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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Trafficking in persons, especially women and children****Report of the Special Rapporteur on trafficking in persons, especially
women and children***Summary*

The present report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, was prepared pursuant to Human Rights Council resolution 35/5.

In the report, the Special Rapporteur takes stock of her previous research and reports, and analyses protection gaps in the legal and policy framework to prevent and combat trafficking. Profound changes are needed in the current approach to anti-trafficking action, which predominantly tends to prioritize investigation and prosecution of traffickers over victims' support, empowerment and long-term social inclusion. Moreover, restrictive migration policies contribute to exacerbate vulnerabilities to trafficking and severe exploitation, and hamper the protection of trafficked persons' rights.

The Special Rapporteur urges States to adopt a genuinely human rights-based approach, and offers updated recommendations, based on the Recommended Principles and Guidelines on Human Rights and Human Trafficking.



I. Introduction

1. During her six years of tenure, the Special Rapporteur has developed significant thematic research with the aim of effectively implementing a human rights-based approach to trafficking in persons. As her tenure is coming to an end in July 2020, the same year that 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, the Special Rapporteur believes that it is timely and relevant to dedicate her last thematic report to the Human Rights Council to a reflection on the main gaps that have emerged throughout the extensive research conducted thus far, as well as on the way forward in relation to effective actions aimed at preventing and combating trafficking in persons.

2. According to the knowledge and experience gained during her tenure, the Special Rapporteur believes that profound changes are needed in the approach to anti-trafficking action. Estimates show that forced labour, including in the context of trafficking, is a massive widespread phenomenon, involving millions of people. While sexual exploitation, mostly involving women and girls, remains a significant proportion of all cases, labour exploitation probably represents the highest percentage of trafficking in persons. The scale of the problem suggests that trafficking should be considered first and foremost a matter of human rights and social justice. Trafficked persons are in fact an enormous reserve of cheap labour or even unpaid labour, misused and victimized for this purpose, while the proceeds of their hard work enrich not only their traffickers, very often criminals, but also their final exploiters, very often well-established and respected actors in the formal economy.

3. This is the reason why Governments should, as a matter of priority, address businesses with a collaborative approach, asking for voluntary initiatives in compliance with due diligence obligations to respect human rights, and at the same time impose on corporations basic obligations to report on the actions they take, identify and minimize risks, and provide remedies for people subjected to trafficking in their operations, including their supply chains. The agency of exploited and trafficked persons should be promoted and valued, by respecting their freedoms of assembly and association and their rights to form or join trade unions, and by providing workers who denounce exploitation with viable and regular alternative jobs, and residence status if needed.

4. However, a law enforcement approach to anti-trafficking is still prevalent. Trafficking is overlooked, especially when it is linked with migration, and victims are not identified as such when they are trafficked during their perilous journeys, due to the lack of dedicated procedures in places of first arrival, aimed at identifying vulnerabilities, including vulnerabilities to trafficking. The result is that trafficking is almost ignored in the context of mixed migration movements. Taking into account the clear link between trafficking and migration – although trafficking can also occur within an individual country – such a failure to protect vulnerable migrants at an early stage produces a sort of marginalization of anti-trafficking action, which is still confined to a specific policy area, restricted to cases in which exploitation has already taken place, and the person concerned has been found in such a situation by the police.

5. In addition, when a person is identified in such a way, he or she is asked to report and give testimony, with the consequence that their residence status and therefore their possibility to access assistance and remedies is made conditional on the legal qualification of the crime, the initiation and continuation of criminal proceedings, and sometimes even the fact that their contribution leads to the arrest or conviction of perpetrators. It is clear that such a model is not human rights compliant, and not effective. The Special Rapporteur believes that a different approach is needed, in which considerations related to the rights, vulnerabilities and needs of the person involved must take first place.

6. Restrictive migration policies and xenophobic or racist approaches to migration exacerbate or even create vulnerabilities to trafficking. The increasing trend towards criminalization of migration and related repressive policies is one of the driving factors of trafficking. On the contrary, trafficked persons' rights can be fully protected only if migrants' rights are protected.

7. In addition, anti-trafficking action often produces further violations of trafficked persons' rights. No other victims of crime are subjected to such restrictive measures for their own protection. Actually, in a number of countries, trafficked persons are detained in so-called closed shelters. In addition, generally speaking, trafficked persons, when they are identified as such, are often deprived of their agency, and subjected to "protection" measures inspired by a paternalistic or even authoritarian approach. Such a situation reflects a persisting ambiguity in the status of trafficked persons, who are often treated as criminals, although they are victims of one of the most serious crimes, which could even amount – under certain conditions – to a crime against humanity. Therefore, a true shift is needed in the prevention of and the fight against trafficking, which should be genuinely inspired by a human rights agenda. For this purpose, the Special Rapporteur believes that new approaches should be urgently explored by Member States and the international community.

8. First, the goal of preventing and combating trafficking in persons should be one of the criteria used to evaluate national migration policies and design profound changes. Early support for trafficked persons requires preventative action aimed at ensuring that every single migrant has an opportunity to meet a social worker in a friendly environment, tell his or her stories and express his or her hopes, aspirations and concerns. In such a way, it will be possible to identify indications of trafficking and vulnerabilities to trafficking in mixed migration movements.

9. Second, anti-trafficking policies should be designed, and adequately funded, to work on a much larger scale, and carried out in close cooperation with trade unions, civil society organizations and the private sector, including in countries in which exploitation takes place as a result of violations occurring in the supply chains. Any determination about the social protection of the person concerned should be made by multidisciplinary teams, and not by law enforcement and/or immigration authorities alone, and based on grounds of personal or social vulnerabilities. Asylum procedures should be fully integrated with procedures aimed at identifying migrants' vulnerabilities, including to trafficking, with a view to facilitating their referral to services when indications of trafficking or vulnerabilities to trafficking have been identified during the asylum procedures. The referral to the anti-trafficking system must be without prejudice to the person's right to obtain refugee status, when grounds for both kinds of protection have been found, or when trafficking itself has been identified as a ground for asylum or other forms of international protection.

