

**Human Rights Council****Fiftieth session**

13 June–8 July 2022

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Trafficking in persons in the agriculture sector: human  
rights due diligence and sustainable development****Report of the Special Rapporteur on trafficking in persons, especially  
women and children, Siobhán Mullally***Summary*

The present report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, was prepared pursuant to Human Rights Council resolution 44/4.

Characterized by high levels of informality, lack of oversight and protection, trafficking in persons remains a serious concern within the agricultural sector, affecting both adults and children. Temporary, seasonal and migrant workers are provided with limited protection and remain at risk of exploitation. Discrimination on grounds of race, ethnicity, migration status, gender and disability create conditions within which trafficking occurs with impunity. Restrictive migration policies persist, despite demand for agricultural workers. The coronavirus disease (COVID-19) pandemic saw the designation of agricultural workers as “essential”, yet this did not lead to improved worker protections or expanded safe migration pathways. Child labour remains prevalent within the agriculture sector, with continuing significant risks of trafficking affecting both boys and girls. The growth of agribusiness and the power of corporations, combined with the rapid pace of climate change, have further exacerbated risks of trafficking in persons. Agriculture, and specifically intensive agriculture, is contributing negatively to climate change, reflecting the wider nexus between trafficking in persons, environmental degradation, loss of biodiversity and the climate crisis. Land inequality, particularly affecting women and girls, remains a key driver of exploitation, including trafficking for forced labour. Linked to legacies of colonialism, conflict, patriarchal family and State structures, and racial discrimination, land inequality is exacerbated by the growth of large-scale industrial farming models and limited enforcement of international human rights law and labour standards. The present report examines the continuing prevalence of trafficking in persons in the agricultural sector, in particular, for purposes of forced labour. In the report, the Special Rapporteur highlights the importance of mandatory human rights and environment due diligence measures to combat trafficking in persons within the agriculture sector to achieve the goals of sustainable development.



## I. Introduction

1. The agriculture sector employs an estimated 28 per cent of the total labour force globally, and employs an estimated 60 per cent of the labour force in low-income countries.<sup>1</sup> Practices of exceptionalism remain widespread within the agriculture sector, limiting the rights of workers to freedom of association and collective organizing as well as respect for labour rights. The agricultural sector is characterized by high levels of informal employment, increasing risks of exploitation. Human rights defenders, workers' associations and committees, non-governmental organizations and trade unions advocating for greater protection of agricultural workers receive limited support and are frequently the target of reprisals. The Special Rapporteur, Siobhán Mullally, recalls general comment No. 23 (2016) of the Committee on Economic, Social and Cultural Rights, on the right to just and favourable conditions of work, recognizing that agricultural workers often face severe socioeconomic disadvantages, forced labour, income insecurity and lack of access to basic services. The intersections of discrimination on grounds of race, ethnicity and gender are brought into sharp relief in experiences of trafficking in persons in the agricultural sector, affecting indigenous peoples, refugees, stateless persons, migrants and minorities, who are often marginalized from equal protection of the law by States and non-State actors.

## II. Intersectional discrimination

2. The incidence of forced labour, including trafficking for forced labour in agriculture, is linked to systemic discrimination against “scheduled” castes and tribes, indigenous peoples, minorities and persons of African descent, and/or of slave descent.<sup>2</sup> Discrimination on grounds of migration status of workers and their families creates situations of vulnerability in which trafficking occurs.<sup>3</sup> In the landmark case of *Hacienda Brasil Verde Workers v. Brazil*,<sup>4</sup> the Inter-American Court of Human Rights found a violation of the prohibition of discrimination, concluding that the failure to ensure protection of the workers was related to a preconception of the conditions to which it might be normal for workers on the farms in the north and northeast of Brazil to be subjected. That preconception was found to be discriminatory, and specifically impacted the actions of the authorities, limiting the possibility of sanctions being imposed, or of the exercise of due diligence to prevent trafficking in persons. The historical evolution of the phenomenon of slavery in Brazil, particularly in rural areas, was well documented in the case, as were the continuing human rights violations reported by the Pastoral Land Commission (*Comissão Pastoral da Terra*) and other organizations concerning the occurrence of “slave labour” in the north and northeast of the country, and specifically about Hacienda Brasil Verde. In South Asia, traditional, caste-based forms of bondage tend to interact with modern, contract and intermediary-driven debt bonded labour in agrarian communities.<sup>5</sup> Adaptation strategies, including migration, in the context of climate change, may push marginalized farming communities into situations of debt-bonded labour.<sup>6</sup>

3. The Special Rapporteur is concerned that owing to the informality and isolation of agricultural work, refugees and internally displaced persons also may be at particular risk of

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<sup>1</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020* (United Nations publication, Sales No. E.20.IV.3), p. 101.

<sup>2</sup> J. Raj, “The hidden injuries of caste: south Indian tea workers and economic crisis”, *Beyond Trafficking and Slavery* (2015); and Verité, *Labour and Human Rights Risk Analysis of Ecuador's Palm Oil Sector* (2016).

<sup>3</sup> K. E. Bravo, “Legal constructions of personhood: their nexus with the trafficking of human beings”, in *Bullying: an Assault on Human Dignity* (Brill, 2012), p. 467.

<sup>4</sup> Judgment, 20 October 2016.

<sup>5</sup> Doreen Boyd and others, “Modern slavery, environmental destruction and climate change: fisheries, field, forests and factories” (University of Nottingham Rights Lab, 2019), p. 18.

<sup>6</sup> *Ibid.*

trafficking for forced labour.<sup>7</sup> Refugees may not have the right to work, limiting their employment options to the informal sector, such as agricultural day labour. For migrants in irregular situations, the risks of trafficking are significant. The informal sector lacks regulation, making the situation ripe for, impunity for recruiters and employers who may recruit refugees under false pretences. The Special Rapporteur highlights evidence of debt bondage among refugee communities, who incur debt to cover migration costs, recruitment-related debt, or debt to an employer for deductions to cover housing, food, or tools used for the job, including within the agricultural sector.<sup>8</sup> The number of people at risk of trafficking for forced labour may rise with the growth of climate change-related migration and displacement.

