

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL NLD 2/2020

14 September 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/5, 35/15, 43/6, 34/16, 42/10 and 34/19.

In this context, we would like to draw the attention of your Excellency's Government to the information we have received regarding a boat from Venezuela headed to Curacao which disappeared with alleged victims of trafficking on board in June 2019. A similar letter has been sent to the Bolivarian Republic of Venezuela.

According to the information received:

On 7 June 2019, the boat "la Vela del Coro" departed from Agüide, in Falcón State, Venezuela, headed to Curaçao, but allegedly disappeared. It is reported that approximately 34 Venezuelan migrants boarded the boat, although the number may have been higher. Of those, seven men, six women and two minor boys are still missing. Relatives of the victims claimed that the victims paid between USD 300 and 500 to travel irregularly to Curaçao.

The victims were reportedly recruited by Venezuelan nationals and were promised stable jobs and decent living conditions in Curacao. It is reported that eight people who were supposed to travel to Curaçao on the same day decided not to board the boat, because it was too full. According to the information received, the Captain was armed and two brothers were in charge of organizing boarding and passage on the boat and collecting payment. Reportedly, the two brothers were later charged with the crimes of enforced disappearance and criminal association by Venezuelan authorities. The victims allegedly boarded the boat without proper documentation. According to the information provided, the victims may have

reportedly been abducted and taken to Curacao by unknown individuals for the purpose of sexual and labour exploitation.

On several occasions, relatives of the victims sought assistance from the Embassy of the Netherlands in Caracas, but allegedly they were not provided with information on any possible investigation into the situation of their missing relatives.

This case illustrates the existence of patterns, routes and networks of trafficking in persons for labour and sexual exploitation that operate in between Venezuela and in Curaçao. It is reported that labour exploitation reportedly occurs mainly in the domestic service sector, while sexual exploitation occurs mainly in bars and hotels in Curaçao. Persons forced to work against their will may be subjected to forced labour and under certain circumstances, sexual exploitation may amount to sexual slavery.

While we do not wish to prejudge the accuracy of this information, we would like to express our deepest concern about the disappearance of 15 Venezuelan migrants who boarded a boat headed to Curaçao. We further raise concerns about the continued existence of consolidated trafficking routes and networks operating in between Venezuela and Curaçao.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on measures to strengthen cooperation between Venezuelan judicial authorities and your Excellency's Government in cross-border trafficking cases, including, in particular, in relation to children.
3. Please indicate what measures are being taken by your Excellency's Government to combat trafficking in persons and to regulate and monitor private recruitment agencies.
4. Please specify what measures are being taken by your Excellency's Government to establish safe and legal migration channels for migrant workers and their families and to ensure that migrants have access to the regular labour market.

5. Please provide information on what measures are being taken by your Excellency's Government to prevent trafficking in children for the purposes of labour and sexual exploitation, including in particular, in domestic households and in the hospitality sector, and to ensure effective protection of child victims of trafficking.
6. Please provide information on the identification procedures of victims of trafficking, as well as procedures for ensuring effective access to justice, redress, reintegration and long-term social inclusion measures, including unconditional assistance and rights to residence.
7. Please provide information on existing mechanisms to promote search and rescue operations to render assistance to any person found at sea in danger of being lost.
8. Please indicate what measures are being taken to ensure compliance with the obligation of non-refoulement and to ensure that victims of trafficking are not returned to their countries of origin where there is a substantial ground to believe that they would be in danger of trafficking or re-trafficking. Please indicate what measures are taken to ensure that returns of victims of trafficking are safe and preferably voluntary.
9. Please indicate what measures are being taken to ensure that victims of trafficking have effective access to international protection including asylum.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent the re-occurrence of the alleged violations and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible and/or involved in trafficking in persons

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Felipe González Morales
Special Rapporteur on the human rights of migrants

Mama Fatima Singhateh
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

In relation to the allegations, we would like to draw your Excellency's Government's attention to the obligations set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, which the Netherlands ratified on 26 May 2004. The Palermo Protocol maintains that States parties shall establish policies, programmes and other measures to prevent and combat trafficking in persons. Article 9.4 declares that States parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to address the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. Article 10 obliges law enforcement, immigration or other relevant authorities of States Parties to cooperate with one another by exchanging information, to enable them to determine victims of trafficking in cross-border trafficking cases; the types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