10. Third, assistance and support measures should respect the rights of trafficked persons and address their real needs in a tailored way, including regularization of their residence status and alternatives for a regular and non-exploitative job. The non-punishment principle should be correctly applied. Trafficked persons should not be detained, charged or prosecuted for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. Moreover, children's administrative detention must be banned at all times, since it is never in the best interests of the child. Victims' rights in criminal proceedings must be fully recognized and respected, including rights that are instrumental in ensuring that victims claim and obtain remedies, including compensation. Especially regarding people who are sexually exploited, including girls and boys, who are the least likely to get compensation, their entitlements must not be overlooked as a result of biases, stigma and/or discrimination.

11. Fourth, assistance and support measures should aim to achieve full social inclusion of survivors, which must be acknowledged by Member States as due diligence obligations and should be integrated in the implementation of victims' rights to effective remedies, including compensation. In addition, this long-term perspective should inspire all assistance and support measures in a transformative way, based on skill acquisition, formal education, vocational training, job creation, prolonged tutoring and microcredits. No survivor should be returned or maintained in the same situation of social vulnerability that caused his or her victimization.

12. In the present report, the Special Rapporteur takes stock of the extensive research carried out during her six-year tenure, with a view to promoting innovative approaches. In particular, she contributed to raising international concern about the issue of how conflict

fuelled trafficking in persons.¹ She carried out comprehensive research on the issue of child trafficking in situations of conflict and humanitarian crisis jointly with the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material.² She reflected on the gendered dimension of trafficking in conflict and post-conflict settings and advocated for the integration of a human rights-based approach to trafficking in the women and peace and security agenda of the Security Council.³ She was invited to participate in various open debates of the Security Council in New York, to present her views on trafficking in persons and the maintenance of international peace and security. She played a role in unpacking the interlinkages between trafficking and migration, which culminated in the presentation of a report on early identification, referral and protection of victims and potential victims of trafficking in mixed migration movements.⁴ Mindful that protection does not end with identification and referral to the appropriate services, but needs to be translated into meaningful social inclusion of survivors in societies, she also dedicated a thematic report to innovative and transformative models of social inclusion of survivors of trafficking.⁵ She highlighted the importance of combating trafficking in persons in order to reduce labour exploitation in business operations and supply chains. In this regard, she headed a three-year project on strengthening the efforts of multi-stakeholder initiatives against trafficking in persons, forced labour and severe forms of labour exploitation. To this end, she extensively engaged with a wide range of actors, including non-traditional actors, such as private sector companies, industrial coalitions and multi-stakeholder initiatives, as well as trade unions. In addition to the publication of two reports on this subject, namely on strengthening voluntary standards for businesses on preventing and combating trafficking in persons and labour exploitation, especially in supply chains⁶ and, most recently, on access to remedies for victims of trafficking for abuses committed by businesses and their suppliers,⁷ in 2019, she facilitated a platform for dialogue among multi-stakeholder initiatives and trade unions, bringing under a human rights approach umbrella a range of actors that traditionally distrusted each other.

13. The Special Rapporteur hopes that the recommendations put forward in the present report, based on such extensive research and consultations, can guide not only States' policies, but also the private sector, civil society organizations, United Nations agencies and the international community as a whole, with the aim of ensuring the protection of trafficked persons' rights, including early and effective support, and their empowerment and social inclusion as the ultimate goal of anti-trafficking action.

II. Obligation of due diligence under international human rights law

14. States' obligations to prevent and combat trafficking stem not only from the ratification of relevant international instruments but also from due diligence obligations under international human rights law. In this light, the Special Rapporteur will stress some innovative implications of due diligence obligations related to anti-trafficking action.

15. Under international law, States are required to exercise due diligence to prevent trafficking, to investigate and prosecute perpetrators, to assist and protect victims and to ensure remedies.⁸ This derives from States' positive obligation to protect individuals from human rights abuses by private actors (e.g., individuals and corporations). Due diligence obligations have been articulated in a number of areas applicable to trafficking in persons,

¹ See A/71/303 and A/HRC/32/41 and Corr.1.

² See A/72/164.

³ See A/73/171.

⁴ See A/HRC/38/45.

⁵ See A/HRC/41/46.

⁶ See A/HRC/35/37.

⁷ See A/74/189.

⁸ See generally A/70/260. See also the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1).

including the right to life, violence against women, and sex-based discrimination, alongside a series of specific due diligence obligations that pertain to trafficking in persons.⁹ A State's due diligence obligation applies without discrimination to all individuals within its territory or effective control, including citizens and non-citizens, individuals trafficked for sex, labour, organ removal, and other forms of trafficking, and regardless of whether the State is one of origin, transit and/or destination.¹⁰

16. In addition to States' obligations with regard to individual non-State perpetrators, their due diligence obligations to prevent, investigate, and punish trafficking also require measures with respect to corporations, which exist alongside any measures these corporations themselves may adopt as part of their obligation to adopt a human rights due diligence process as set forth in the Guiding Principles on Business and Human Rights.¹¹ In the context of anti-trafficking measures, both the territorial and extraterritorial application of human rights means that States' due diligence obligations apply extraterritorially to those within their jurisdiction, including domestic non-State actors (e.g., corporations).¹²

17. Due diligence is an obligation requiring States to take reasonable measures that have a real prospect of altering the outcome or mitigating the harm.¹³ Consistent with international human rights obligations – including the obligation of substantive equality – such measures should be targeted not only towards identified victims but also towards those most at risk of trafficking in persons.¹⁴ In the context of States' approaches to trafficking, due diligence has primarily been post hoc. However, due diligence also requires a focus on prevention, meaning that States have a systemic¹⁵ responsibility to address root causes.¹⁶ Under international law, the failure to exercise due diligence is consequential, meaning that States that have failed to exercise due diligence towards private actors incur international responsibility that then requires them to provide an effective remedy for victims of trafficking in persons,¹⁷ which is essential for their social inclusion. In providing specialized assistance to individual victims,¹⁸ individual due diligence requires that States must act flexibly to ensure that measures are tailored to individual circumstances.¹⁹

⁹ See generally A/70/260.

¹⁰ *Ibid.*, para. 7.

¹¹ See A/HRC/17/31, annex. See, e.g., principles 15 (b) and 17–21.