## A. Gender equality and rights of women

4. The Special Rapporteur highlights that gender inequality in land ownership and in security of tenure over land contributes to poverty, dependency and risks of violence, including trafficking of women and girls for all purposes of exploitation, in particular forced labour, sexual exploitation and forced marriage. The imperative to address gender inequality in land ownership, control over natural resources and security of tenure is recognized in the targets 1.4 and 5.a of the Sustainable Development Goals, which call for reforms to ensure that women have equal access to ownership and control over land and other forms of property, and natural resources.<sup>9</sup> The overwhelming presence of women in many land-based activities, including agriculture, highlights the urgency of measures to promote gender equality and to ensure effective prevention of trafficking in persons.<sup>10</sup>

5. Although the availability of accurate data is limited, it is estimated that women make up on average less than 20 per cent of the world's landholders, but account for an estimated 43 per cent of the agricultural labour force.<sup>11</sup> In South Asia and sub-Saharan Africa, it is estimated that over 60 per cent of all working women are employed in agriculture, concentrated in time- and labour-intensive work, with low pay and limited social protection. Policymaking and programmes on climate-smart agriculture too often fail to address gender inequality in security of land tenure and control over natural resources, reinforcing disadvantages faced by women, increasing risks of exploitation and limiting the effectiveness of policies to combat trafficking.<sup>12</sup>

6. The Special Rapporteur recalls article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 34 (2016) of the Committee on the Elimination of Discrimination against Women on the rights of rural women, which highlights the specific disadvantages and risks faced by many rural women, including by rural migrant women workers, arising from gaps in legislative protection and enforcement and limited access to social protection. Rural women are more often engaged in work that is insecure, hazardous, poorly paid and not covered by social protection. They are less likely to be educated and are at higher risk of being trafficked and forced into labour, as well as into child and/or forced marriage and other harmful practices (para. 5).

<sup>7</sup> Submission of Solidarity Centre, Jordan, on migrant workers in the agriculture sector. All submissions received for the present report are available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-inputs-trafficking-persons-agricultural-sector>.

<sup>8</sup> Verité, and Tent Partnership for Refugees, *Combating Forced and Child Labour of Refugees in Global Supply Chains: the Role of Responsible Sourcing* (2021), pp. 18–30.

<sup>9</sup> See Robert Ndugwa, Everlyne Nairesiae and Oumar Sylla, “Improving access to women’s land rights data for policy decisions: lessons learnt and opportunities linked to the Sustainable Development Goals”, paper presented at the sixty-second session of the Commission on the Status of Women (2018).

<sup>10</sup> Inter-Governmental Panel on Climate Change, *Climate Change and Land* (2019), p. 677.

<sup>11</sup> See Working Group on Discrimination against Women (2017), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Womenslandright.pdf>.

<sup>12</sup> S. Nelson and S. Huyer, “A gender-responsive approach to climate-smart agriculture: evidence and guidance for practitioners”, Practice Brief (FAO, Consultative Group on International Agricultural Research and Research Programme on Climate Change, Agriculture and Food Security, 2016).

7. Submissions received by the Special Rapporteur in preparation of the present report highlight the harmful impact of discriminatory gender stereotypes on migrant women agricultural workers and the heightened risks of trafficking for forced labour.<sup>13</sup> Practices such as payment of wages to the male head of a family, where several family members are employed as agricultural workers, increase the isolation, dependency and vulnerability of women migrant workers to exploitation.<sup>14</sup> In seasonal agricultural work, women are often specifically sought, as they are presumed more likely to return to their countries of origin, less likely to complain about working conditions and more vulnerable to threats of reprisal against family members. In situations where women's agricultural work is invisible, the gaps in assistance and protection and in prevention of trafficking measures are even greater.<sup>15</sup> Such invisibility increases the likelihood that women will not be identified as victims of trafficking or as at risk of trafficking, allowing the crime and serious human rights violation of trafficking to continue with impunity.<sup>16</sup>

8. Submissions received by the Special Rapporteur highlight the specific risks of sexual harassment, sexual violence and trafficking for forced labour faced by women migrant agricultural workers. The Special Rapporteur is greatly concerned by reports that women victims of trafficking for forced labour in the agricultural sector often lack access to water and sanitation facilities, are frequently at risk of sexual violence and do not have access to sexual and reproductive health services or to assistance and protection measures. The Special Rapporteur remains concerned at the limited attention given by courts and prosecutors to the intersections of trafficking for forced labour and sexual violence experienced by women, including risks of trafficking for purposes of sexual exploitation.

## **B. Rights of indigenous women**

9. Indigenous women and girls may experience increased risks of trafficking, owing to the intersections of discrimination and violence, based on gender, race and ethnicity, indigenous origin and poverty. Submissions received by the Special Rapporteur for the present report document the specific risks for indigenous refugee and migrant women, which are exacerbated by language barriers and lack of access to information about their rights and to legal assistance. The Special Rapporteur is concerned that discrimination against indigenous women and girls, including discriminatory stereotypes and practices, greatly increases risks of trafficking, and limits access to protection for indigenous women who are victims of trafficking. Those risks are of particular concern in the agricultural sector, given the impact of agribusiness expansions on the rights of indigenous peoples to their land and collective ownership. The Special Rapporteur recalls that, in its general recommendation No. 34 (2016), the Committee on the Elimination of Discrimination against Women underscored the importance of indigenous women's rights to land and collective ownership, natural resources, water, seeds, forests and fisheries (para. 56). The Committee, in its draft general recommendation on indigenous women, pointed out that the lack of harmonization of laws and their ineffective implementation at the national and local levels hinder the effective implementation of those rights, increasing risks of exploitation of indigenous women. The Special Rapporteur highlights the intersecting discrimination faced by indigenous women and girls with disabilities, owing to the lack of accessibility and reasonable accommodation and the failure to ensure inclusive anti-trafficking measures.

## **C. Persons with disabilities**

10. The Special Rapporteur highlights that persons with disabilities may be particularly at risk of trafficking in agricultural, work where there is limited inspection, oversight and

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<sup>13</sup> Submission of Women's Link Worldwide.

<sup>14</sup> Submission of Federal Prosecutor's Office, Argentina.

<sup>15</sup> Submissions of Rights Advice Centre and Youth Watch Society. See also International Labour Organization (ILO), *Lessons Learned from the Work in Freedom Programme* (New Delhi, 2019), Lesson 27, p. 63.

<sup>16</sup> Submission of Women's Link Worldwide.

monitoring of workers' rights. The Special Rapporteur also highlights the obligations of States to ensure that information, assistance and services are accessible to persons with disabilities, and that reasonable accommodations are ensured in anti-trafficking prevention and protection programmes. Persons with disabilities in institutional settings may be particularly at risk of trafficking for forced labour in agricultural work when located in isolated rural areas. Discrimination and harmful stereotypes may also limit access to decent work initiatives or to collective organizing, workers' committees or trade unions, increasing vulnerability to exploitation. The Special Rapporteur highlights the specific risks that may be faced by women with disabilities in the agricultural sector, of both trafficking for forced labour and sexual exploitation.

