

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

Comments by the Special Rapporteur on trafficking in persons, especially women and children, Ms. Siobhán Mullally

“The Future of Refugee Management in the Great Lakes Region” November 10 2020

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Thank you to the Refugee Law Project for the opportunity to speak to you on the subject of human trafficking. Human trafficking is a serious human rights violation, linked one of the fastest-growing transnational criminal activities of the 21st century, according to the International Labour Organization.

Uganda is a country of origin, transit, and destination for human trafficking, for all forms of exploitation, including forced labour, forced criminality, child sacrifice, street begging, child marriage, and sexual exploitation.

Significant legal and policy developments have taken place in Uganda, to address trafficking in persons, to ensure protection for survivors and to combat impunity. On the 2020 World Day against Trafficking in Persons (30 July), the Ministry of Internal Affairs launched the second Uganda National Action Plan for Prevention of Trafficking in Persons, and the National Referral Guidelines for Management of Victims of Trafficking. This year also marks the twentieth anniversary of the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol). It is timely therefore to reflect on the limits and potential of the legal framework on trafficking in persons.

In my recent report to the UN General Assembly, *'20 Years After: Implementing and Going Beyond the Palermo Protocol towards a human rights centred approach.'* (UN Doc. A/75/169), I note important legal developments on human trafficking within the UN human rights system and in regional human rights bodies. The UN CEDAW Committee is adopting the first General Recommendation (no.38) on Trafficking of Women and Girls in the context of international migration. Significant case-law, including *Rantsev v. Cyprus and Russia*, *Chowdhury and others v. Greece* and *Haciende Brasil Verde workers v. Brazil* from regional human rights courts address States' positive obligations of prevention and protection, in the fields of sexual exploitation and labour exploitation in particular.

The Trafficking in Persons Protocol includes the protection and assistance of victims of trafficking among its main purposes, noting that such protection should ensure "full respect for their human rights." Despite this core commitment to human rights, however, there are limitations in the anti-trafficking framework envisaged in the Protocol itself. These limitations are found also in anti-trafficking legislation and policy adopted in many States, where the primary focus remains on a criminal justice and migration control response. As a result, identification procedures are frequently linked to law enforcement processes, and assistance to victims remains conditional on cooperation in criminal proceedings.

Responses to human trafficking particularly in the context of migration have tended towards restrictions on migration, often discriminatory against women and girls, and too often includes a focus on criminalisation of irregular migration, leading to detention of victims / survivors of trafficking for extended periods of time, as punishment for irregular migration.

Critical to a human rights based approach to human trafficking is the principle of non-punishment. Part III of the Prevention of Trafficking in Persons legislation, provides for the non-punishment principle, which seeks to ensure that victims of trafficking are not punished for

crimes that they were compelled to commit. Too often, however, it is the victims / survivors of trafficking and not the perpetrators of the crime, that are being punished. This gap in protection is particularly acute in the context of trafficking of persons for the purpose of forced criminality, including through forced recruitment by armed groups. Children and young people are frequently the targets of such groups, particularly in situations of conflict, forced displacement and extreme poverty.

This failure to implement the non-punishment principle undermines the goal of ensuring accountability and contributes further to impunity for serious human rights violations. A key thematic priority for 2021 for the mandate of Special Rapporteur on Trafficking in Persons, will be to highlight the positive obligation of states to ensure that victims of trafficking in persons are not punished, including through immigration related detention, administrative sanctions related to irregular migration or engagement in prostitution. Punishment may also take the form of deprivation of citizenship (the so-called phenomenon of citizenship stripping), or forced returns, raising questions also as to States' compliance with obligations to avoid statelessness and to ensure compliance with the principle of non-refoulement.

We need to see, in all regions, including the Great Lakes region, a greater focus on prevention of trafficking and on ensuring effective access to protection, with longer term support for social protection and reintegration of victims / survivors of human trafficking.

We also need to see a greater focus on the less visible forms of human trafficking. While government anti-trafficking action worldwide remains largely rooted in a criminal law model, addressing the labour dimension requires better and more effective action aimed at changing dominant business models, enforcing and extending the scope of labour laws and labour inspectorates, regulating recruitment agencies and online recruitment activities, and empowering all workers, to prevent and eradicate exploitation. The adoption of the 2014

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Protocol to the Forced Labour Convention 1930 (no.29), marks an important opportunity to address the labour dimension of human trafficking. Under Sustainable Development Goal (SDG) 8 on decent work and economic growth, all countries committed to achieving target 8.7: “Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”

Uganda is an Alliance 8.7 Pathfinder country. In Uganda, and across the Great Lakes region, there are significant labour externalisation programmes, with labour migration routes to Middle East / Gulf countries. According to the Uganda Association of External Recruitment Agencies approximately 140,000 Ugandans are working in the Middle East. It is critical to ensure that recruitment processes comply with international labour and human rights standards, and that all workers have access to decent work, and to safe, regular migration route and protections as migrant workers. Without such regulation, the risks of exploitation including trafficking, remain significant.

The mandate of the UN Special Rapporteur on Trafficking has repeatedly highlighted States’ and business obligations to eliminate trafficking in supply chains. A key concern is the role of extractive industries, often linked to conflict settings, labour exploitation, sexual exploitation of both adults and children. Multi stakeholder initiatives are critical to highlight and to prevent such exploitation, which may particularly affect those forcibly displaced by conflict, climate change of disasters.

We also know that internal trafficking, within the Great Lakes region, remains an urgent problem. Trafficking for the purpose of labour exploitation in agriculture and in extractive industries remains prevalent, particularly from South Asia and China, and of children from other African countries.