¹² A/HRC/70/260, para. 16. On extraterritoriality, see, e.g., Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 10; Committee against Torture, general comment No. 2 (2007) on the implementation of article 2, paras. 7 and 16; Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 12, and general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, paras. 8–12 and 15; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, at para. 216.

¹³ A/HRC/23/49, para. 72.

¹⁴ See, e.g., Inter-American Commission on Human Rights, *Jessica Lenahan (Gonzales) et al. v. United States*, Merits, 21 July 2011, Case 12.626, Report No. 80/11, para. 127.

¹⁵ A/HRC/23/49, para. 70, in which the Special Rapporteur on violence against women, its causes and consequences states that: there is a need to create a framework for discussing the responsibility of States to act with due diligence, by separating the due diligence standard into two categories: individual due diligence and systemic due diligence.

¹⁶ *Ibid.*, para. 20.

¹⁷ A/70/260, para. 7. See also Human Rights Committee, general comment No. 31, para. 8; Committee against Torture, general comment No. 2, para. 18, and general comment No. 3 (2012) on the implementation of article 14, para. 7.

¹⁸ See E/CN.4/2006/61.

¹⁹ A/HRC/23/49, para. 70, in which the Special Rapporteur on violence against women, its causes and consequences states that individual due diligence requires flexibility, as procedures taken in these instances must reflect the needs and preferences of the individuals harmed.

A. Moving away from the traditional identification model towards early support for trafficked persons, including in the context of mixed migration movements

18. As stated in the Recommended Principles on Human Rights and Human Trafficking, a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights.²⁰ However, throughout the Special Rapporteur's research, she has noted a general lack of dedicated procedures to promptly and proactively identify and protect victims and potential victims of trafficking, especially in mixed migration flows and with respect to labour exploitation. She has extensively expressed her concerns about the increasing tendency to place migration within the law enforcement paradigm and to present restrictive migration-related measures as part of the fight against organized crime, including trafficking in persons, with little attention paid to the human rights implications of such policies against migrants and trafficked persons.

19. Indeed, despite a clear legal distinction between smuggling and trafficking in international binding instruments, the differences between the two crimes are increasingly blurred in mixed migration movements, as people do not necessarily start their migration process as trafficked persons but might become trafficked during their journey or when they reach a transit or destination country. The Special Rapporteur has also strongly condemned any attempt to criminalize civil society organizations and private individuals engaged in humanitarian action aimed at rescuing lives and acting in solidarity with migrants, as such actions should never be treated as promoting irregular migration.

20. All over the world, civil society organizations are playing a pivotal role in saving lives and protecting people from trafficking, during search and rescue operations and on arrival in transit and destination countries, including in relation to identification during large mixed migration movements. However, despite the efforts made, early support for victims or potential victims of trafficking and detection of the indicators of vulnerabilities are not prioritized, particularly during a large influx of migrants. As a consequence, this leads to further revictimization and exposure to different forms of exploitation in transit and destination countries.

21. Moreover, in origin, transit and destination countries, the business practices of recruitment intermediaries, who are largely unregulated or informal, such as the charging of fees to migrant workers or the arrangement of unclear and informal working arrangements, are still largely viewed as common, rather than abusive conditions of work. The result is that migrants are often reduced to situations of extreme exploitation in inhuman working and living conditions.

22. Restrictive migration policies primarily aimed at returning migrants to their countries of origin make it very difficult for undocumented migrants, including trafficked persons and people at risk of trafficking, to be identified, as they often prefer to remain in an exploitative situation rather than be deported to their country of origin, where they would face stigmatization and discrimination for their failed migration project and/or for having been involved in prostitution/sex work and where they would most likely fall back into the cycle of poverty and run the risk of being trafficked again.

23. Against this background, the Special Rapporteur has recommended the adoption of an innovative approach, based on indicators of vulnerabilities to trafficking and ensuring early support, in her report on early identification, referral and protection of victims and potential victims of trafficking in persons in mixed migration movements.²¹

²⁰ See guideline 2. See also basic principles on the right to an effective remedy for victims of trafficking in persons (A/69/269, annex), para. 7 (b).

²¹ See A/HRC/38/45.

B. Moving away from the ambiguous status of trafficked persons in criminal proceedings – between victims and criminals – towards full recognition of victims’ rights and full implementation of the non-punishment principle

24. Article 6 of the Trafficking in Persons Protocol contains specific obligations in relation to the protection of victims, including in relation to their rights during criminal proceedings, while taking into account the age, gender and special needs of victims. This includes the right to justice,²² including through proceedings that aim to identify, investigate, prosecute and punish offenders. Victims of trafficking also have the right to be heard and to fully participate in criminal proceedings,²³ to receive information from the first contact with a competent authority,²⁴ which includes information on legal rights, including their right to have access to remedies, including through national compensation schemes.²⁵

25. As an essential component of the right to remedy, States also have to ensure equal and non-discriminatory access to such a right, including by ensuring that all investigations, prosecutions and other mechanisms are child and gender-sensitive and avoid trauma, revictimization and stigmatization.²⁶ While non-discrimination is an essential aspect of the right to remedy, many States fail to put into place measures that address gender discrimination, as well as intersecting forms of discrimination.

26. Victims also have the right to legal and other assistance in relation to any criminal, civil or other actions against traffickers.²⁷ The right to access assistance, support and protection should not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.²⁸ The right to receive information, such as on legal rights, including their right to have access to remedies, should include “information, advice, and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries”.²⁹ All victims should be provided with information in a language that they understand.³⁰

²² See, e.g., Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex), para. 11 (a).

²³ Council Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, art. 10; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), para. 6 (b).

²⁴ Council Directive 2012/29/EU, art. 4.

²⁵ Basic principles on the right to an effective remedy for victims of trafficking in persons, para. 7 (c) and (e). See also Recommended Principles and Guidelines on Human Rights and Human Trafficking, guidelines 4 (8) and 9 (2); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 11 (c) and 12 (a); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 5 and 6 (a).

²⁶ Basic principles on the right to an effective remedy for victims of trafficking in persons, para. 7 (h). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 12.

²⁷ Recommended Principles and Guidelines on Human Rights and Human Trafficking, principle 9 and guidelines 6 (5) and 9 (2). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 12 (c); basic principles on the right to an effective remedy for victims of trafficking in persons, para. 7 (e); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6 (c).