#### **D. Male victims of trafficking**

11. The gender dimensions of trafficking in the agricultural sector also constrain the protection of male victims. Men and boys are presumed to be less vulnerable and consequently may not be identified as victims of trafficking or at risk of trafficking. Discriminatory stereotypes of ideal victim types hinder the identification of male victims of trafficking, particularly when intersecting with discrimination on grounds of race, ethnicity or migration status.<sup>17</sup>

#### **E. Rights of lesbian, gay, bisexual and trans persons and persons of diverse gender identities**

12. The Special Rapporteur is also concerned that lesbian, gay, bisexual and trans persons and persons of diverse gender identities may be at heightened risk of trafficking due to discrimination in access to decent work and to protection. Submissions received by the Special Rapporteur highlight the abuse of positions of vulnerability by employers of seasonal, temporary and migrant workers, who threaten to reveal the gender identities or sexual orientation of migrant workers as a means of exercising control.<sup>18</sup> Access to assistance for lesbian, gay, bisexual and trans victims of trafficking or persons at risk of trafficking, may also be limited in rural areas and remote agricultural settings, where privacy and confidentiality may be more difficult to ensure.

### **III. Rights of agricultural workers in seasonal, temporary and circular migration**

13. The Special Rapporteur highlights the continuing dependency of the agricultural sector on temporary, seasonal and circular migration. The Global Compact for Safe, Orderly and Regular Migration calls on States to develop, flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs (Objective 5). However, the Special Rapporteur is concerned that market needs have been prioritized in place of ensuring the rights of migrant workers and their families, including in recruitment processes.

14. Submissions received by the Special Rapporteur highlight the increasing numbers of temporary visas issued for agricultural migrant workers, reflecting continuing demand and market needs, yet limited access to secure residence status, citizenship or to strengthened labour protections for agricultural workers.<sup>19</sup> The Special Rapporteur is concerned at the lack of oversight and monitoring of temporary visa programmes, and of employers engaging with

<sup>17</sup> N. Magugliani, "(In)Vulnerable masculinities and human trafficking: men, victimhood and access to protection in the United Kingdom", *Journal of Human Rights Practice* (March, 2022).

<sup>18</sup> Submission of The Advocates for Human Rights.

<sup>19</sup> In its submission, Polaris reported that according to figures from the Office of Foreign Labour Certification of the Department of Labour of the United States of America, more than 317,619 H-2A visas were certified in fiscal year 2021. The total represents a 13 per cent increase in the total number of visas certified compared to fiscal year 2020 and a 17 per cent increase in the total number of applications for workers.

such programmes. The lack of vetting of sponsors, limited follow-up or inspections of working conditions, or of compliance with labour law and international human rights law, creates significant risks of trafficking for forced labour and allows such trafficking to continue with impunity.<sup>20</sup>

15. Situations of trafficking arise in seasonal, temporary and circular migration, including through debt arising in recruitment processes, leading to debt bondage, confiscation of passports by employers and recruitment intermediaries, threats to workers of arrest and deportation, and use of physical violence. In *Chowdury and Others v. Greece*,<sup>21</sup> the European Court of Human Rights highlighted the particular vulnerability of the applicants, all of whom were seasonal workers recruited to work on strawberry farms and were found to be victims of trafficking. Importantly, the Court highlighted in paragraph 96 of its judgment the abuse of a position of vulnerability in this context, particularly given the irregular migration status of the workers, concluding that “where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterization of work as forced labour”.

16. The Special Rapporteur notes that the risks faced by migrant workers, in the context of temporary, seasonal and circular migration, are not confined to any one geographical region. The visa regimes established by States continue to place migrant workers and their families in precarious situations. The use of tied visas, limiting the rights of workers to change employers or seek employment in other sectors, remains widespread. The short-term, temporary nature of employment and the likelihood of being in an irregular migration situation create high risks of exploitation.

17. The Committee on the Elimination of Racial Discrimination has highlighted the working conditions of migrant workers on temporary visas and safe haven visas, noting that owing to heavy reliance on their employers, combined with a lack of knowledge about their rights and entitlements, they may be reluctant to file complaints.<sup>22</sup>

18. The previous mandate holder highlighted concerns raised by the United States Department of Agriculture that migrant workers are often reluctant to complain about violations of labour standards, or experiences of trafficking, owing to fears of having future visa applications denied.<sup>23</sup> The Special Rapporteur highlights again the obligation on States to ensure effective implementation of the principle of non-punishment of victims of trafficking and, as required by the Global Compact for Safe, Orderly and Regular Migration, to ensure safe reporting, without fear of deportation, detention or penalty.<sup>24</sup>

#### IV. Rights of the child

19. The specific vulnerability of children has led to heightened protection under international law. However, despite this heightened protection and the global commitment to end child labour by 2025, the Special Rapporteur is concerned that there has been a recent rise in child labour, with an estimated increase of 8.4 million child labourers globally in the last four years.<sup>25</sup> Agricultural work is a recognized entry point into child labour, accounting for 76.6 per cent of all child labour in the age group 5–11 years and for 75.8 per cent in the

<sup>20</sup> Submissions of Focus on Labour Exploitation (FLEX) and The Advocates for Human Rights; Polaris, “Recruitment, human trafficking, and temporary visa workers” (2021); and Focus on Labour Exploitation and Fife Migrants Forum, *Assessment of the Risks of Human Trafficking for Forced Labour on the UK Seasonal Workers Pilot* (London, 2021).

<sup>21</sup> Application No. 21884/15, Judgment, 30 June 2017.

<sup>22</sup> CERD/C/AUS/CO/18-20, para. 34.

<sup>23</sup> A/HRC/35/37/Add.2, para. 45. See submission of Polaris on vulnerabilities of migrant agricultural workers in the United States and Mexico, and its brief, “Recruitment, human trafficking and temporary visa workers” (2021); and submissions of Women’s Link Worldwide and Abogadas Sociedad Cooperativa Andaluza.

<sup>24</sup> General Assembly resolution 73/195, annex, para. 26 (e).

<sup>25</sup> ILO and United Nations Children’s Fund (UNICEF), <https://www.unicef.org/press-releases/child-labour-rises-160-million-first-increase-two-decades>.

age group 12–14 years.<sup>26</sup> The impact of the coronavirus disease (COVID-19) pandemic, limited access to social protection and lack of access to education and decent work for families, combined with poverty and inequality, have all contributed to this increase and reversal of limited progress made.

20. The Special Rapporteur is concerned that in many jurisdictions, exemptions or exceptions apply to the agricultural sector, allowing for child labour on farms, with significant risks that the exemptions create conditions within which trafficking of children for purposes of forced labour and related human rights violations occur.<sup>27</sup> The Special Rapporteur highlights the obligations of States arising under the Convention on the Rights of the Child and its Optional Protocols to ensure effective regulation of businesses to prevent trafficking of children, and to protect child victims of trafficking.<sup>28</sup> The Committee on the Rights of the Child has repeatedly highlighted the impact of business activities and operations on children’s rights, including where businesses operate abroad in areas where there is insufficient State protection for children’s rights.<sup>29</sup> The Special Rapporteur is concerned at the continuing failure of States and businesses to ensure protection of children, and prevention of trafficking for forced labour in agribusiness and more widely in the agricultural sector. Concerns have repeatedly been raised in relation to the prevalence of child labour in cocoa production, for example, and of the significant risks of trafficking of children for the purpose of forced labour.

