as an **indivisible provision**, which links trafficking and sexual exploitation. (par. 8)

Trafficking and exploitation of prostitution of women and girls is unequivocally a phenomenon rooted in **structural sex-based discrimination**, constituting gender-based violence. (par. 10)

“ THIS MEANS THAT ”

It is violence against women, there is no basis for some to call it “sex work”

The internationally-accepted legal definition of trafficking in persons is set out in the United Nations Trafficking Protocol, the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children** which supplements the 2000 **Convention against Transnational Organized Crime** in Art 3. (par. 11)

A. “Trafficking in persons” shall mean **the recruitment, transportation, transfer, harbouring or receipt** of persons,

B. by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, **of the abuse of power or of a position of vulnerability** or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

C. *Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation*, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

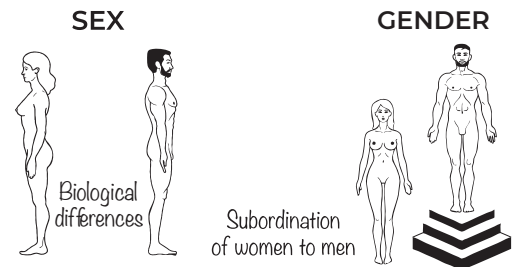
D. **The consent of a victim of trafficking in persons to the intended exploitation, shall be irrelevant.**

“ AH! IMPORTANT! ”

We cannot separate trafficking from its main purpose, which is sexual exploitation. Trafficking details preparatory acts to obtain a profit or benefit.

“ LET’ S RECALL WHAT ”

CEDAW SAYS. Art. 5 GR 28



These are the verbs or conducts that are punished:

TO RECRUIT



TO TRANSPORT OR TRANSFER



TO HARBOUR



These are some of the methods or means to commodify people

These are the purposes by which a profit or benefit is obtained

“ HOWEVER ”

Criminal Codes of many countries in the world have excluded the methods or means. You must only prove **one** of the verbs of trafficking and **one** of the purposes of exploitation of a person.

“ SO ”

Even if she does not identify as a victim, or justifies her exploitation to survive, we should protect her.

The one who commits the crime is the one who takes advantage of her !

* ADDITIONAL DEFINITIONS

Exploitation for the prostitution of others:

States agree to punish any person who, to gratify the passions of another procures, entices or leads away, for purposes of prostitution, another person, and exploits the prostitution of another person, even with the consent of that person (art 1).



States agree to punish any person who keeps or manages, or knowingly finances or takes part in the financing of a brothel, knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others (art 2).

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

Sexual exploitation:

The obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials. UNODC Model TIP Law, 2009.

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles, also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence. CEDAW GR No.19, par. 11-12

✎ In certain cases trafficking in women and girls may amount to **slavery, the slave trade and torture.** (par. 15)

✎ Trafficking in persons extends beyond situations where physical violence has been used or where the victim's personal liberty has been deprived, **considering the role of information communication technology, social media and chat apps in the recruitment of women and girls and their exploitation.** (par. 12)

✎ The **abuse of a position of vulnerability and the abuse of power** are the most common means used to commit the trafficking crime and that victims are often subjected to multiple forms of exploitation. (par. 12)

“ OF COURSE ! ”

In the case of women, debt bondage is a classical form of doing this. Other forms include: punishments, fines, document retention, threat of deportation or of jail.

✎ Criminal law alone is unable to address or redress the crime of trafficking. (par.19)

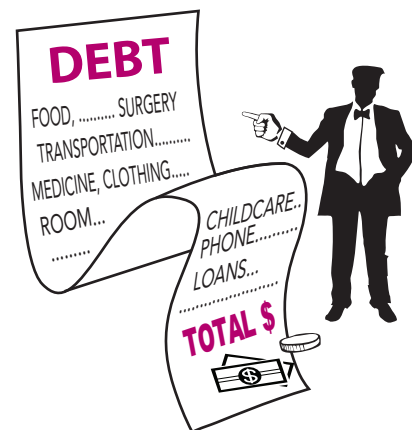
A larger protection framework stemming from **international humanitarian law, refugee law, criminal law, labour and international private law, the statelessness, slavery and slave trade conventions and international human rights law instruments, is needed.** (par. 13)

“ THIS CLARIFICATION ”

is proof of the seriousness of the crime and how urgent it is to identify and assist victims

“ SO ”

Pornography, webcam and many apps and “services” are being normalized, but are really trafficking in persons



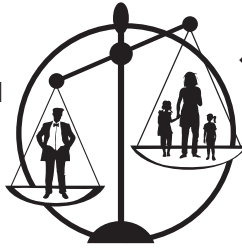
“ WONDERFUL ”

This General Recommendation helps civil society, States, humanitarian organizations, United Nations agencies to agree to minimum standards and coordinate assistance for women and girls.

