### **Check against delivery**



**Statement by Ms. Maud DE BOER - BUQUICCHIO**

**SPECIAL RAPPORTEUR ON THE SALE AND SEXUAL EXPLOITATION OF CHILDREN, INCLUDING CHILD PROSTITUTION, CHILD PORNOGRAPHY AND OTHER CHILD SEXUAL ABUSE MATERIAL**

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Mr President,

Excellencies,

Ladies and Gentlemen,

It is an honour for me to address the Human Rights Council at the beginning of my second term as the fifth Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material.

As we witness horrifying conflicts and humanitarian disasters, where children are often the first victims, and sometimes even primary targets, we must provide protection for those who do manage to escape and seek refuge elsewhere. It is unacceptable that children fleeing wars and disasters will face further hardship along their journey, by being subjected to various forms of exploitation.

On this subject, I wish to bring to your attention the joint thematic report on the vulnerabilities of children to exploitation in situations of conflict and humanitarian crisis, which I presented together with the Special Rapporteur on trafficking in persons, to the 72nd session of the General Assembly. In this report, we concluded that existing prevention mechanisms and responses to the various forms of exploitation of children in the context of conflict and humanitarian crisis are largely ineffective. I encourage all States to implement our recommendations, in particular, the one that relates to banning child immigration detention.

As the negotiations of the Global Compact on Migration are reaching a critical stage, we must ensure that the rights of the child are prominently reflected. The creation of pathways for regular migration is essential for families to remain together and would provide a first layer of protection for children.

Mr President,

Regarding country visits, I welcome the invitation extended by the Government of Ireland to undertake an official visit which will take place from 14 to 21 May 2018. I also look forward to a fruitful cooperation with the Government of Malaysia in preparation of my official visit which will be undertaken from 24 September to 1 October 2018.

I wish to also take this opportunity to thank the Government of Lao People’s Democratic Republic for their collaboration before and during the visit which took place in November of last year. A full country visit report will be presented to the Council next year at its 40th session.

Mr President and distinguished delegates,

I will now turn to my thematic study on surrogacy. To begin with, I wish to make it very clear that I do not seek and am not in a position to deliver moral, ethical or public policy judgements on surrogacy. I was mandated by the Council to identify new patterns of sale and sexual exploitation of children as they emerge. I have thus undertaken this analysis in respect to surrogacy.

Moreover, my consideration of surrogacy is solely through a child-rights perspective and as it relates to the sale of children. This report should thus be considered as a stepping-stone for further research on surrogacy by other human rights mechanisms and UN agencies, in particular as it relates to women’s rights. What is more, nothing in this report should be interpreted as a restriction of women’s autonomy in decision-making or of their rights to sexual and reproductive health.

Mr President,

As stated by international human rights law, children are right holders and any attempt to commodify them is in contravention of these norms. States, regardless of their perspectives on surrogacy, must create safeguards to prevent the sale of or traffic in children in the context of surrogacy.

My report notes that commercial surrogacy as currently practised usually constitutes sale of children as defined under international human rights law. Indeed, if the surrogate mother or a third party receives “remuneration or any other consideration” in exchange for transferring a child, the sale of a child occurs, as defined by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. While the surrogate mother is paid, in commercial surrogacy arrangements, for the services of gestating and giving birth to a child, she is also being paid for the transfer of the child.

Mr President and distinguished delegates,

It is of the upmost importance to resist against the pressures created by a large-scale practice of a market- and contract-based form of commercial surrogacy. Child rights cannot be watered down for the sake of monetary gain. In my report, I underline the type of abuses that can occur when profit led schemes encourage a disregard for human rights. Children may be abandoned or sold when considered undesirable, surrogate mothers may be exploited and trafficked and ultimately surrogate-born children may become stateless.

Strict regulation based on human rights is consequently required in order to ensure that surrogacy does not amount to the sale of children.

For commercial surrogacy to occur without amounting to sale of children, the report proposes two safeguards. Firstly, the surrogate mother should have non-exclusive parentage and parental responsibility at birth, which would ensure her freedom of choice, thus protecting her autonomy and removing the sale component. Secondly, all payments to the surrogate mother should happen before the birth and should in no way be linked or made conditional to the transfer, both physical and legal, of the child.

Moreover, in all cases a court or competent authorities should review the transfer of parentage between the surrogate mother and the intending parents. In general, all financial aspects of surrogacy arrangements have to be closely monitored and reviewed.

In respect to altruistic surrogacy, the report observes that a truly altruistic surrogacy does not constitute sale of children, since altruistic surrogacy is understood as a gratuitous act, often between family members or friends with pre-existing relationships, and often without the involvement of intermediaries.