The COVID-19 pandemic has the potential to exacerbate the trend of rampant exploitation as a consequence of rising unemployment, collapse of informal economies, gaps in social protection and child protection, and supply chain disruption.

The COVID-19 pandemic may also exacerbate the feminization of poverty and gender discrimination, and fuel the worst forms of child labour, as children become a primary source of income for their families in crisis situations. Since the start of the pandemic, there has been an increase in border closures and travel restrictions, which may also result in a rise in irregular and clandestine migration, increasing vulnerability to exploitation through human trafficking. The Global Compact on Safe, Orderly and Regular Migration, commits to expanding access to safe migration, including as a means to reduce trafficking in persons.

In the Great Lakes region, the prevalence and risk of trafficking in conflict situations and humanitarian settings, remains a serious concern. Since 2015, the UN Security Council has repeatedly addressed human trafficking in conflict situations, as has the UN Secretary General. As my recent Report to the UN General Assembly notes, however, human trafficking continues to be viewed primarily through a criminal justice and security lens. The human rights of victims /survivors, and positive obligations of due diligence of prevention, early identification and referral for protection, in conflict situations, are not yet given sufficient attention or priority.

Security Council Resolution 2242 (2015) was the first Resolution to highlight the use of sexual and gender-based violence as part of strategic objectives by terrorist groups in areas affected by armed conflict. The resolution falls under the women, peace and security (WPS) regime, and is aimed at the greater integration of frameworks for counter-terrorism and countering violent extremism with the WPS agenda. In 2019, Security Council Resolution 2467, also

falling under the WPS regime, went further by linking trafficking in persons, crimes of terrorism and sexual violence in conflict.

The links between trafficking in persons and conflict situations is also increasingly being addressed by the African Union. In the recent Communiqué of the 960th Peace and Security Council meeting on the Establishment of the Special Unit on Counter-Terrorism within the framework of the African Standby Force 30 October 2020, there is an explicit focus on human trafficking as an element of organized crime. In 2019, the Peace & Security Council of the AU issues a Press Statement on the theme: “Children Affected by Armed Conflicts in Africa” 14 May 2019. The Council underscored the importance of education of refugees and IDPs, as essential to building peace, stability and communal cohesion, as well as preventing their conscription into armed groups and human trafficking. The Council also reaffirmed the penal responsibility of armed groups which violate the rights of refugees and IDPs, in conformity with the International Law.

Currently in most regions, responses to human trafficking remain fragmented. In frequent references to counter terrorism strategies, and linkages between trafficking, terrorism and conflict situations, there is little reference to the human rights framework that applies to trafficking in persons or the human rights of victims / survivors – to protection and to effective remedies.

This year marks also the 20th anniversary of Resolution 1325 on Women, Peace and Security. A full integration of a human rights based approach to trafficking in persons in the Women Peace and Security agenda, would be a powerful means of reinforcing women’s agency and leadership in combating human trafficking. It would also place gender equality and a commitment to ending sexual violence in conflict settings at the heart of anti-trafficking work globally.

In the context of the Youth Peace and Security Agenda, we also need to take more seriously trafficking of children for the purpose of forced criminality.

A priority for my mandate will be to work with the Global Protection Cluster, moving beyond fragmented responses and silos, to focus on trafficking in humanitarian crises, and critical roles of humanitarian actors, in prevention, early identification, referral for protection, and ensuring access to services. Standard Operating Procedures, Screening guidelines and vulnerability assessment tools are all available to be applied in humanitarian settings. Too often, however, we see that there is limited engagement in prevention work, or to ensure early identification and referral to protection of potential victims in humanitarian settings.

Recognising the non-discrimination principle in all anti-trafficking action, also requires that multiple forms of discrimination, linked to disability, ethnicity and gender, for example, heighten risks of poverty and of exploitation. Effective protection also requires addressing the rights of persons with disabilities in prevention, assistance and social protection measures. I will be addressing the UN Committee on the Rights of Persons with Disabilities on March 8th 2021, to support the work of the Committee in integrating a focus on human trafficking and exploitation into its work.

In my role as UN Special Rapporteur, I will continue to highlight the significant work of civil society in supporting victims/ survivors of trafficking. Despite limited resources, and increasing restrictions imposed on their work in many countries, civil society has been to the fore in the development of models of prevention, assistance and protection, based on the empowerment of trafficked persons through health care, psychological counselling, legal assistance, training and employment. Survivor led responses to human trafficking are critical to ensure effectiveness and longer term impact, recognizing the agency, skills and contribution of

survivors. We need to remain vigilant at all times to protect civil society space, and human rights defenders, including those working with migrants. Increasingly we are seeing not only trends towards criminalization of human rights defenders working with migrants. Along with other UN Special Procedures, I will continue to work to support civil society space and the rights of human rights defenders.

It is critical that States consider prevention to be a political priority and take specific action, including by funding civil society organizations, to address the root causes of trafficking and exploitation, including extreme poverty, systemic injustice, gender discrimination, domestic and sexual violence, and destitution in situations of conflicts, natural disasters and pandemics. Education about respectful relationships, including from a gender and child rights perspective is also critical, to ending exploitation.

In closing, I would like to thank again the Refugee Law Project for hosting this event, and for their continued work to promote human rights and the rights of all refugees, migrants and displaced persons. I particularly commend and thank them for their work on sexual and gender based violence, on the rights of persons with disabilities and their support for refugee youth groups, and for their engagement and human rights work throughout Uganda. With their support, we will continue to work towards combating human trafficking including in humanitarian settings.