²⁸ Recommended Principles and Guidelines on Human Rights and Human Trafficking, principle 8 and guideline 6.

²⁹ Directive 2012/29/EU, art. 9 (1) (a).

³⁰ Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 6 (5). See also United Nations Office on Drugs and Crime, Model Law against Trafficking in Persons, art.

27. The right to protection includes ensuring victims' safety and that of their families from harm, intimidation and retaliation, and protection from secondary and repeat victimization³¹ during the investigation process, criminal proceedings and subsequent period. The right to privacy is inextricably linked to States' obligations to protect victims from further harm.³²

28. Particular attention must be paid to child victims of trafficking: their best interests must be considered paramount at all times, including in criminal proceedings.³³ Measures to protect child victims during criminal proceedings can include recording their interviews and using these interviews in criminal proceedings³⁴ and appointing a representative.³⁵ Alongside the right to be protected, children have the right to effectively participate in proceedings,³⁶ to be heard³⁷ and to be kept informed.

29. A key factor inhibiting the rights of trafficked persons as victims of crime is that detention measures against trafficked persons are still common practice in various forms, occurring even if they have been correctly identified as victims, as a result of their engagement in illicit activities. Trafficking victims may violate immigration laws, may be charged with prostitution where prostitution/sex work is illegal or may be involved with illicit drug production or violent crime as a result of their trafficked situation. The non-punishment principle serves to "ensure that victims are not punished for offences committed in the course, or as a consequence, of being trafficked".³⁸ While the principle does not confer blanket immunity for non-status-related crimes,³⁹ it recognizes that trafficking victims "have no, or limited, free will because of the degree of control exercised over them" by their traffickers.⁴⁰ Traffickers often deliberately exploit their victims by exposing them to criminal liability to manipulate and maintain control over them.⁴¹ Protecting victims from prosecution for offences that they may commit as a direct consequence of their situation as trafficked persons, therefore, is not only an essential element of a human rights approach to trafficking in persons, but may combat such trafficking generally by encouraging victims to come forward.

30. Normatively, the key anti-trafficking instrument – the Trafficking in Persons Protocol – does not expressly reference the non-punishment principle.⁴² However, several binding international and regional instruments contain the non-punishment principle,

19 (2), which states that information should be provided in a language that the victim understands. If the victim cannot read, he or she should be briefed by the competent authority.

³¹ Directive 2012/29/EU, art. 18. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which states that the State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation (para. 10).

³² *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary* (United Nations publication, Sales No. E.10.XIV.1), p. 146.

³³ *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, principle 10.

³⁴ Directive 2012/29/EU, art. 24 (1) (a).

³⁵ *Ibid.*, art. 24 (1) (b).

³⁶ Convention on the Rights of the Child, art. 40 (2) (b) (iv); Committee on the Rights of the Child, general comment No. 24 (2019) on children's rights in the child justice system, para. 46.

³⁷ Convention on the Rights of the Child, art. 12; Committee on the Rights of the Child, general comment No. 24, paras. 44–45.

³⁸ Organization for Cooperation and Security in Europe, Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, "Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking" (Vienna, 2013), para. 10.

³⁹ *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary*, p. 133 (stating that non-punishment principle is not intended to confer blanket immunity on trafficked victims who may commit other non-status-related crimes with the requisite level of criminal intent).

⁴⁰ Organization for Cooperation and Security in Europe, "Policy and legislative recommendations", para. 5.

⁴¹ *Ibid.*, para. 1.

⁴² In addition, the Convention itself does not reference the non-punishment principle.

including the Protocol to the Forced Labour Convention, 1930 (No. 29),⁴³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,⁴⁴ the Council of Europe Convention on Action against Trafficking in Human Beings⁴⁵ and the Association of Southeast Asian Nations (ASEAN) Convention against Trafficking in Persons, Especially Women and Children.⁴⁶ In addition, many regional and international soft law instruments and guidance documents emphasize the importance of non-punishment for victims of trafficking by demonstrating policy preferences for the non-punishment principle as an accepted normative standard.⁴⁷ This includes the Model Law against Trafficking in Persons (and the commentary thereto) of the United Nations Office on Drugs and Crime.⁴⁸ The principle of non-punishment is also stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking⁴⁹ and in the “Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking” of the Organization for Security and Cooperation in Europe. The General Assembly has also addressed the importance of non-punishment in the context of victims of trafficking in several resolutions.⁵⁰ A human rights-based approach requires that children’s involvement in criminal activities should not undermine their status as both children and victims, or their related rights to special protection.⁵¹

31. Inconsistencies in application of the principle across jurisdictions emerge because of differences in the nexus between the act of trafficking and the unlawful acts that is required for the principle to apply (e.g., unlawful activities that trafficked persons are “compelled to do”;⁵² acts that they are “compelled to commit as a direct consequence” of being trafficked;⁵³ and acts that are “directly related to the acts of trafficking”)⁵⁴ and discretion by authorities in the application of this nexus.

32. In this respect, first, the competent authorities should consider that the notion of “compulsion” includes the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will, not only under physical or psychological violence, threat or coercion, but also in the devastatingly prevalent scenarios wherein traffickers exploit victims by abusing their position of vulnerability.⁵⁵

33. Second, while a victim’s consent to the trafficking purpose of exploitation is irrelevant if any of the means set forth in article 3 (a) of the Trafficking in Persons Protocol are used,⁵⁶ many jurisdictions are reluctant to fully embrace the principle of the irrelevance

⁴³ Art. 4 (2).

⁴⁴ Para. 14. A separate directive echoes the same non-punishment requirement set forth in Directive 2011/36/EU as regards child victims of sexual abuse and sexual exploitation: see Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

⁴⁵ Art. 26.

⁴⁶ Art. 14 (7).

⁴⁷ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge, United Kingdom, Cambridge University Press, 2010), p. 285.

⁴⁸ Art. 10 (1).

⁴⁹ Guideline 4 (5).

⁵⁰ See, e.g., General Assembly resolutions 63/156, para. 12, and 64/293, para. 27.