21. Several examples of transnational litigation concerning allegations of trafficking of children for forced labour illustrate concerns in relation to the continuing prevalence of the worst forms of child labour, and also highlight the many obstacles that child victims face in securing remedies and effective access to justice. In the case of *Nestlé USA, Inc. v. John Doe I, et al.*,<sup>30</sup> the respondents were six citizens of Mali who alleged that they were trafficked into Ivory Coast as children to produce cocoa. The petitioners, Nestlé USA, Inc., and Cargill, Inc., companies based in the United States that purchase, process and sell cocoa, did not own or operate farms in Ivory Coast, but they did buy cocoa from farms located there and also provided those farms with technical and financial resources – such as training, fertilizer, tools, and cash – in exchange for the exclusive right to purchase cocoa. The complaints, ultimately unsuccessful, were brought under the Alien Tort Statute, an 18th-century law that permits foreigners to bring lawsuits in courts of the United States for serious violations of international law. However, its limited scope of application, as interpreted by a majority of the Court, restricted access to any potential remedy that might arise. The case of *Milasi Josiya & 7,262 Others v. British American Tobacco Plc*<sup>31</sup> arose from claims brought by 7,263 Malawian tobacco farmers, comprising 4,066 adults and 3,197 children.<sup>32</sup> Specifically, the High Court of England and Wales noted that the claimants overwhelmingly originated from the south of Malawi and were said to have been trafficked from their family homes to the tobacco farms. They included child claimants between 3 and 17 years of age. The claimants, falling within the “extreme poverty” bracket, were considered to be highly vulnerable.<sup>33</sup>

22. The Special Rapporteur is concerned at the risks faced by children of seasonal, temporary and migrant workers, who are often unable to attend school regularly, lack access to child protection or social services and are at increased risk of exploitation. The impact of the COVID-19 pandemic increased vulnerabilities of children to economic exploitation in the agriculture sector. In cocoa fields, the inability to access school, the quality of schooling

<sup>26</sup> FAO and Alliance for Child Protection in Humanitarian Action, “Reducing child labour in agriculture in humanitarian contexts”, Background paper (Rome, FAO, 2021) p. 6.

<sup>27</sup> See submission of Polaris on vulnerabilities of migrant agricultural workers in the United States and Mexico, and its brief, “Recruitment, human trafficking and temporary visa workers” (2021).

<sup>28</sup> Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, para. 9.

<sup>29</sup> *Ibid.*, para. 11.

<sup>30</sup> Supreme Court of the United States, Case Nos. 19-416 and 19-453, Judgment, 17 June 2021, 593 U. S. (2021).

<sup>31</sup> High Court of Justice, Queens Bench Division, Case No. QB-2020-004542, 25 June 2021 ([2021] EWHC 1743 (QB)).

<sup>32</sup> *Ibid.*

<sup>33</sup> Submissions of Rights Advice Centre and Youth Watch Society.

and the cost of school fees and resources, combined with the need to gain livelihood training, all make up the complex landscape of child labour in the cocoa sector. The cessation of the school feeding programmes owing to school closures and the lack of access to affordable childcare impacted on risks of trafficking of children.<sup>34</sup>

23. The Special Rapporteur highlights the particular risks that may arise for unaccompanied or separated child refugees and migrants, who are often at risk of recruitment for agricultural work, and at heightened risk of trafficking for forced labour. Children in institutional settings, separated from families or caregivers, particularly in rural areas, may also be at heightened risk.

24. The Special Rapporteur highlights the particular risks of child trafficking in humanitarian contexts, whether in conflict situations, forced displacement or in disaster settings.<sup>35</sup> These risks are particularly prevalent in agriculture, as humanitarian contexts can involve a food chain crisis, violent conflict or natural disaster. With families displaced, loss of livelihoods and disruption of schooling, limited access to social protection or to family support networks, the risks of child labour in agriculture, including specific risks of trafficking of children, are heightened. Harvest failures increase the chances that children will be needed to support household income and production. The effects of climate change can exacerbate pre-existing vulnerabilities and increase risks of child trafficking. Child labour may be used as a “coping mechanism” for communities recovering from the impacts of climate-induced events like droughts and flooding. The Special Rapporteur is concerned that in humanitarian settings there may be a lack of attention to the complex risks of trafficking of children in agricultural work.

## V. Fair and ethical recruitment of workers

25. The Special Rapporteur is concerned that recruitment practices in the agricultural sector, particularly of seasonal, temporary and migrant workers, contribute to increased risks of trafficking for forced labour. Despite significant standard-setting efforts to regulate recruitment intermediaries and ensure that recruitment fees and other related costs are borne by recruiters and employers, recruitment processes in the agricultural sector typically include payment of substantial recruitment fees, administrative fees, and visa and travel expenses,<sup>36</sup> often leading to situations of debt bondage.<sup>37</sup> Submissions received by the Special Rapporteur indicate that the high levels of informality in agricultural work allow unregistered and unlicensed recruitment intermediaries, including *enganchadores* (contractors) and *capataces* (supervisors), to operate with little oversight.<sup>38</sup> It is not uncommon for victims of trafficking, or former victims, to become recruitment intermediaries, particularly where a situation of debt bondage has arisen. In such contexts, the principle of non-punishment may apply.<sup>39</sup>

26. In the Hacienda Brasil Verde case, the Inter-American Court of Human Rights highlighted the recruitment of workers using “fraud and deception”, leading to a situation of debt bondage. The workers had no possibility of escape, owing to fear of reprisals, physical violence and the presence of armed guards. As the Court noted (para. 303), those conditions were magnified by the situation of vulnerability of the workers, who were mostly illiterate and from a distant region of the country, who had no knowledge of the area surrounding Hacienda Brasil Verde and who were subjected to inhumane living conditions.

27. The complex networks of recruiters, contractors and subcontractors also adds to the difficulties of ensuring effective investigation and prosecution of traffickers for forced labour,<sup>40</sup> as does the limited international cooperation in investigation of trafficking for

<sup>34</sup> Submission of United Nations University Centre for Policy Research.

<sup>35</sup> FAO and Alliance for Child Protection in Humanitarian Action (2021).

<sup>36</sup> See Polaris (2021); and ILO, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs* (Geneva, International Labour Office, 2019).

<sup>37</sup> See Polaris (2021).

<sup>38</sup> Submission of *Libera*. See <https://www.ciperchile.cl/2021/09/28/fiscalia-investiga-denuncia-de-trabajo-forzado-masivo-de-inmigrantes-en-cosecha-de-arandanos-y-mandarinas/> (in Spanish).

