

## Mandate of the Special Rapporteur on trafficking in persons, especially women and children

17 August 2021

Excellencies,

I thank you for the opportunity to address you in my capacity as Special Rapporteur on trafficking in persons, especially women and children, in the context of the negotiation of the Political Declaration for the High-Level Meeting of the General Assembly on the appraisal of the United Nations Global Plan of Action to Combat Trafficking in Persons. I wish to congratulate you on the initial zero draft of the political declaration, which already contains key elements in the adoption of a human rights approach to the protection of victims of trafficking. I believe this declaration is an excellent opportunity for the international community to recognize the human rights of victims and to encourage the adoption of measures that puts victims and their protection at the centre of any international or national legislation and policy addressing trafficking in persons.

The recognition of **gender inequality and discrimination, including racism and xenophobia**, and the role they play in increasing risks of exploitation and vulnerability to trafficking, is critical. It is encouraging to see this recognition included in the zero draft.

In specifying measures to be taken, it would be important to call also for strengthened positive action and innovative approaches in **identification and assistance of victims**. Identification models and decisions on granting of assistance to victims should be based on the detection of personal and social vulnerabilities to trafficking and exploitation, on the basis of an **individual assessment** and taking into consideration the **intersections of multiple forms of discrimination**, including on grounds of gender, age, disability, race and ethnicity, migration status and statelessness that increase risks of exploitation.

Decisions on identification and granting of early assistance should be made by interdisciplinary teams, comprising trained professionals, established by the competent civil authorities. Measures of early support and protection must aim at **long term social inclusion, without conditionality and respecting the international law principle of non-discrimination**. This approach entails a shift from the treatment of trafficking as a primarily a security and criminal justice concern, to the **recognition of trafficking in persons first and foremost as a human rights violation**. Ensuring a human rights approach, requires effective access to justice including through the **timely provision of legal assistance, to ensure early identification of victims, referral for assistance and protection**.

The commitment to establishing **safe and regular pathways for migration** to reduce the risks of trafficking in the context of migration, in line with the Global Compact for Safe Orderly and Regular Migration, is very welcome. Commitment to the expansion of migration pathways through **refugee resettlement and family reunification** will be critical to the objective of eliminating trafficking in persons and preventing exploitation,

including in particular of **unaccompanied and separated migrant and asylum seeking children**.

I encourage Member States to consider additional measures to **strengthen prevention, and ensure effective protection of migrant workers**, including: abolition of any form of sponsorship that ties workers to a single employer, prohibition of administrative detention for children, and establishment of a firewall between access to social services, health care and to legal assistance, protection of labour rights, and immigration law enforcement. Fulfilment of **the obligation of non-refoulement**, including by conducting comprehensive and individualised risk assessments, is essential to prevention of trafficking and re-trafficking and to effective protection. Such policies should always include an **age and child-sensitive perspective**, recognising the distinct rights of the child in international law, and increased vulnerabilities to exploitation faced by children.

The Political Declaration offers the opportunity to **highlight the urgency of ensuring the rights of trafficked persons with disabilities are effectively protected**. Recognising the increased risks that may be faced by persons with disabilities, including in particular in institutional settings, it is essential to **ensure non-discrimination and disability inclusion in all anti-trafficking measures**. This requirement is particularly urgent where persons with disabilities may be at heightened risk of exploitation, including for the purpose of forced criminality. It is important to highlight the obligation of non-discrimination on the basis of disability, and to ensure that reasonable accommodation for persons with disabilities is ensured, including in assistance and protection measures. Provision of procedural and age-appropriate accommodations is essential, in order to facilitate effective access to justice and participation of trafficked persons with disabilities in all legal proceedings, including in identification procedures and at investigative and other preliminary stages of investigation and prosecution.

It is encouraging to see the **recognition of trafficked persons as agents of change** and the need to incorporate their perspective and experience in all efforts to prevent and combat trafficking in persons. In this regard, it is important to recognise the role of partnerships in anti-trafficking action and, in particular, the role that **civil society organizations** continue to play in prevention, in identifying and assisting victims of trafficking and in supporting long term social inclusion. **Ensuring an enabling legal and policy framework and adequate resourcing for civil society and human rights defenders, including trade unions and worker-led initiatives**, will be essential to accomplish States' commitment in this regard. Funding for victim support must not be limited to short term assistance, but must include **long-term, sustainable measures** aimed at promoting the full social inclusion of trafficked and exploited persons in both countries of destination and countries of origin.

I am reassured by the zero draft's inclusion of a clear acknowledgement of the **principle of non punishment and its implementation**, applying to any unlawful activity carried out by a trafficked person as a direct consequence of their trafficking situation, regardless of the gravity or seriousness of the offence committed, as well as to all types of punishment, including criminal, civil, administrative and immigration offences, or other forms of punishment. All victims have a right to protection and access to justice: the notion of "less deserving victims" depending on the acts committed as a consequence of their trafficking situation is an aberration of the rule of law. To ensure the implementation of the non-punishment principle, States should consider as well the capacity building needs to ensure that all law enforcement authorities and prosecutors are fully trained to identify potential victims of trafficking and trafficking-related offences and to order, or request, the discontinuance of proceedings against victims at as early a stage as possible.