⁵¹ United Nations Children’s Fund, “Guidelines on the Protection of Child Victims of Trafficking” (New York, 2006), p. 10 (citing articles 37 and 40 of the Convention on the Rights of the Child).

⁵² Council of Europe Convention on Action against Trafficking in Human Beings, art. 26.

⁵³ Directive 2011/36/EU, art. 8.

⁵⁴ ASEAN Convention, art. 14 (7).

⁵⁵ Organization for Cooperation and Security in Europe, “Policy and legislative recommendations”, para. 12.

⁵⁶ See art. 3 (b). Note that the means defined in article 3 (a) include the 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.

of consent, and thus are reluctant to apply the non-punishment principle, even in situations in which the “means” relevant to trafficking in persons can be established.

34. Third, some trafficking instruments and domestic legislation explicitly limit application of the non-punishment principle to certain offences. However, it should be stressed that any restrictions regarding the scope of application of the non-punishment principle based on the severity of crimes or on a closed list of crimes is not allowed by any binding or non-binding international instrument.

35. Fourth, in practice, authorities continue to convict trafficked persons for offences, such as prostitution/sex work or illegal status, that are linked to their situation as trafficked persons. For example, in States that criminalize prostitution/sex work, this can result in criminalizing trafficking victims involved with this. Other States have broadly applicable non-punishment provisions, yet have a strong political inclination towards criminalizing and prosecuting irregular migrants that could cause criminalization of trafficked persons.⁵⁷

36. In order to implement correctly the non-punishment principle, it should be clear that it does not imply a previous formal identification by immigration or law enforcement authorities. It is also important to correctly identify the threshold for applicability of the non-punishment principle, which should not require clear evidence, but rather reasonable grounds to believe that trafficking is taking place. Furthermore, a causal model should be preferred, in which the implementation of the non-punishment principle is not based on the use of force or coercion but on the link between the trafficking process and the commission of crime or unlawful activity. Even in legislations in which the nexus linking the illegal activity with trafficking is one of “compulsion”, such a notion should be interpreted in the light of the definition of trafficking, including among illicit means, not only violence, threat or coercion, but also abuse of a position of vulnerability. The non-punishment principle also implies that criminal proceedings should not be initiated or should be terminated at an early stage, or otherwise as soon as indications of trafficking have been identified. For this purpose, clear guidance should be addressed to prosecutors and investigative judges.

37. Another widespread gap in national legislation is related to the fact that, despite the non-punishment principle, victims might have been convicted for crimes related to their situation of trafficked persons and have a criminal record. This hampers, among other things, their social inclusion. In such cases, their criminal records should be immediately vacated.

C. Moving from victimhood to agency, with a focus on gender and child-sensitive responses, including in conflict and post-conflict settings

38. A cultural shift is necessary in order to see trafficked persons not solely as victims but also as agents of their own life project. Trafficked persons have the ability to regain control of their lives and make decisions based on their own interests and life projects, if adequately supported in the recovery phase and correctly informed. As regards trafficking for labour exploitation, such cases have often been discovered as a consequence of unionization or other forms of workers’ solidarity and concerted action. Many women and girls subjected to sexual exploitation, when they have been helped to regain control of their bodies and lives, often through meaningful relationships with other women, have undertaken a successful process leading to their social inclusion.

39. The Special Rapporteur has specifically investigated trafficked persons’ agency throughout her research on trafficking in conflict and post-conflict settings, especially highlighting the important role of women, including survivors of trafficking, in prevention, protection, participation and relief and recovery, which are also the four main pillars of the women and peace and security agenda of the Security Council. The Special Rapporteur has found that trafficking is not just occasionally linked with conflict, but is a systematic consequence of it. People, including children, kidnapped or recruited to be child soldiers or

⁵⁷ See also CTOC/COP/WG.4/2010/4, para. 4.

servants or sexual slaves, displaced persons, people fleeing conflict and/or people in situations of destitution are particularly vulnerable to exploitation during and in the aftermath of conflicts. The gender dimension of trafficking must be taken into account as women and girls are disproportionately affected in conflict and post-conflict settings, due to pre-existing marginalization and economic dependency, and gender-based violence stemming from patriarchal social norms, including limited access to resources and education, gender discrimination and domestic violence.

40. The Security Council has fully acknowledged trafficking as an integral part of the peace and security agenda. However, the Security Council's approach has focused almost exclusively on trafficking as a security issue, and as a crime perpetrated in the context of terrorism, and reference to victims' protection and support has been limited. The Special Rapporteur has noted with appreciation the progressive recognition of trafficking in persons as a form of conflict-related sexual violence, including through reports by the Secretary-General. However, such recognition implies enlarging the area of necessary interventions in the field of victims' protection, a task that has not yet been comprehensively undertaken.

41. However, women in conflict situations are not exclusively victims, but also agents of life-saving, peacebuilding and peacekeeping activities. A full integration of the anti-trafficking and women and peace and security agendas in ways that centre on human rights is a powerful means to show the centrality of women's agency and participation. The inclusion of a gender perspective in conflict prevention is also key for the development of early warnings and early-screening frameworks that include indicators of vulnerabilities, for instance in the context of camps for refugees and internally displaced persons.

D. Moving from short-term assistance to social inclusion of survivors, including through their access to effective remedies

42. Protection does not end with identification and referral to the appropriate services, nor is it limited to the delivery of immediate and short-term assistance. Instead, it requires States to take robust measures that can allow trafficked persons to rebuild their lives, free from the threats of violence and exploitation, beyond the recovery and rehabilitation phase. Trafficked persons commonly face loss of self-esteem, marginalization and humiliation, which further isolates them from families and communities and increases their vulnerability, exposing them to the risk of being revictimized or re-trafficked. Early support provided to them should therefore not only aim at simply removing them from their trafficking situation but should also ensure their empowerment and independence in the long term. The notion of social inclusion – which is linked to States' due diligence obligations and to the right to an effective remedy – conveys the idea of a process, of which recovery is the first step, the ultimate goal being the full and permanent restoration of all rights that have been violated before and during the trafficking cycle. According to the basic principles on the right to an effective remedy for victims of trafficking in persons, the right to remedy should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and should reflect a victim-centred and human rights-based approach.