<sup>39</sup> A/HRC/47/34, sect. IV.B, “Recommendations”, paras. 55 and 57.

<sup>40</sup> Submissions of The Advocates for Human Rights, Human Trafficking Institute, Polaris and others.



forced labour.<sup>41</sup> Although domestic legislation in many jurisdictions recognizes the joint and several responsibility of recruiters and employers towards workers, in practice, access to remedies will depend on the effective administration of justice and workers' capacity (both de jure and de facto), to seek enforcement.<sup>42</sup>

28. The Special Rapporteur stresses the importance of undertaking actions to implement Objective 6 of the Global Compact for Safe, Orderly and Regular Migration, by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry. She highlights the potential role of digital recruitment platforms to ensure fair recruitment and prevent trafficking for forced labour. Digital technologies can be deployed to promote compliance with labour and human rights standards. However, the Special Rapporteur stresses that further efforts must be made by States to ensure that fair recruitment initiatives reach workers deployed in the agricultural sector, who are often designated as "low-skilled" or "unskilled" and are beyond the reach of State-sponsored initiatives.<sup>43</sup>

## VI. Limited enforcement and application of labour law in agricultural work

29. The Special Rapporteur is concerned that, despite the adoption of international labour standards and domestic legislation, monitoring and enforcement of the rights of agricultural workers remains weak, increasing risks of trafficking in persons.<sup>44</sup> In many countries, agricultural work remains outside of the scope of labour legislation; where labour legislation extends to agriculture, it is often outdated, and the mandate of labour inspectorates, where they exist, is limited.

30. The Special Rapporteur stresses that the identification and protection of victims of trafficking is a positive obligation on States, as is the prevention of trafficking. While the remoteness and isolation of agricultural work may create additional challenges, effective prevention of trafficking requires the allocation of sufficient human and financial resources to labour inspectorates and to law enforcement authorities to meet these obligations. The Special Rapporteur is concerned that while significant work has been undertaken to strengthen the capacity of labour inspectorates through standard setting, development of good practices and training, the impact on rural areas is limited, and consistent patterns of abuse continue with impunity.<sup>45</sup> The frequency and number of unannounced inspections is too limited, and the persistence of corruption continues to limit the effectiveness of such inspections. The Special Rapporteur is concerned that labour inspectors may not be mandated to identify victims of trafficking for forced labour. Enforcement of immigration law may be prioritized, and the principle of non-punishment of victims of trafficking, including for status related offences, is not applied or understood. The Special Rapporteur is particularly concerned at the impact of the COVID-19 pandemic on labour inspections, which were significantly reduced or suspended in many countries.

31. The Special Rapporteur notes that the importance of implementation of the International Labour Organization (ILO) Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29). Despite recognition of the urgency of ensuring coverage and enforcement of legislation to prevent

<sup>41</sup> European Union Agency for Fundamental Rights, *Severe Labour Exploitation: Workers Moving within or into the European Union* (Vienna, 2015), p. 32; and ILO, *Recruitment Fees and Related Costs: What Migrant Workers from Cambodia, the Lao People's Democratic Republic and Myanmar Pay to Work in Thailand* (Bangkok, ILO Regional Office for Asia and the Pacific, 2020), p. 20.

<sup>42</sup> Communication to Guatemala by Special Rapporteurs, on the situation of workers in the Guatemalan palm oil sector (GTM 3/2020).

<sup>43</sup> ILO and International Organization for Migration (IOM), *Promoting Fair and Ethical Recruitment in a Digital World* (Geneva, 2021).

<sup>44</sup> Submissions of The Advocates for Human Rights and Institute for Migrants Rights, Cornell Law School.

<sup>45</sup> Submissions of Libera, Solidarity Centre and Human Trafficking Institute.

trafficking for forced labour to all workers and all sectors, and to strengthen labour inspection services, many gaps remain. These failures are failures of policy and of political will.

32. The informality of much agricultural work, the prevalence of undeclared work and lack of clarity on the status of employment relationships further hinder the enforcement of labour laws, increasing risks of exploitation and limiting the identification and protection of victims of trafficking. The Special Rapporteur is concerned that the numbers of investigations and prosecutions of trafficking for forced labour in the agriculture sector remain limited, suggesting a continuing failure to recognize the seriousness of the human rights violations occurring or the seriousness of the crime. Limited understanding of the range of indicators of forced labour by law enforcement bodies, and courts and tribunals, also hinder effective investigations or prosecutions.

33. The Special Rapporteur highlights the continuing prevalence of discriminatory attitudes in law enforcement bodies, including on grounds of race and ethnicity, migration status, gender and disability. Discrimination, stigma and harmful stereotypes limit the implementation and enforcement of labour laws and the identification of victims of trafficking or persons at risk of trafficking, creating a climate of impunity for traffickers and leaving victims without assistance or protection.<sup>46</sup>

## VII. Human rights due diligence: combating trafficking in persons in supply chains

34. While significant steps have been taken to eliminate trafficking in persons in supply chains in the agricultural sector, the impact of such measures has been limited, with overreliance on voluntary regulation, soft-law measures and weak enforcement. The Special Rapporteur highlights the urgency of addressing trafficking in persons through strengthened regulation of labour rights and human rights in supply chains. A range of measures have been adopted to date, but continue to have limited impact on the agricultural sector. They include the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework,<sup>47</sup> the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy<sup>48</sup> and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.<sup>49</sup>

35. The weakness of previous attempts at regulation are well recognized. The Special Rapporteur stresses that efforts against trafficking for forced labour in global supply chains will continue to be inadequate if they do not extend beyond immediate suppliers to include actors operating at all levels, and particularly those further upstream in global supply chains. As has been well documented, human trafficking is a “whole-of-supply-chain problem.”<sup>50</sup> Current proposals for enhanced corporate due diligence obligations are welcome, but fail to ensure that the human rights of trafficked persons are effectively protected, or that effective prevention action is taken to combat trafficking in persons.

36. Agricultural supply chains include upstream and downstream sectors, starting with the supply of agricultural inputs (such as seeds, fertilizers, pesticides, feeds, medicines or equipment) to production, post-harvest handling, processing, transportation, marketing, distribution and retailing.<sup>51</sup> With significant changes in our global food system, monitoring of human rights in supply chains is critical to effective prevention of trafficking in persons. The Special Rapporteur highlights the importance of human rights due diligence in supply chains, to achieve the objectives of decent work and effectively prevent trafficking in persons. Mandatory human rights due diligence recognizes that trafficking for forced labour

<sup>46</sup> Submission of Liberia.

<sup>47</sup> [A/HRC/17/31](#), annex.

<sup>48</sup> Geneva, International Labour Office, 2017.

<sup>49</sup> OECD Publishing (2011).

<sup>50</sup> ILO, OECD, IOM and UNICEF, *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains* (Geneva, 2019), p. 26.