According to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States have an international obligation not only to identify traffickers but also to identify victims of trafficking, as "If a person who has been trafficked is not identified at all, or is incorrectly identified as a criminal or as an irregular or clandestine migrant, this will directly affect that person's ability to enjoy his or her rights". Identification is possible when a safe space and a relationship of trust has been created that allows victims to share a traumatic experience. Therefore, specific and confidential identification procedures need to be established in arrival areas, in cooperation with civil society organizations, in order to ensure respect for the rights of victims of trafficking (A/HRC/38/45) and to identify vulnerabilities and protection needs, including, but not limited to, those of victims of trafficking. The Recommended Principles also refer to access to reparation measures, while the 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 detail the various forms of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The 1982 United Nations Convention on the Law of the Sea, in its article 98, provides that every State "has the duty: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him. Similar obligations are specified in the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR). We wish to remind your Excellency's Government that article 98 is

considered customary law; that it applies to all sea areas and all persons in distress, without discrimination; and that it applies to all ships, including private ones.

The International Covenant on Civil and Political Rights, ratified by the Netherlands on 11 December 1978, in relation to articles 6 (1), 7, 9 obliges States to guarantee the right to life, the right not to be subjected to torture or other ill-treatment, and the right to liberty and security of person, respectively. Article 8 of the ICCPR prohibits slavery and the slave-trade in all their forms, servitude and forced or compulsory labour, and requires States Parties to take measures to eliminate trafficking of women and children, within the country or across borders, and forced prostitution (General Comment no.28 HRI/GEN/1/Rev.9 (Vol. I), para. 12)

The Convention on the Elimination of All Forms of Discrimination against Women, which the Netherlands ratified on 23 July 1991, recognizes that trafficking constitutes a violation of human rights and establishes State obligations in this regard (art. 6).

The Convention on the Rights of the Child, which the State ratified on 6 February 1995, requires States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (article 35). The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified on 23 August 2005, recognizes that children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited and prohibits the sale of children, child prostitution and child pornography. The UN Committee on the Rights of the Child, in its Joint General Comment with the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, has reiterated that in all actions concerning children, including in the context of international migration, States should be guided by the overarching principles of non-discrimination (art. 2); the best interests of the child (art. 3); the right to life, survival and development (art. 6); and the right of the child to express his or her views in all matters affecting him or her, and to have those views taken into account (art. 12). (CMW/C/GC/3-CRC/C/GC/22 5, para. 19). They also note that States should, “take all necessary measures to prevent and combat the illicit transfer and non-return of children as well as the worst forms of child labour, including all forms of slavery, commercial sexual exploitation, the use of children for illicit activities, including begging, and hazardous work, and protect them from violence and economic exploitation.” Further the Committees highlight that girls may be even more vulnerable to trafficking, especially for purposes of sexual exploitation and that gender-specific risks and vulnerabilities should be identified and specifically addressed by States.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 21 December 1988, at article 2, requests States Parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and affirms that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal

political instability or any other public emergency, may be invoked as a justification of torture. ”. In its General Comment No. 2 (CAT/C/GC/2), the Committee against Torture recognised that where State officials fail to exercise due diligence to prevent, investigate, prosecute and punish acts of torture or ill-treatment committed by private actors the State bears responsibility and its officials should be considered as complicit or otherwise responsible, including for cases of trafficking. At article 3, it prohibits States to expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

The International Labour Organization (ILO) Worst Forms of Child Labour Convention (Convention No. 182 of 1999), which the Netherlands ratified on 14 February 2002, prohibits all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, as well as the use, procuring or offering of all children for the purpose of prostitution.

The Council of Europe Convention on Action against Trafficking in Human Beings, which the Netherlands ratified on 22 April 2004, sets important obligations aimed at improving the protection of victims of trafficking. At article 10, it requires States Parties to provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children. It obliges States to assist victims by various means such as counselling, interpretation and information and specifies that assistance to a victim is not made conditional on his or her willingness to act as a witness (article 12). At article 16, the Convention requires States Parties to pay due regard for the rights, safety and dignity of person that is returned and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

The Convention, at article 17, obliges States Parties to ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory. It further requires each Party to ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. Article 3 affirms that Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments for the purpose of:

- preventing and combating trafficking in human beings;
- protecting and providing assistance to victims;
- investigations or proceedings concerning criminal offences established in accordance with this Convention.

Finally, we would like to refer to the Global Compact for Safe, Orderly and Regular Migration, in particular to Objectives 8 to 10 (principles 24 to 26) that establish the measures to “Save lives and establish coordinated international efforts on missing migrants”; “Strengthen the transnational responses to smuggling of migrants” and “Prevent, combat and eradicate trafficking in persons in the context of international migration”.