

Statement by Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children at the 70th session of the General Assembly Third Committee Item 68 (b & c)

23 October, 2014 New York

Mr. Chairperson, Distinguished Representatives, Delegates and Observers,

I would like to thank the Third Committee for this opportunity to present my report, which focuses this year on State's due diligence obligation to ensure the rights of trafficked persons, especially women and children.

I would like to take this opportunity to raise a concern and sound an alarm. It is my impression that trafficking in persons is not high on the political agenda of governments and political parties as it was a few years ago. This is a real paradox as human trafficking is still a gross human rights violation that affects all States - as source, transit and/or destination countries, in which trafficking especially for labour exploitation is becoming a systemic component in certain economic sectors. Furthermore, human trafficking today is deeply intertwined with significant events such as conflicts, poverty, human rights violation and persecution induced migration by sea or land. I would like to remember here the thousands of men, women and children, who have lost their lives in the Mediterranean Sea, in South East Asia and across many borders of the world, including children, while trying to escape from war, armed conflicts, terrorist attacks or extreme poverty. Probably some were victims of trafficking; probably some were at high risk of being trafficked at destination. For sure some surviving the perilous journey have encountered a destiny of labour exploitation and trafficking, due to their vulnerability and destitution. For sure many women and girls, who are among the most vulnerable migrant populations, have been subjected on a regular basis to sexual violence and exploitation, often in addition to labour exploitation.

This linkage between trafficking, migration and conflicts is often overlooked by States and other competent authorities. This is the reason why trafficking does not appear today as an emergency. However, in this context of decreased attention, trafficking is unfortunately becoming an integral part of our societies, less visible maybe, as it is linked with – and hidden behind - many other social phenomena, but not less dangerous than in the past.

I am convinced that a new phase of anti-trafficking commitment is needed. I don't mean that we need to create new laws and regulations. I mean however that we need an innovative and forward looking approach for the implementation of existing obligations.

This is the reason why my mandate presents today a report on the due diligence principles, highlighting State and non State actors obligations, for the first time in the field of anti-trafficking action. In fact the due diligence principle is key to reinterpret and implement in an innovative way existing obligations enshrined in the human rights instruments, and international standards dealing with trafficking in persons.

Allow me to highlight the value added of State's due diligence principles to ensure the rights of trafficked persons, especially women and children and of people at risk of trafficking and exploitation.

- Due diligence leads to a holistic and pro-active approach to anti-trafficking action: In practice, anti-trafficking measures have been applied mainly on the basis of a reactive approach, often leading States to focus on post-hoc and short-term anti-trafficking measures, in most countries only applying when a person claims to be a victim and co-operates in investigation and prosecution. Instead, the due diligence standard requires States to take a proactive and long-term approach, aimed at social inclusion of trafficked and exploited persons.

- Due diligence contributes to coherent policies. In fact it provides the necessary framework to ensure that anti-trafficking policies and related policy areas such as immigration and labour market policies are coherent. In particular, the impact of migration policies on trafficking should be accurately evaluated by individual Member States and regional organizations, in order to ensure that migration policies do not exacerbate social vulnerabilities of migrants, be they asylum seekers, refugees or

economic migrants, making them easy prey of traffickers and exploiters. In times of emergencies and crisis, policy coherence also demands that the impact of decisions related to armed interventions and humanitarian action on anti-trafficking policies be evaluated.

- Due diligence emphasises on prevention of trafficking: It requires action to address the wider, more systemic root causes that contribute to trafficking in persons, including in receiving countries, such as restrictive immigration policies, discriminatory practices and unfair labour conditions, particularly for migrant workers. These abusive methods often fuel the cycle of debt bondage, exploitation and trafficking. Prevention policies should mitigate these risks, including through providing comprehensive and innovative regulated migration options and job opportunities in transit and destination countries in order to prevent recourse of migrants to traffickers in the first place. Good practices in prevention of labour trafficking include regulating/controlling employment and recruitment agencies and establishing systems by which workers can report abuses committed by recruitment agencies.

- Human Rights Due diligence process leads corporations to respect human rights. Such a human rights due diligence process should identify, prevent, mitigate and account for how businesses address their impacts on human rights. Often, global companies do have in place corporate-level policies, and supplier codes of conduct that include a clear prohibition of forced labour and human trafficking and provide training to suppliers on these policies. This is a first step in the right direction. However, implementation is still problematic and should be adequately monitored with a view to applying dissuasive sanctions in case of verified violations. Unionisation of workers including migrant workers should be encouraged especially in the supply chains as an essential means to protect their rights and report exploitation.

Moreover, States have an obligation to exercise due diligence through their laws and policies toward business entities. For example, rules can be established on how States will conduct commercial transactions with business enterprises, including in their public procurement activities.

- The Due diligence principle suggests that other non-State actors including armed groups be held accountable for non-compliance with human rights obligations. This could apply to prevent trafficking especially for the purpose of labour exploitation by contractors and subcontractors of armed forces and peacekeeping forces operating in conflict areas. Accountability for persistent and heinous human rights violations arising from the presence of peacekeepers and the resulting demand for sexual services which could contribute to trafficking for sexual exploitation, especially affecting women and children, should be addressed as a matter of priority both in terms of prevention and prosecution.

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- The due diligence principle helps highlight and address challenges relating to access to remedies for trafficked and exploited persons. The past work of my mandate in this area has clearly identified that failure of States to exercise due diligence to address trafficking by non-State actors gives rise to obligations to provide an effective remedy for victims of trafficking in persons, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. The right to an effective remedy encompasses also procedural rights necessary to facilitate access to remedies. The rapid and accurate identification of victims of trafficking in persons is also an essential prerequisite to make the right to remedy effective.

Moreover, anti-trafficking measures should not adversely impact the human rights of victims of trafficking in persons and should ensure a non-conditional access to remedies for victims. In other words remedies, including assistance and protection, should be tailored to their individual preferences and needs, and should be provided on social protection grounds, regardless of victim's willingness or ability to cooperate with authorities.

- Let me finish by highlighting that the Due Diligence principle requires broad and innovative implementation of obligations arising from the ratification of international instruments, including the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) to the Convention against Transnational Organized Crime and States or regional instruments. In this respect, States' extraterritorial due diligence obligations are particularly important in the context of transnational trafficking. States should

for example, incorporate extraterritorial jurisdiction into national legislation criminalizing trafficking. Extraterritorial obligations based on the Due Diligence principle could also help strengthen protections against trafficking in contracting or procurement practices for activities abroad.

It is my hope that the core elements of due diligence briefly mentioned above and more in depth in my thematic report (A/70/260) are operationized by State and Non-State actors to ensure the human rights of trafficked persons and persons at risk of being trafficked.

In substance, - this is my main message to Member States today - the due diligence principle suggests an innovative approach that is based on a cultural and political switch: trafficking in persons is not only, and not primarily a law enforcement issue, but rather a social and economic issue, requiring a consistent and long-term commitment, sustained by a persistent political will.

Finally, I would like to thank Malaysia for its invitation and cooperation before, during and after my visit earlier this year (23-28 February 2015). In my report presented at the 29th session of the Human Rights Council in June 2015, I appreciated the anti-trafficking efforts in the country and made recommendations on how existing concerns could be addressed. I would also like to thank Cuba, Israel, Jordan, Kuwait, Luxembourg, Nigeria and Switzerland for extending me invitations to undertake visits that I will endeavour to conduct in the course of my tenure.

I thank you for your kind attention and I look forward to a fruitful interactive dialogue.

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