WHICH ARE THE ROOT CAUSES OF TRAFFICKING IN WOMEN AND GIRLS?

A. SOCIO - ECONOMIC INJUSTICE

- ◆ Trafficking in women and girls is rooted in sex and gender-based discrimination, gender-based structural inequality and the feminization of poverty. (par. 20)



- ◆ Women and girls continue to be the prime targets of traffickers for specific forms of exploitation due to pervasive and persistent gender and age inequalities resulting in an economic, social and legal status that is lower in comparison to that which is enjoyed by men and boys. (par. 21)

B. DISCRIMINATION IN MIGRATION AND ASYLUM REGIMES

- ◆ Women's ability to migrate is further restricted by gender-based stereotypes, discriminatory laws, discrimination and exploitation in recruitment, lack of available decent work, limited reliable information on migration. (par. 26)



- ◆ Visa regimes may be responsible for creating an economic and legal dependency on an employer or spouse, creating the conditions for exploitation and for sponsors to operate with impunity. (par. 27)

C. DEMAND THAT FOSTERS EXPLOITATION AND LEADS TO TRAFFICKING

- ◆ Demand in the context of trafficking is often shaped by desire for financial gain, discriminatory attitudes, including cultural attitudes, and beliefs. Women may be preferred for certain forms of exploitation because they are perceived as weak and less likely to assert themselves or to claim the rights to which they are entitled. (par. 29)



- ◆ Sexual exploitation persists due to States parties' failure to effectively discourage the demand that fosters exploitation and leads to trafficking. Persisting norms and stereotypes regarding male domination, the need to assert male control or power, enforce patriarchal gender roles, male sexual entitlement, coercion and control which drive the demand for sexual exploitation of women and girls. (par. 30)

D. SITUATIONS OF CONFLICT AND HUMANITARIAN EMERGENCIES

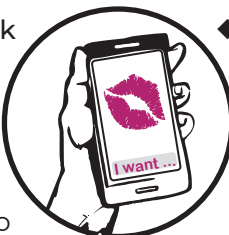
- ◆ Women and girls are in increased situations of vulnerability to gender-based violence including trafficking when they are not able to meet their basic livelihood needs or face economic desperation, which is often exacerbated by conflict, political events, health crises or natural disasters. (par. 33)



- ◆ During humanitarian emergencies governments are often required to divert resources including the use of policing and social services, making it easier for traffickers to hide their operations and rendering victims increasingly invisible as well as making it more difficult for victims to seek protection, services, assistance and support. (par. 35)

E. THE USE OF DIGITAL TECHNOLOGY IN TRAFFICKING

- ◆ Demand channels through social media, dark web and messaging platforms provide easy access to potential victims thus increasing their vulnerability as well as the use of electronic currencies offers tools to hide personal information such as identification of involved parties and location, and allow to make anonymous payments without disclosing the purpose of transaction. (par. 36)



- ◆ Under the COVID-19 State parties face growths of trafficking in cyberspace: an increased recruitment for sexual exploitation on-line, an increased demand for child sexual abuse material and technology facilitated child sex trafficking. (par. 37)

IV

WHAT ARE THE DIFFICULTIES RELATED

TO VICTIM IDENTIFICATION, ASSISTANCE AND PROTECTION?