43. During the consultations that the Special Rapporteur held with various stakeholders, it emerged that compensation was one of the least implemented provisions of the Trafficking in Persons Protocol, due to a number of obstacles, such as deportation of migrant victims of trafficking, lack of residence status for victims, lengthy judicial proceedings, lack of firewalls between labour inspectors and migration authorities, lack of confidentiality and protection measures for victims and witnesses, criminal convictions hampering access to legal remedies, inversion of the burden of proof, and compensation being conditional upon cooperation with criminal proceedings and/or upon the possession of residence permits. The situation is particularly dire for child victims, who are the least likely to obtain compensation. Moreover, one of the structural challenges hampering social inclusion is linked to restrictive migration policies leading to mass returns and repatriations, including of survivors whom had already been integrated into the social tissue of destination countries.

44. Additional forms of the right to remedy that are particularly important for trafficking victims include physical and psychological care, including as a form of rehabilitation and recovery, especially given that trafficking exposes victims to an array of health problems,⁵⁸ including serious, long-lasting and hard to detect psychological and physical effects.⁵⁹ An additional element of restitution is the restoration of employment⁶⁰ and damages for lost opportunities, including employment, education and social benefits.⁶¹ Such access to employment-related remedies is highly relevant in the trafficking context.⁶² The guarantee of non-repetition, which aims to combat impunity and prevent future violations and which may take the form of criminal prosecution, protection of victims and addressing the root causes of trafficking,⁶³ is also an essential element of the right to remedy.

45. Stigma associated with trafficking has been identified as a major obstacle to social inclusion. The Special Rapporteur has highlighted the importance of engaging directly with survivors, through an inclusive and participatory process, in the design, implementation and evaluation phases. Guaranteeing the safety and stability of trafficked persons also includes providing them with access to asylum or residence status, ensuring their right to family reunification if they so wish, guaranteeing them access to long-term medical services and safe and affordable accommodation and including them in recreational activities. Supporting the economic empowerment of survivors, by promoting skill acquisition, including through formal education, professional and vocational training and by facilitating their access to the labour market and microcredit, is also paramount in ensuring their social inclusion in the long term and preventing re-trafficking.

46. The Special Rapporteur has also extensively explored the issue of access to remedy for victims of trafficking for abuses committed by businesses and their suppliers, particularly by reflecting on the concept of a continuum of exploitation of vulnerable workers in today's economy. In this context, trafficking, as an expression of one of the most egregious violations at the workplace, is one extreme in a continuum of a series of labour abuses, such as delayed payment of wages, excessive overtime, non-paid holidays or the payment of recruitment fees to intermediaries. However, resorting to complaint procedures, whether they are State-based or not, often results in the loss of jobs for workers and uncertain results regarding recovering wages and other payments due.

47. The Special Rapporteur has also explored the importance of recourse to alternative remedies other than criminal proceedings, such as through civil and labour courts, which are often the only way of securing any compensation for victims of trafficking for labour exploitation in business operations and supply chains, although their procedures might be inappropriate for dealing with severe forms of exploitation. In the event of a lack of adequate and accessible judicial mechanisms, non-judicial mechanisms, such as procedures established by labour inspectorates, national human rights institutions and ombudspersons, trade unions and other labour mediation mechanisms, should also be explored.

⁵⁸ A/HRC/41/46, para. 43.

⁵⁹ Jenna Hennebry, Will Grass and Janet McLaughlin, *Women Migrant Workers' Journey through the Margins: Labour, Migration and Trafficking* (New York, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2016), p. 77.

⁶⁰ Basic principles on the right to an effective remedy for victims of trafficking in persons, para. 9 (f).

⁶¹ *Ibid.*, para. 11 (b). See also International Organization for Migration, *IOM Handbook Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse* (Geneva, 2018), p. 84, which states that vulnerable migrants should be able to obtain legal remedies, such as reparation payments, or other compensation, such as repayment of legal fees or unpaid wages.

⁶² Pursuant to article 6 (3) (d) of the Trafficking in Persons Protocol, each State party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of employment, educational and training opportunities.

⁶³ Recommended Principles and Guidelines on Human Rights and Human Trafficking, principles 4, 5 and 12–16; basic principles on the right to an effective remedy for victims of trafficking in persons, para. 17; A/HRC/41/46, para. 13.

48. The Special Rapporteur has found that legislation on transparency, which has been adopted in a few countries, may have initiated the first changes in attitudes towards shifting some element of responsibility for labour exploitation along the supply chain, but it has not yet led to significant changes in business behaviour. Transparency and due diligence along supply chains are essential in ensuring remedies for exploited workers. Companies have an important role to play in establishing grievance and/or other redress mechanisms: in this regard, workers must be fully involved in the design of such mechanisms and social actors, such as trade unions, should play an important role in ensuring implementation and monitoring of such mechanisms. Operational grievance mechanisms should also operate in partnership with existing national referral mechanisms, including those of State authorities and civil society.

III. Conclusions and recommendations

A. Conclusions

49. The Special Rapporteur believes that it is time to discuss how to fill the gaps in the current international and national frameworks on trafficking and to adopt a genuinely human rights-based approach to preventing and combating trafficking, and protecting the rights of victims and potential victims.

50. In order to fulfil this goal, profound changes are needed in the whole field of anti-trafficking action. Trafficking in persons continues to be predominantly addressed through a law enforcement lens that tends to prioritize investigation and prosecution of traffickers over victims' support, protection, empowerment and long-term social inclusion. Therefore, the Special Rapporteur insists on the importance of addressing trafficking in persons as a human rights and a social justice issue, rather than a mere security concern.

51. This approach implies that the traditional short-term approach to assistance should be substantially revised. What is needed is early support for victims and potential victims aimed at not only recovery but also long-term social inclusion through education, training, alternative employment, family reunification if the persons concerned so wish, and access to judicial and non-judicial remedies.

52. The current poisonous political discourse that leads States to adopt extremely restrictive and even xenophobic migration policies and regulations contributes to the current lack of early support for victims and potential victims of trafficking in mixed migration flows; moreover, it fuels exploitation, as undocumented migrants, including trafficked persons who fear being returned to their countries of origin, are often induced to accept exploitative conditions.