<sup>51</sup> *OECD-FAO Guidance for Responsible Agricultural Supply Chains* (OECD Publishing, Paris, 2016), p. 19.

is not limited to isolated incidents of exceptional human rights violations, but is a result of systemic failings in labour rights and human rights protection and of discrimination, poverty and restrictive migration regimes.<sup>52</sup>

37. The Special Rapporteur has previously raised concerns about difficulties in ensuring human rights due diligence in supply chains, where access to production locations is denied and oversight and monitoring are impossible.<sup>53</sup> The Special Rapporteur remains seriously concerned about the lack of oversight and enforcement to ensure protection against trafficking for forced labour in Xinjiang Uighur Autonomous Region of China, in particular in relation to allegations of forced labour in cotton production and the treatment of rural “surplus labourers”.

38. The proposed European directive on corporate sustainability due diligence<sup>54</sup> is a welcome development and a critical opportunity for transformative change. The proposal, which complements Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, seeks to combat the use of forced labour by effectively prohibiting the placing on the European Union market of products made by forced labour, including forced child labour. Both domestic and imported products fall within the scope of the proposed directive, which is expected to ensure a robust, risk-based enforcement framework. In addition to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the annex to the proposed directive lists the relevant human rights and labour rights instruments and environmental law conventions that must be considered in identifying actual or potential adverse impacts, including core United Nations human rights treaties, ILO core conventions and, importantly, both the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

39. Nevertheless, the proposed directive continues to be limited in scope, falling short of ensuring an effective mechanism to combat trafficking for forced labour in supply chains.<sup>55</sup> The Special Rapporteur is concerned that to reduce the burden on companies, the directive fails to align with the Guiding Principles on Business and Human Rights,<sup>56</sup> specifically principle 14, which states that the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. The Special Rapporteur highlights the importance of policy coherence and compliance with international human rights standards, and agrees with the recommendation of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the importance of expanding the scope of application of the directive.<sup>57</sup> Article 2 (1) (a) sets a minimum threshold of 500 employees and a global net turnover of over 150 million Euros. For higher-risk sectors, including agriculture and forestry, article 2 (1) (b) sets a lower threshold of 250 employees and a global net turnover of 40 million euros. As currently drafted, companies covered under 2 (1) (b) are required to address only severe potential and actual adverse human rights impacts,<sup>58</sup> thereby again reducing the transformative impact of the directive. Careful monitoring will also be required to ensure that non-European Union companies cannot evade the application of the directive.

<sup>52</sup> G. LeBaron, “The role of supply chains in the global business of forced labour”, *Journal of Supply Chain Management*, vol. 57, No. 2 (2021) pp. 29–42.

<sup>53</sup> Communication by Special Rapporteurs (AL CHN 18/2020).

<sup>54</sup> Proposal for a directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937, and annex, Brussels, 23.2.2022, COM (2022).

<sup>55</sup> European Coalition for Corporate Justice, “Dangerous gaps undermine European Union Commission’s new legislation on sustainable supply chains” (23 February 2022).

<sup>56</sup> A/HRC/17/31, annex.

<sup>57</sup> Remarks of Anita Ramasastry, member of the Working Group on the issue of human rights and transnational corporations and other business enterprises, at webinar on implementing the three pillars of the United Nations Guiding Principles on Business and Human Rights, European Union human rights and environmental due diligence in global value chains (European Parliament Working Group on responsible business conduct), 2 March 2022.

<sup>58</sup> Art. 6 (2) and art. 3 (iv) (l).

40. The Special Rapporteur is concerned that measures should be taken to support small and medium-sized enterprises to achieve compliance with mandatory human rights due diligence obligations, rather than applying the directive to large businesses exclusively. Expanding the scope of mandatory human rights and environmental due diligence obligations is particularly important in the agricultural sector, and to the objective of combating trafficking in persons for forced labour. The gendered impact of this restricted scope is of serious concern. Women, in particular rural women, are more likely to work in smaller enterprises and smaller agricultural settings, including in informal work. The Special Rapporteur is concerned that failing to extend the scope of mandatory due diligence is a missed opportunity for transformative impact at a critical time. It risks repeating the errors of box-ticking corporate responsibility compliance approaches and overreliance on contractual assurances.<sup>59</sup>

41. The Special Rapporteur is also concerned at the limited provision for engagement with affected groups, as expressed in draft article 6 (4), which states that “Companies shall, where relevant, carry out consultations with potential affected groups including workers and other relevant stakeholders”. There is no explicit reference to the rights of women, gender equality, the role of human rights defenders or groups that may be particularly adversely affected, such as indigenous peoples.

42. The Special Rapporteur highlights the critical importance of mandating engagement with human rights defenders, and of supporting and empowering civil society in the prevention of trafficking in persons and protection of victims. Of concern in the draft directive is the failure to ensure the role of workers’ representatives in the design and implementation of responses to actual or potential adverse impacts, in both prevention measures and in measures to end adverse impacts. Also missing from the draft directive is specific recognition of the risk of reprisals against human rights defenders, including workers’ representatives, and an explicit reference to ensuring protection against such reprisals as a requirement of effective action to combat trafficking in persons. The Special Rapporteur also expresses her concerns in relation to the absence of an explicit reference to trade unions or workers’ associations or committees in article 26, “Setting up and overseeing due diligence”, and elsewhere in the draft directive, particularly given the importance of trade unions in preventing trafficking for forced labour, and in relation to the prevalence of restrictions on freedom of association globally.<sup>60</sup>

43. Proactive and meaningful stakeholder engagement is an essential element of human rights due diligence, as set out in the Guiding Principles on Business and Human Rights. The Special Rapporteur highlights the purpose of human rights due diligence as being prevention of harm, including prevention of the serious human rights violation of trafficking in persons. Given the gender dimension of trafficking for forced labour in the agricultural sector and heightened risks for rural women and girls, it is critical that human rights due diligence measures explicitly require and support participation of women in stakeholder engagement.

44. In the draft directive, the reliance on third party auditing also raises questions as to the effectiveness of such auditing in identifying victims of trafficking or persons at risk of trafficking, and how such auditing will link to reporting obligations (art. 11) and follow-up measures on substantiated concerns (art. 19). Well-documented limitations of due diligence measures,<sup>61</sup> including the lack of information available to consumers or workers on rights protections and remedies, must be addressed.<sup>62</sup>

<sup>59</sup> Letter dated 7 March 2022 addressed to the President of the European Commission, from ILO, OECD and Office of the High Commissioner for Human Rights (OHCHR). Available at <https://www.ohchr.org/sites/default/files/2022-03/eu-csddd-ilo-oecd-ohchr-letter-von-der-leyen.pdf>.

<sup>60</sup> Jeffrey Vogt, Ruwan Subasinghe and Paapa Danquah, “A missed opportunity to improve workers’ rights in global supply chains”, *Opinio Juris* (March 2022).