My mandate has dedicated several reports and continues to advocate for a stronger international response to address **trafficking in persons in situations of armed conflict and humanitarian emergencies, including natural disasters**. My next report to the General Assembly will look into the links between terrorism and trafficking. I am pleased by the prominent place this issue enjoys in the declaration. I would like to encourage Member States, and specifically the Security Council, to take this opportunity and close the gap between the security approach adopted when tackling trafficking in the context of terrorist organizations and the human rights dimension of anti-trafficking action in those resolutions. A clear link must be made to ensuring the protection of the human rights of victims without discrimination. **States must ensure also that actions taken to address trafficking in persons in the context of terrorism comply with international human rights law and international humanitarian law**, and that action to combat human trafficking is not instrumentalised to enhance counter-terrorism measures that undermine human rights.

In its Resolution 44/4, the Human Rights Council highlighted the **importance of greater synergy between anti-trafficking efforts and the women, peace and security agenda**, “especially by addressing the issue of trafficking in persons and its link with conflict-related sexual violence, and by stressing the key role of women’s agency and participation.”<sup>1</sup> It is timely now to **highlight the importance of addressing all forms of trafficking in persons in the WPS agenda including, in particular, for purposes of sexual and labour exploitation, forced criminality and forced marriage**.

The particular vulnerabilities of **refugee and migrant children, and children in conflict and humanitarian settings**, require urgent attention. It is critical to ensure that children detained for association with armed groups, including proscribed groups, are recognized as victims of grave violations of human rights and humanitarian law. Recovery, reintegration, protection and family reunification should be prioritized.

The **climate crisis increases risks of displacement, internally and across borders, and creates additional risks of poverty, discrimination, and trafficking in persons for all forms of exploitation**. It is urgent now that the Declaration addresses the impact of the climate crisis, recognising that effective action to combat the climate crisis will be critical to prevention of trafficking in persons, and to meeting states’ obligations of due diligence of prevention of trafficking and protection of victims.

Trafficking and other forms of exploitation are systemic components of economies and markets worldwide. **Addressing the labour dimension** requires better and more effective action aimed at changing the business model, **enforcing labour laws and empowering workers** in order to prevent and eradicate exploitation. The **role of the private sector** is rightly highlighted in the Declaration. =I further encourage States to take measures to strengthen legislation on the protection of labour rights as critically important for the prevention of trafficking in persons, and protection of victims, including by strengthening labour inspectorates and enforcement of labour rights. **Gaps in protection of labour rights, including in domestic work and in domestic households**, must be urgently addressed.

Recognising the significant role of the private sector, I strongly encourage states to enact legislation on **mandatory human rights due diligence**, requiring businesses to disclose not only the action taken to prevent and **eradicate exploitation from supply chains, but also the specific and verifiable results achieved, and remedies provided to victims**.

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<sup>1</sup> (16 July 2020) UN Doc. A/HRC/RES/44/4, para.1(h)

Recognising that **exploitation of children in child labour** remains prevalent in particular in **Africa, states and businesses** must be required to take urgent action to prevent and eliminate trafficking of children for purposes of labour exploitation, including through requiring **positive action to implement child rights impact assessments**.

The Special Rapporteur recommends acknowledging the **major impact of the current global pandemic** on increasing risks of trafficking in persons and, in particular, highlighting the gender dimension of increased risks of trafficking for purposes of sexual exploitation and **forced marriage**, increased vulnerabilities to labour exploitation and exploitation in criminal activities.

The COVID-19 pandemic has seen a growth in recruitment for **sexual exploitation online and technology facilitated child trafficking for the purpose of sexual exploitation**. Reference should be made to the important **role of digital technologies** in supporting states' positive obligations of international cooperation to combat child trafficking for all purposes of exploitation including, in particular, sexual exploitation.

Groups engaged in **armed conflict and criminal activities, including UN designated terrorist groups increasingly use targeted advertising, enabled by digital environments and social media platforms**, to contact children, with heightened risks of exploitation for the purpose of forced criminality, sexual exploitation and other forms of sexual exploitation. The Special Rapporteur recommends that the Declaration addresses the need to **proactively engage with internet service providers and advertising partners**, to prevent such advertising, and attendant risks of recruitment for purposes of exploitation. **Reference should be made to States' positive obligations of due diligence to prevent all forms of child trafficking.**

I would also like to take this opportunity to assure you of my commitment to this process and to offer my full cooperation in this endeavour.

Please accept, Excellences, the assurances of my highest consideration.

A handwritten signature in cursive script, appearing to read 'Siobhán Mullally', written in black ink on a light-colored background.

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children