Nonetheless, great caution must be taken around reimbursements to surrogate mothers for medical costs, which may be used to disguise a payment for the transfer of the child. Consequently, altruistic surrogacy must also be appropriately regulated with the assurance that reimbursements to surrogate mothers are reasonable and itemised, by subjecting them to review by courts or other competent authorities.

Mr President,

In respect to international commercial surrogacy arrangements, States that prohibit all surrogacy arrangements, or commercial surrogacy, are often confronted with their nationals returning with a child obtained through surrogacy abroad. It is of the upmost importance for such States to carefully conduct post-birth best interests determinations, protect the child’s identity rights and access to origins, and make independent assessments as to parentage, and also inquire into the treatment and post-birth consent of the surrogate mother. In all such proceedings, the child born from a surrogacy arrangement must not be punished or discriminated against due to the circumstances of his or her birth.

Mr President and distinguished delegates,

Let me now introduce to you the main conclusions and recommendations of my visit to the Dominican Republic. My visit was the first of the special procedures system since 2007. Based on the positive experience, I encourage the Government of the Dominican Republic to invite other UN independent experts by issuing a standing invitation to the Special Procedures.

During my eight day visit in May 2017, I observed with grave concern that the sale and sexual exploitation of children in the country take many forms and are widespread. Abuses such as child marriage, sexual exploitation of children in travel and tourism, smuggling, trafficking and exploitation of children across the border with Haiti and within the country, abuse within the family, the predicament of children in street situations, and exploitation of children in domestic work and agriculture require an urgent and comprehensive response from national authorities.

Nevertheless, in the past decade there has been a growing consciousness in society about the negative impact that sale and sexual exploitation of children have on children, in particular girls.

Another positive development is the incorporation of the absolute prohibition, without exceptions, of child marriage in the draft reform of the Civil Code, which has been adopted by Congress. In this context, I urge the Senate to endorse this prohibition and to adopt without delay this legislative reform as an effective means to combat child marriage and teen pregnancies in the country.

The adoption of special laws such as the law on trafficking and the law against cyber-crime, the creation of specialised units of the Attorney General’s Office against these crimes, the incorporation of child-sensitive measures in justice proceedings, and the establishment of multidisciplinary coordination teams to improve criminal investigations and protection of child victims are yielding positive results, such as convictions for the crimes of sexual exploitation of children. I encourage authorities to continue on this track by allocating the necessary human, technical and financial resources to expand these results in the whole country.

The fight against sexual exploitation of children must become a political priority in the Dominican Republic. For this purpose, it is imperative that the Government at the highest level adopts a comprehensive strategy to fight the phenomena, ensures inter-institutional coordination, strengthens the capacities of the National Council for Children and Adolescents (CONANI), and allocates adequate resources for prevention and child protection. Such a comprehensive strategy should address two issues of particular concern, namely the eradication of sexual exploitation of children in tourism and the particular vulnerability and discrimination suffered by undocumented children, including children of Haitian descent and migrant children.

The Government of the Dominican Republic has set the target of reaching 10 million tourists by 2022. In order to avoid that this influx is reached at the expense of the rights and protection of children, I call on the Government, in particular its Ministry of Tourism, to place prevention of child sex tourism at the core of its strategy on tourism. In this task, the Dominican Republic must count with the cooperation of countries of origin of tourists. I also call on national authorities to ensure that the Specialised Body of Tourist Security (CESTUR) and National Police are proactively involved in the effective reporting and investigation of these crimes, and protection of children.

Lastly, I would like to refer to the situation of undocumented and migrant children in the Dominican Republic, including those of Haitian descent or origin. While I acknowledge efforts deployed by the Government to minimize the negative impact of the decision of the Constitutional Court of 2013, I call on the Government to continue adopting all the necessary measures, in close collaboration with the Haitian Government, to ensure the rights of these children to a name, identity and nationality, development, education and health, and protection from any form of discrimination.

I remain at the disposal of the Government of the Dominican Republic to assist in the effective implementation of my recommendations.

Mr President and distinguished delegates,

This year as we celebrate the 70th anniversary of the Universal Declaration of Human Rights, it is fundamental to remind ourselves of what is at stake when these enshrined international standards are openly and repeatedly challenged. This is particularly true for vulnerable groups in our societies, such as children.

As we witness a potentially revolutionary wake-up call in respect to discrimination and sexual harassment of women across all sectors, we should aim to bring the same awareness to the suffering of children throughout the world. Children should never be sold or submitted to any form of exploitation. If we keep our heads in the sand, we become complicit to such revolting crimes.

Thank you for your attention and I look forward to a fruitful dialogue with you.

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