<sup>61</sup> Business and Human Rights Resource Centre, “Who audits the auditor? Shaping legal accountability strategies to redress social audit failings”, *Corporate Legal Accountability Quarterly Update*, No. 38, (March 2021).

<sup>62</sup> Submission of Italy, Ministry of Labour and Social Policies, “Three-Year Plan to tackle labour exploitation and unlawful recruitment in agriculture (2020–2022)”.

45. The Special Rapporteur highlights the importance, as recognized in the Guiding Principles on Business and Human Rights, of ensuring that human rights due diligence obligations encompass the entire value chain, both upstream and downstream. As such, references in the draft directive to “established business relationship” must not undermine or unduly limit the scope of the due diligence obligation. While tier 1 suppliers may be “established”, this is not necessarily the case for all suppliers at tier 1, or at tier 2 and further beyond. Such a limit in the scope and reach of the due diligence obligations is inconsistent with the Guiding Principles.<sup>63</sup>

46. Globally, it is estimated that between 28 and 43 per cent of child labour in global supply chains occurs in the upstream segments. The Special Rapporteur highlights the urgency, therefore, of ensuring that human rights due diligence obligations are not limited to relationships with downstream suppliers, and agrees with the findings of ILO and others that companies may have less visibility and more limited leverage over suppliers operating in the upstream segments of supply chains, but that those challenges should not be used as a reason not to undertake due diligence beyond immediate suppliers.<sup>64</sup>

## **A. Access to remedies and compensation**

47. The Special Rapporteur on Trafficking in Persons has previously highlighted the difficulties faced by victims of trafficking in ensuring effective access to remedies.<sup>65</sup> Submissions received by the Special Rapporteur in preparing the present report have highlighted the continuing obstacles encountered by victims of trafficking in the agricultural sector in securing access to remedies. Difficulties include overcoming procedural and jurisdictional barriers, meeting evidential requirements in criminal proceedings, discharging the burden of proof and limited opportunities for collective redress, as well as lack of awareness of domestic and international laws relating to trafficking for forced labour and the rights of victims. In the agricultural sector, the above-mentioned difficulties are often exacerbated owing to the remoteness of work settings and limited access to legal assistance. Such recent proposals as the draft European Union directive on corporate sustainability due diligence do not go far enough in removing the obstacles, particularly given the power imbalance between those it is addressing – large companies – and victims of trafficking, or persons at risk of trafficking for forced labour.

48. The Special Rapporteur notes that ensuring effective regulation of businesses and access to remedies for victims is a legal obligation on States arising from positive obligations to prevent trafficking in persons and ensure protection for victims of trafficking. To effectively protect labour rights and human rights, strengthening judicial accountability is critical, as are expanded avenues for legal recourse and access to free legal assistance and representation. The Special Rapporteur notes that such mechanisms as the national contact points for responsible business conduct and the OECD Guidelines for Multinational Enterprises have the potential to play a useful role, but are currently limited in their impact. Additional resources and a strengthened legal framework are essential to the effective operation of the mechanisms, ensuring their independence, impartiality and visibility.

## **B. Strengthening enforcement of prohibitions of trafficking in persons: the use of import bans**

49. The use of import bans as trade instruments to combat forced labour is expanding, with the agricultural sector, supply chains in the agricultural sector and agricultural products frequently the target of such bans. The Special Rapporteur notes that the use of import bans may represent a useful tool to combat trafficking for forced labour, drawing upon ILO indicators of forced labour. A prominent example of the use of import bans is the United States Tariff Act of 1930, which prohibits the importation into the United States of any goods

<sup>63</sup> International Trade Union Confederation, “Towards mandatory due diligence in global supply chains” (2020).

<sup>64</sup> ILO, OECD, IOM and UNICEF (Geneva, 2019), p. 72.

<sup>65</sup> [A/74/189](#).

made wholly or in part using forced, indentured or convict labour, in any part of the world. The import bans are implemented by United States Customs and Border Protection, through the issuing of Withhold Release Orders, which rely upon evidence of indicators of forced labour, including debt bondage, restriction of movement, isolation, intimidation and threats, physical and sexual violence, withholding of wages and identity documents, and abusive living and working conditions. A more recent example is the Agreement between the United States of America, the United Mexican States and Canada. Chapter 23, entitled “Labour”, prohibits the importation of goods produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.

50. Import bans operate in a contested and highly politicized international environment, which may result in inconsistencies in application and geographical coverage. While such import bans may play an important role in combating forced labour, it is critical to continually assess and monitor the impact of such bans upon workers and communities. It is also critical to ensure that workers’ associations, trade unions and human rights defenders participate in decision-making processes leading to such bans, and that prioritization of labour rights reforms and remedies to victims of forced labour are ensured. Clarity is also necessary on who will monitor and enforce import bans, and how stakeholder engagement will be ensured. The Special Rapporteur highlights the difficulties that arise owing to limited transparency in supply chains.<sup>66</sup>

## VIII. Climate change: the nexus with trafficking in persons

51. The Special Rapporteur is concerned that intensive agriculture and agribusinesses contribute negatively to climate change, reflecting the wider nexus between trafficking in persons, environmental degradation, loss of biodiversity and the climate crisis. Addressing trafficking for forced labour in agriculture has the potential to reverse this trend. Sustainable Development Goal 13 calls for urgent action to combat climate change and its impacts. Target 13.2 calls for integration of climate change measures into national policies, strategies and planning. However, there has been limited attention to anti-trafficking measures in responses to climate change, or vice versa.

52. The Special Rapporteur highlights that natural disasters and climate-induced migration or displacement may lead to the exploitation of small-scale agriculturalists under debt-bonded conditions. The negative impact of climate change and increased ecological precarity also affects those remaining in farming communities, which put them at risk of trafficking for forced labour, including in the form of debt bondage, particularly in South Asia.<sup>67</sup>

53. The Special Rapporteur highlights the particular impact of climate change and intensive agriculture on indigenous peoples, who may rely on natural resources for livelihoods or housing. Intensive agriculture has been linked to land grabbing, pollution, deforestation and overuse of scarce water, contributing to the forced displacement of indigenous peoples and exposing them to the risk of human trafficking for labour or sexual exploitation.<sup>68</sup> For indigenous women and girls, climate change may exacerbate particular vulnerability to discrimination, exclusion and exploitation, while creating new risks. Indigenous peoples may be subject to exploitative working conditions in agriculture, facing wage discrimination, limited social protection, weak contractual arrangements, and health and safety risks, along with forced labour situations.<sup>69</sup>

<sup>66</sup> Laura T. Murphy, *Laundering Cotton: How Xinjiang Cotton Is Obscured in International Supply Chains* (Sheffield Hallam University Helena Kennedy Centre, 2021); and Irene Pietropaoli, Owain Johnstone and Alex Balch, “Effectiveness of forced labour import bans”, Modern Slavery PEC Policy Brief 2021-3 (Policy and Evidence Centre, July 2021).

