

UN Special Rapporteur on Trafficking in Persons, especially women and children, Siobhán Mullally

Statement delivered at International Migration Review Forum (Round Table 2), New York, United Nations

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Co-Chairpersons, Excellencies, Distinguished delegates,

Thank you for the opportunity to participate in this important Roundtable, at this historic first International Migration Review Forum.

I will focus specifically on Objective 10 of the Global Compact, to 'Prevent, Combat and Eradicate Trafficking in Persons in the context of international migration'. To achieve this objective, we need to ensure a human-rights based approach to migration, one that prioritises the agency and human rights of migrants, and mobilises the full range of international human rights and international labour law standards in support of migrant rights.

A core principle of international human rights law is that of non-discrimination, on grounds of gender, disability, race and ethnicity, migration status, among other grounds. On this day, International Day against Homophobia, Biphobia, and Transphobia, we must remember that international human rights law, international labour law, and international refugee law, fully implemented, guarantee universal protection of human rights to all persons, without discrimination. Ensuring safe expanded opportunities for regular migration, and effective protection of the human rights of all migrants and their families, is essential to prevent trafficking in persons. Securing non-discrimination and equality in law and in practice, in access to economic and social rights, in labour rights for all migrants, would be transformative for international migration and for our global community.

Distinguished delegates,

At this historic International Migration Review Forum, we are also discussing the displacement of persons, due to climate change, disasters, and armed conflict.

My upcoming Report to the General Assembly in October 2022, specifically addresses the risks of trafficking arising in the context of climate change and disasters. Displacement greatly increases risks of exploitation including trafficking, due to loss of livelihoods, community and family support networks, and increased debt, leading to situations of debt bondage and dependency. For children, displacement and migration may lead to loss of education opportunities and lack of oversight by child protection actors, increasing vulnerabilities to trafficking. Climate related disasters and displacement contribute to situations where children become key sources of income for families. In disaster settings and situations of forced displacement, risks of trafficking for purposes of forced marriage, sexual exploitation or forced labour may increase.

A key priority for my mandate is trafficking in persons occurring in conflict and humanitarian settings. Against the background of the war in Ukraine, and the displacement of more than 7 million people internally as a result of the conflict, and almost 7 million refugees from the war, it is important to ensure safety through secure migration status and access to international protection. We have seen what can be achieved by States.

The activation of the Temporary Protection Directive in the European Union ensures that a residence permit, access to the labour market and housing, medical assistance, and access to education for children, is provided to those who were permanently residing in Ukraine, and left the country to escape war from 24 February 2022 onwards.

In Colombia, the adoption of the ten-year temporary protection status (TPS) for over 1.8 million Venezuelans living in Colombia, and many more entering since 2021, provides access to protection and a regularisation of status, that limits and significantly reduces the risks of trafficking arising in situations of displacement and large refugee movements.

We need further proactive measures by States, expanded resettlement programmes, humanitarian visas and family reunification, to prevent trafficking in persons, and ensure safe and timely access to international protection, recognising the overlaps between the objectives of the Global Compact for Safe Orderly and Regular Migration and the Global Compact for Refugees. The upcoming 2023 Global Forum for Refugees, offers an opportunity for further pledges and commitments from States to prevent trafficking in persons.

Distinguished delegates,

I am concerned that despite the adoption of the Global Compact for Safe, Orderly and Regular Migration, we continue to see restrictions on migration, closures of borders, forced returns, immigration-related detention, and discriminatory practices in work places, that push migrants and their families, into risky, dangerous situations where risks of exploitation, including trafficking in persons, are great.

To combat trafficking in persons, and to ensure safe migration, we need to move away from protective paternalistic measures that limit migration, particularly for migrant women who are often presumed to be in need of protection and face discriminatory restrictions that limit, rather than expand migration opportunities.

Bilateral labour agreements, pre-departure orientation training, model contracts of employment, are all useful tools to ensure safe migration and prevent trafficking in persons. It is critical, however, that such measures address the gender dimension of migration, to highlight the opportunities for all migrant workers. It is important that all necessary measures are taken to ensure safe migration for work, including in informal sectors such as the domestic work sector, which is often less regulated and a site of human rights violations, including of trafficking in persons. It is timely to recall that prevention of trafficking in persons, and protection of persons at risk of trafficking is a positive obligation of states.

We know that labour externalisation programmes, which offer opportunities for migration for work, may lead to trafficking in persons if adequate safeguards and protection of the rights of migrant workers and their families are not ensured. We need to expand the range of migration for work opportunities, and ensure that gender stereotypes do not limit access to such opportunities, particularly for women. We also need to ensure that the rights of migrant workers in often remote, hard to reach locations, in agriculture, in fisheries, in extractive mining, and in households and domestic work, are effectively protected.