A. VICTIM IDENTIFICATION

- ◆ In mixed migration flows, hotspots lack appropriate and confidential spaces to carry out identification performed by trained staff and interpreters who can promptly assess indicators of vulnerability and provide adequate support. (par. 38)
- ◆ Front-line professionals often lack the required training to adequately understand, identify and appropriately respond to all types of victims, including to survivors of sexual exploitation and intersecting forms of exploitation. (par. 38)
- ◆ Victims are often hidden in non-public areas such as private residences, isolated factories and farms, and brothels. (par. 38)
- ◆ Victims are often reluctant to self-identify and disclose their traffickers for fear of retaliation, due to lack of information on the crime and where to report it, and fear of engaging with authorities, including being detained, prosecuted, punished and deported. (par. 38)

B. VICTIM ASSISTANCE AND PROTECTION

- ◆ Long term, needs-based, comprehensive victim-centered assistance and protection measures are often lacking in anti-trafficking responses due to poor victim identification and insufficient definition and implementation of trafficking in national law. (par. 39)
- ◆ Victims often face restricted access to essential services, including access to information on their rights, medical, psychological, social and legal services available to them and how to access them as well as to safe and appropriate accommodation, both in the place in which they are identified and in their place of origin. (par. 40)
- ◆ Victims face restricted access to essential services, because of the cost and language delivery of services, lack of gender or cultural sensitivity and trauma-informed practices; failure of first responders to conduct appropriate risk assessments and referrals; fear of being forced into a rehabilitation program or cooperation with law enforcement authorities in the prosecution of traffickers; fear of prosecution for crimes committed as a consequence of having been trafficked or for immigration offences. (par. 40)



C. VICTIMS' ACCESS TO JUSTICE

- ◆ Justice systems may be more likely to violate women's rights than to protect them, including by subjecting victims to criminalization, stigmatization, revictimization, harassment and possible retribution. (par. 42)
- ◆ Residency permits are tied to criminal justice processes and repatriation occurs prior to seeking or obtaining civil remedies; the victim bears the burden of proof in civil claims; survivors of trafficking are not identified as victims of a crime for the purpose of reparations owed under law; or where monetary compensation is unavailable or the proceeds of crimes are not redistributed to victims. (par. 43)
- ◆ Victims of trafficking often encounter significant difficulties in claiming compensation and other forms of reparation, including damages, for the harm suffered for reasons including where: it is made conditional upon cooperation with law enforcement authorities; victims do not have access to high-quality, gender-sensitive, trauma informed legal aid and representation (par. 43)

RECOMMENDATIONS OF THE CEDAW COMMITTEE

TO ADDRESS THE ROOT CAUSES OF TRAFFICKING IN WOMEN AND GIRLS

1. SOCIO-ECONOMIC JUSTICE

- ◆ Eradicating pervasive and persistent gender inequality resulting in an economic, social, and legal status of women and girls that is lower in comparison than that which is enjoyed by men and boys (par. 50), eliminating social structures which limit women's autonomy and access to key resources, such as **education and vocational training opportunities, asset and land ownership, access to credit, participation in decision-making, equal pay.** (par. 51)
- ◆ Enact legislation to protect women and provide effective assistance to victims of domestic abuse, review family law, **address socio-cultural practices, including intra-family arrangements which increase exposure of women and girls to trafficking and sexual exploitation.** (par. 52)
- ◆ Protect all women workers, including migrant workers, by **providing very clear protections, including localized living wage requirements, overtime pay, health and safety, social protection, and decent working conditions, equal pay for work of equal value, particularly in unregulated, informal or unmonitored economic sectors that rely on migrant labour.** (par. 54 a)



“ HOW IMPORTANT! ”

To invest and promote socio-economic autonomy and empowerment of women in all sectors of society

2. PROMOTE A SAFE MIGRATION FRAMEWORK

- ◆ Women and girl refugees are highly vulnerable to trafficking and are in need of international protection, especially against refoulement. **Gender-based violence against women and girls** is one of the major forms of persecution experienced by women and girls that may be grounds for granting refugee status and asylum, and/or residence on humanitarian grounds. (par. 25)
- ◆ Supporting increased access to pathways for safe and regular migration and to avoid exploitation, including sexual exploitation, considering the **specific needs of women and their children**, and ensuring the rights of the migrant populations within these pathways to protected formal employment opportunities, legal pathways to education and vocational training, both in their countries of origin and destination. (par. 56a)
- ◆ Increasing access to family reunification with a focus on psychosocial and economic dependency, and in consideration of different types of families (par. 56d); **Upholding the rights of children, guaranteeing their right to be heard and considering unaccompanied girls as especially vulnerable and requiring additional protection.** (párr. 56 d - e)