53. As regards early support for trafficked persons and people vulnerable to trafficking in mixed migration flows, an innovative methodology is needed, which should not be based on police operations and/or decision-making of law enforcement or immigration authorities, but rather on an individual assessment of each victim's background and personal circumstances, made by multidisciplinary teams, in order to identify the most appropriate protection channel, without infringing on the victim's right to apply for asylum or other forms of international protection. A similar methodology should be applied to ensure early support for victims of internal trafficking.

54. Particular attention must be paid to children, especially those unaccompanied or separated from their families. Their best interests must be considered paramount at all times. They must be treated first and foremost as children and promptly referred to child protection systems. Especially when they are close to adulthood, children should be allowed to have access to additional protection on the grounds of their being trafficked. Children's administrative detention must be banned at all times.

55. It is essential to shift from criminalization and stigmatization of trafficked persons, especially when they are subjected to sexual exploitation, to social protection, empowerment and social inclusion. During criminal proceedings, trafficked persons must be seen not merely as witnesses or tools for the prosecution, but primarily as rights holders. Importantly, exploited persons' rights to access remedies, including compensation, should be ensured through judicial and/or non-judicial mechanisms, including by fully implementing their rights to information, counselling and free representation.

56. The non-punishment principle should be effectively implemented and interpreted in the light of the definition of trafficking, which covers all cases in which trafficked persons cannot act with free will, not only because of physical or psychological violence, threat or coercion, but because of the abuse of their position of vulnerability. The non-punishment principle should also be extended to vacating criminal records in order to ensure the long-term social inclusion of survivors and their access to education, housing and employment.

57. With respect to trafficking in conflict and post-conflict settings, shifting from hard security to a human rights-based approach includes moving from victimhood to agency and mainstreaming a human rights and gender-sensitive approach to all pillars of the women and peace and security agenda of the Security Council, including valuing women's participation in peacebuilding and peacekeeping, also as a means to promote victim and survivor empowerment and social inclusion in the aftermath of conflict.

58. The final aim of anti-trafficking action is to promote the long-term social inclusion of survivors, which should be considered by States as an integral part of their due diligence obligations. Social inclusion is a transformative process, aimed at ensuring that survivors regain full ownership of their lives in an innovative way. Viable solutions need to be gender-sensitive, child rights-based and individually designed, not affected by traditional gender roles, based on survivors' needs and aspirations and receive dedicated government funding.

59. Cooperation with the private sector should also be more actively explored and implemented, on the basis of more effective legislation providing for reporting obligations, and obligations aimed to ensure that companies act effectively to minimize the risks of exploitation and trafficking, and also provide remedies for exploited workers throughout their supply chains. Grievance mechanisms established by companies should always include workers' voices, and be established in cooperation with trade unions and civil society organizations. The private sector has an important role to play in terms of prevention and remediation. For this purpose, however, structural changes are needed in the way that business models function today.

B. Recommendations

60. In addition to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, Member States, United Nations agencies, the private sector, civil society organizations and the international community are invited to consider the following recommendations.

Primacy of human rights

61. The human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims, including in the context of mixed migration flows. Such actions should be gender and child-sensitive, and should be implemented in a non-discriminatory way, taking into account intersectional discrimination.

62. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect

trafficked persons and people at risk of being trafficked or re-trafficked, including with a view to ensuring their full social inclusion.

63. The private sector has a responsibility under international law to act with due diligence to prevent trafficking, to establish effective procedures to identify cases of trafficking and forced labour in their operations and supply chains, and to provide redress to workers found in exploitative situations, in cooperation with trade unions, civil society organizations and, if appropriate, with the Governments of countries in which the exploitation occurred.

64. Anti-trafficking measures should not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers. Trafficked persons should not be placed in immigration detention, and their freedom should not otherwise be restricted for security or other reasons. Administrative detention of children should be banned at all times.

Preventing trafficking in persons, including in mixed migration flows and in the context of conflict

65. States should:

(a) Address the demand for commercial sexual services and for cheap labour, which is a driving factor of trafficking;

(b) Ensure that State interventions address the factors that increase vulnerability to trafficking, including inequality, poverty, all forms of discrimination, and restrictive or even xenophobic immigration regulations;

(c) Establish safe and legal migration channels, respect the principle of non-refoulement and ensure that migrants, including victims and potential victims of trafficking, have access to the regular labour market in the host country in a non-discriminatory manner;

(d) Establish a clear firewall between labour inspectors, immigration control and law enforcement and ensure that labour inspection is proactive and adequately resourced;

(e) Exercise due diligence in identifying and eradicating public sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking should be investigated, tried and, if convicted, appropriately punished;

(f) Establish obligations for companies to identify, analyse and mitigate the risks of trafficking and forced labour resulting from their own activities, from the activities of the companies they control, and from the activities of subcontractors and suppliers with whom they have an established commercial relationship. States should establish obligations for companies to adopt vigilance plans to address risks. Parent companies should be held liable for the harm caused by their failure to comply with such obligations;

(g) Incentivize due diligence by rewarding companies that implement social compliance policies and show evidence of having reduced the risks of trafficking, forced labour and exploitation;

(h) Regulate labour recruiters and recruitment practices in line with the International Labour Organization's general principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs and the International Organization for Migration/International Recruitment Integrity System Standard, especially concerning the prohibition of the payment of recruitment fees by workers.

(i) Address with appropriate means, especially in the field of education and awareness-raising, discriminatory approaches and patriarchal social norms that increase women's and girls' vulnerabilities to trafficking, including by addressing

sexual and domestic violence, and discrimination in access to resources, education and job opportunities;

(j) Address the specific vulnerabilities of children, including by promoting education and preventing and combating child labour;

(k) Include, in a context of conflict, anti-trafficking measures in early warning and life-saving activities, and in peace agreements, and measures for the prevention and protection of trafficked persons and people at risk of being trafficked, especially women and children, in post-conflict reconstruction, in consultation with women's organizations;

(l) Take action to ensure that trafficking is linked to the six grave violations and abuses against children that should be considered as grounds on which to bar countries that are repeatedly listed in the Secretary-General's reports on children and armed conflicts as being involved in such violations from contributing troops to United Nations operations;

(m) Ensure full coordination among the anti-trafficking, women and peace and security and conflict-related sexual violence agendas in ways that centre on human rights and women's agency.