I am concerned that for migrant workers, the visa regimes established by many States continue to place migrant workers and their families in precarious situations. The use of tied visas, limiting the rights of workers to change employers or seek employment in other sectors, remains widespread. Such restrictions are not limited to any one region. We particularly see such tied visas in domestic work, in agriculture for example.

The Global Compact for Safe, Orderly and Regular Migration, calls on States to develop, flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs (Objective 5). However, I am concerned that market needs have been prioritized in place of ensuring the rights of migrant workers and their families, including in recruitment processes. These restrictions create dependency, increasing vulnerability to trafficking.

For example, in my forthcoming Report to the Human Rights Council, I highlight the continuing dependency of the agricultural sector on temporary, seasonal and circular migration. (A/HRC/50/33) We have seen increasing numbers of temporary visas issued for migrant agricultural workers, reflecting continuing demand and market needs, yet limited access to secure residence status, citizenship or to strengthened labour protections. Despite being designated as 'essential workers' during the COVID-19 pandemic, essential to our food security, we have seen limited progress in ensuring human rights of migrant agric workers – and migrant workers in other sectors recognised as high risk for trafficking for forced labour (domestic work, fisheries for example) I am concerned at the lack of oversight and monitoring of temporary visa programmes, and of employers engaging with such programmes.

The lack of vetting of sponsors, limited follow-up or inspections of working conditions, or of compliance with labour law and international human rights law, creates significant risks of trafficking for forced labour and allows such trafficking to continue with impunity.

Situations of trafficking arise in seasonal, temporary and circular migration. This happens through debt arising in recruitment processes, leading to debt bondage, confiscation of passports by employers and recruitment intermediaries, threats to workers of arrest and deportation, and use of physical violence

Trafficking for forced labour frequently intersects with experiences of sexual harassment, gender-based violence, and sexual exploitation. Migrant workers are often reluctant to complain about such rights violations or of labour rights violations, or of experiences of trafficking, owing to fears of having future visa applications denied, or of arrest, detention and deportation.

I highlight again the obligation on States to ensure effective implementation of the principle of non-punishment of victims of trafficking and, as required by the Global Compact, to ensure safe reporting, without fear of deportation, detention or penalty. (Objective 10)

I stress the importance of undertaking actions to implement Objective 6 of the Global Compact by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry. I highlight the potential role of digital recruitment platforms to ensure fair recruitment and prevent trafficking for forced labour. Digital technologies can be deployed to promote compliance with labour and human rights standards.

However, further efforts must be made by States to ensure that fair recruitment initiatives reach workers deployed in sectors where we see high levels of informality, such as domestic work and agriculture, fisheries, hospitality, where workers are often designated as “low-skilled”, or “unskilled” and may be beyond the reach of State-sponsored initiatives.

I also highlight the importance of strengthened protection of child rights, highlighting the commitment to end child labour and the now universal ratification of ILO Convention on Worst forms of Child Labour, 1999, no.182.

The Global Compact is rooted in the UN Convention on the Rights of the Child and a commitment to child rights. Risks of exploitation, including trafficking in persons, are most acute for those children in vulnerable situations, including unaccompanied and separated children, children living in situations of protracted irregularity, LGBT adolescents and youth, and children with disabilities. Too many children continue to face the risks of immigration detention.

As highlighted by the UN Task Force to End Deprivation of Liberty of Children, every day, in over 100 countries, migrant children are detained; whether alone or with their families. It is important to highlight that detaining migrant children is not in their best interest, it is a form of violence and a child rights violation.

I am also concerned that children of seasonal, temporary and migrant workers, are often unable to regularly attend school, lack access to child protection or social services, and are at increased risk of exploitation including trafficking.

Recognising the specific risks of trafficking that may be encountered by persons with disabilities, due to failures of accommodation and discrimination, we need to ensure that initiatives to expand safe and regular migration, and prevent trafficking in persons, are disability inclusive.

We must also recognise the obligations of international cooperation, to identify and assist trafficked persons. Many missing migrants, including missing children, may be victims of trafficking. Urgent action is needed to ensure assistance and protection, and accountability for this serious human rights violation. If we fail to ensure accountability, Traffickers continue to operate with impunity.

Finally, as we have heard yesterday and today, partnerships with civil society, including trade unions, workers associations, NGOs, play a critically important role in promoting rights of migrants and their families, and in preventing trafficking in persons.

Too often, civil society space is restricted, we see criminalisation of HRDs, including those assisting migrants and trafficked persons. Strengthening partnerships with civil society is essential to prevent trafficking, to protect the human rights of migrants, and is an obligation under IHRL.

Thank you, I look forward to continuing to work to promote the human rights of all migrants, and to prevent trafficking in persons.