More, here:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en

3. DISCOURAGE THE DEMAND THAT FOSTERS EXPLOITATION AND LEADS TO TRAFFICKING

- ◆ Implement educational, social or cultural measures aimed at targeting potential users. (par. 62)

“ WE WILL SAVE MANY LIVES! ”

Discouraging the use of pornography, webcam, sugar baby, Only Fans and other “adult entertainment” platforms that commercialize the human dignity of women and girls



- ◆ Prevent and address trafficking in all business operations, public procurement, and corporate supply chains by investigating, prosecuting and convicting all perpetrators involved in the trafficking of persons, including those on the demand side. (par. 63a)

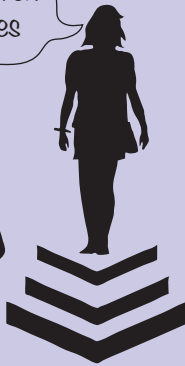
“ NOW WE KNOW ”

In the case of trafficking for the purpose of prostitution of others, criminalizing those who pay for sex and pornography, is the solution to the existence and increase of these crimes

“ EVIDENCE OF THIS IS THE NORDIC OR ABOLITIONIST MODEL ”

Women and girls **deserve** protection and opportunities

It is **prohibited** to pay for sexual access to women



It is **prohibited** to profit from the prostitution of others

- Measures that protect women of those who entice and exploit the prostitution of others.
- The number of prostituted women and crime associated decreases exponentially.
- Women are not criminalized, they are protected, have access to a dignified life and men treat them in equality.

Report on the evaluation of the prohibition of the purchase of sexual services in Sweden. (1999-2008)

- ◆ Conducting, and/or funding, awareness raising campaigns to inform consumers and customers of products and services that may involve exploitative labour, including unethical recruitment practices and slave labour, and where to report suspicions of criminal activities. (par. 63d)

“ WITHOUT DEMAND, THERE IS NO SUPPLY! ”

This is why it is key to focus on consumers of prostitution and pornography in campaigns and policies.

4. CONFRONT SITUATIONS OF CONFLICT AND HUMANITARIAN EMERGENCIES

- ◆ Integrate into conflict and disaster-risk reduction, preparedness and response plans, existing and new risk factors of women and girls to trafficking, including sexual exploitation, ensuring they are provided with comprehensive protection and assistance. (par. 65)
- ◆ Prevent trafficking and sexual exploitation in all accommodation facilities for displaced women and girls, including by training facility staff to identify potential victims, and ensuring women's and girls' security by establishing single-sex accommodations and facilities, patrolling of police officers, including female officers, ensuring adequate lighting and access to sanitary facilities, and establishing resource centres for women and girls in their vicinity. (par. 67)
- ◆ Ensure access to complaint procedures and redress mechanisms in cases of human rights violations. (par. 69)



- ◆ Adopt a zero tolerance policy on trafficking and sexual exploitation forced labour, slavery, slavery-like practices based on international human rights standards, which addresses groups such as national troops, peacekeeping forces, border police, immigration officials and humanitarian actors and other staff members of international organizations and international civil society organizations. (par. 68)

5. COMBAT THE USE OF TECHNOLOGY IN TRAFFICKING

- ◆ Require social media and messaging platform companies use their existing capabilities in big data, intelligence artificial and analytics to identify any pattern that could lead to trafficking and identification of the involved parties, including the demand side. (par. 71)

“ WE MUST DEMAND ”

Ethical commercial practices: even if the format is digital, images that are reproduced of women and girls are real and impact them negatively



- ◆ Initiate proactive identification of production of on-line sexual abuse material during the COVID-19 and afterwards; cooperate with technology companies in creating automated tools to detect online recruitment and identify traffickers. (par. 73)

“ DO NOT UPLOAD OR DISTRIBUTE ”

Images or videos could correspond to crimes such as trafficking for the purpose of the prostitution of others and other forms of sexual exploitation, as well as sexual abuse and violence.