Protection of and assistance to trafficked persons, including victims' rights in criminal proceedings, and the non-punishment principle

66. Trafficked persons should not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their being trafficked. When there are indications of such a nexus, criminal proceedings against them should not be initiated, or should be terminated at an early stage or otherwise as soon as such indications are detected. When, despite such indications, criminal proceedings against trafficked persons resulted in a conviction, their criminal records should be vacated.

67. States should provide early support and assistance to trafficked persons and people at risk of being trafficked in a way that is non-discriminatory, culturally appropriate and gender and child-sensitive, and not conditional on the initiation of criminal proceedings, and/or the legal qualification of the crime as trafficking and/or the contribution made by the victim to any investigation or prosecution.

68. States should provide early support and assistance to trafficked persons and people at risk of being trafficked, including by establishing dedicated and standardized procedures for the identification of indicators of migrants' vulnerabilities, including to trafficking and exploitation, referral to appropriate protection mechanisms, especially in places of first arrival of migrants and asylum seekers, and provide protection from further harm, based on a multidisciplinary team approach that is in line with the Global Compact for Safe, Orderly and Regular Migration, and the Global Migration Group's Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations.

69. Early support for trafficked persons should be individually tailored and should include, at a minimum, appropriate and secure accommodation, psychological and material assistance, access to health-care, translation and interpretation services, counselling and information, access to education for children, vocational and professional training and, if appropriate, access to formal education for adults. States should ensure that support measures include providing alternative employment, in cooperation with trade unions, civil society organizations and the private sector.

70. States should integrate the referral of victims and potential victims of trafficking into asylum procedures, including in the context of accelerated procedures, and enable, including by appropriate training, the competent authorities to identify indicators of trafficking and refer those concerned to appropriate services. States should train the competent authorities to identify the indicators of trafficking and risk

of re-trafficking or reprisals from traffickers as grounds to grant international protection, in line with Guidelines on International Protection No. 7 of the Office of the United Nations High Commissioner for Refugees.

71. States should ensure that the risks of trafficking and re-trafficking are adequately evaluated when a decision is made on return and that no person, regardless of their status, is returned to a place where there are grounds to believe that they would be at risk of being subject to torture or other cruel, inhuman or degrading treatment or punishment, or other serious human rights violations, including trafficking.

72. Children, especially unaccompanied and separated children, should be promptly identified, registered and referred to child protection systems. States should ensure that identification procedures are proactive and take into account age, gender and maturity, in line with the Convention on the Rights of the Child and the general comments thereon. In case of doubt when carrying out a child-sensitive age assessment, the person concerned should be considered a child.

73. States should establish dedicated shelters for women, in cooperation with civil society organizations, based on meaningful relationships among women as a means to ensure that trafficked women and girls recover from their traumas, rebuild their self-esteem, regain control of their lives, and be empowered in order to undertake a process of social inclusion.

74. States should establish shelters for men victims of trafficking for any forms of exploitation. Moreover, States should explore, for women and men, the possibilities of alternative independent accommodation.

75. Civil society organizations and private individuals should not be criminalized for acting in solidarity with migrants, including trafficked persons.

76. States and competent law enforcement and judicial authorities should uphold victims' rights in criminal and other legal proceedings, by ensuring their right to safety (including as a witness) and that of family members, the right to be heard, the right to be informed in a language that they understand of their legal rights, including their right to have access to remedies, the remedies available and the procedures to obtain them, the right to access justice in a non-discriminatory manner, the right to fair trial guarantees and the right to legal assistance and representation. Such rights should be effectively implemented, taking into account age, gender and the specific needs of victims and avoiding secondary victimization in victims' interaction with law enforcement and judicial authorities.

Social inclusion of trafficked persons and survivors, including through judicial and non-judicial remedies

77. States should:

(a) Exercise due diligence to promote social inclusion of trafficked persons as an integral part of the due diligence obligations of States and the right of trafficked persons to an effective remedy;

(b) Adopt, revise and implement legislation and policies in order to ensure that survivors' right to remedy, including compensation, is not conditional upon victims' cooperation in criminal proceedings, upon the initiation or the outcome of criminal proceedings or upon the possession of legal residence status, paying special attention to child victims of trafficking;

(c) Eradicate stigma, gender-based discrimination, xenophobia and racism, ensure that social inclusion is not hampered by restrictive migration policies and that no decision on return or repatriation is adopted without a previous assessment of the level of integration of that person in the country and of the risk of re-trafficking in the event of return or repatriation, in line with the Global Compact for Safe, Orderly and Regular Migration;

(d) **Revise any legislation or policy hampering social inclusion, including policies tying workers to a single employer, or preventing equal access to long-term empowerment measures, and adopt appropriate policies to ensure the birth registration of children born of rape as a result of trafficking;**

(e) **Ensure trafficked persons' access to long-term medical services, including psychological and psychiatric services, and their right to family reunification if they so wish, and provide them with access to safe and affordable independent accommodation, as well as viable alternatives to exploitative conditions, by facilitating their access to alternative non-exploitative employment, in cooperation with the private sector, in order to prevent further exploitation and re-trafficking;**

(f) **Enact measures to grant trafficked persons' access to information on available judicial and non-judicial remedies, facilitate their access to civil and labour proceedings, including by eliminating claimants' costs and establishing a fund for legal and financial aid to trafficked persons, and ensure that compensation is always paid upfront, regardless of the outcome of the proceedings, when exploitation is evidenced;**

(g) **Enact measures to facilitate trafficked persons' access to non-judicial mechanisms, such as procedures established by labour inspectorates, national human rights institutions and ombudspersons, trade unions and other labour mediation mechanisms.**

78. Companies should:

(a) **Establish grievance mechanisms in cooperation with civil society, trade unions and worker-led initiatives, ensure their implementation, preferably managed by a third party, including workers' representatives, or by a civil society partner that is trusted by workers and is well established in the area in which the mechanism operates;**

(b) **Ensure, in coordination with State authorities, that grievance mechanisms are aligned with national referral mechanisms, and establish cooperation protocols with such referral mechanisms to channel companies' resources for assistance and remedies for workers who have been subjected to trafficking or severe exploitation.**