5. AWARENESS-RAISING

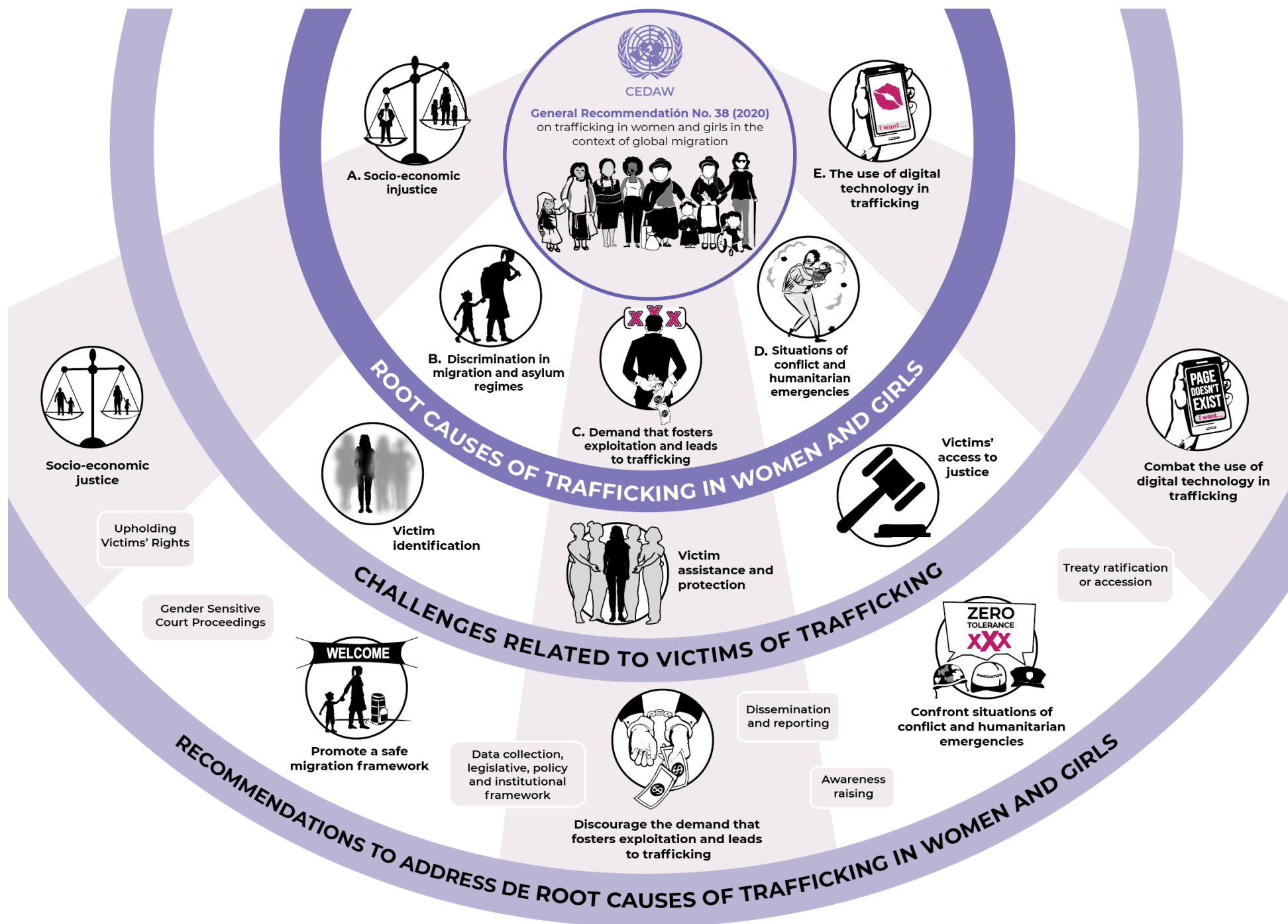
- ◆ Provide accurate information to women and girls (especially those in border areas and those on route or in a destination context) about their rights and the means and motivation to avoid human traffickers (...) to protect themselves and others from trafficking, particularly in the context of migration. (par. 75)

“ VICTIMS ”

Are very vulnerable and it is difficult to prevent among them, however, we can make those who use and profit from them, responsible.

More, here:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GC/38&Lang=en



To read the whole General Recommendation click here:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en