<sup>67</sup> Doreen Boyd and others (University of Nottingham Rights Lab, 2019), p. 18.

<sup>68</sup> “Indigenous peoples and climate change: multiple crises drive modern slavery” (Anti-Slavery International, 2022), <https://www.antislavery.org/indigenous-peoples-and-climate-change-multiple-crises-drive-modern-slavery>.

<sup>69</sup> ILO, *Indigenous Peoples and Climate Change: from Victims to Change Agents through Decent Work* (Geneva, International Labour Office, 2017), p. xi and 14.

54. The Special Rapporteur notes that migrant agricultural workers are one of the most vulnerable populations to the wildfires which have intensified owing to the impacts of climate change, with rising temperatures and increased droughts. Migrant workers in irregular situations are often excluded from government or humanitarian assistance in disaster responses, and many continue working at high risk of exploitation in hazardous working conditions and of trafficking for forced labour.<sup>70</sup>

55. The intersectional effects of climate change on the agricultural sector, on children, indigenous peoples, women and girls, and refugees, stateless persons and migrants, and persons with disabilities, must be addressed, if anti-trafficking measures are to be effective. They include ensuring that policy responses to disasters take into account gender roles in agricultural and food systems so that national, regional and global policies prevent and address gendered impacts of disasters on agriculture.<sup>71</sup> As highlighted by the Intergovernmental Panel on Climate Change, policies and institutions relating to land, including land tenure, create conditions in which rural people and agricultural workers become vulnerable to exploitation, also constraining adaptation to and mitigation of climate change.<sup>72</sup>

56. The links between strengthening women's land tenure, reducing vulnerability to exploitation and combating environmental and land degradation were recognized by the Conference of the Parties to the United Nations Convention to Combat Desertification in its Decision 26/COP14 on land tenure,<sup>73</sup> in which it invited the States parties "to legally recognize equal use and ownership rights of land for women and the enhancement of women's equal access to land and land tenure security" (para. 4). It also called upon States parties to promote equal tenure rights and access to land for all, in particular "vulnerable and marginal groups". The decision is important in recognizing the urgency of reform and in removing such structural barriers as inheritance or land tenure rights, discriminatory norms and gendered roles and stereotypes. Strengthened implementation is needed also of the voluntary guidelines on the responsible governance of tenure, forests and fisheries.<sup>74</sup>

## IX. Freedom of association: the role of trade unions and civil society

57. The Special Rapporteur is concerned that although the importance of freedom of association was recognized in the Right of Association (Agriculture) Convention, 1921 (No. 11), one of the earliest ILO conventions, freedom of association and collective bargaining remains particularly limited in the agriculture sector. The prevalence of informal and precarious work arrangements, including part-time, short-term or temporary contracts, on-call schedules, multilayered subcontracts or franchises and self-employment schemes,<sup>75</sup> and of migrant workers in irregular situations, further limits opportunities to form unions and to engage in collective bargaining. Concerns in relation to the imposition of restrictions on civil society were recently highlighted in response to the designation by the Government of Israel of the Union of Agricultural Work Committees as a "terrorist organization".<sup>76</sup>

<sup>70</sup> Environmental Justice Foundation, "You will see who gets the lifeboats: injustice on the frontlines of the climate crisis in the United States" (2021), pp. 7–8.

<sup>71</sup> FAO, *The Impact of Disasters and Crises on Agriculture and Food Security* (Rome, 2021), p. 19, <https://www.fao.org/3/cb3673en/cb3673en.pdf>; and [A/73/164](#), para. 37.

<sup>72</sup> Intergovernmental Panel on Climate Change, *Climate Change and Land: an IPCC special report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security and Greenhouse Gas Fluxes in Terrestrial Ecosystems*, P.R. Shukla, and others, Eds. (2019), p. 678.

<sup>73</sup> See <https://www.unccd.int/sites/default/files/sessions/documents/2019-11/26-cop14.pdf>.

<sup>74</sup> FAO (Rome, 2012), <https://www.fao.org/3/i2801e/i2801e.pdf>.

<sup>75</sup> [A/71/385](#), para. 23.

<sup>76</sup> See letter 12/2021, available at <https://www.ohchr.org/sites/default/files/2022-01/LetterHRJosepBorrell.8.12.2021.pdf>; and letter 01/2022, available at <https://www.ohchr.org/sites/default/files/2022-02/UN-experts-letter-regarding-the-decision-of-the-Government-of-the-Netherlands-to-end-funding-for-the-UAWC.pdf>.



58. The Special Rapporteur highlights the obligation set out in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas which calls on States to encourage the establishment of organizations of peasants and other people working in rural areas, including unions, cooperatives or other organizations, and provide them with support to strengthen their position (art. 9 (3)). The Special Rapporteur reminds States of the positive obligation of partnership with non-governmental organizations, arising under the Trafficking in Persons Protocol and regional instruments, and of the critical importance of such partnerships in prevention and protection.<sup>77</sup>

## X. Conclusion and recommendations

### A. Conclusion

59. Risks of trafficking in the agricultural sector remain significant. Urgent action is required to ensure the protection of all workers, including temporary, seasonal and migrant workers and their families, and is essential to prevent trafficking in persons. It is critical that States apply the principle of non-discrimination and recognize that comprehensive prevention of trafficking requires ensuring just and favourable conditions of work and decent work for all workers. Combating trafficking in persons in agriculture will also contribute to reversing environmental degradation, loss of biodiversity and climate change, through reform of agricultural working methods and by ensuring land equality and security of tenure. The present moment is critical in recognizing the need for mandatory human rights and environmental due diligence, protection of workers' rights and gender equality to achieve the objective of combating trafficking in persons.

### B. Recommendations

60. **States should:**

(a) **Ensure universal ratification and implementation of relevant human rights and labour rights standards;**

(b) **Ensure respect for the principle of non-discrimination, and equal protection of the law for all agricultural workers, including women, minority groups and indigenous peoples, persons with disabilities, lesbian, gay, bisexual and trans persons and migrant workers, who may be particularly at risk of trafficking;**

(c) **Ensure just and favourable conditions of work for all agricultural workers without discrimination;**

(d) **Recalling general recommendation No. 38 (2020) of the Committee on the Elimination of Discrimination against Women, ensure that anti-trafficking legislation addresses the social and economic challenges faced by rural women and girls; provide gender-responsive training on prevention measures, protection and assistance for victims to the judiciary, police, border guards, other law enforcement officials and social workers, especially in rural areas and indigenous communities; and uphold extraterritorial obligations with respect to rural women, inter alia, by taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing upon or abusing the rights of rural women outside their territory;**

(e) **Recalling targets 8.7 and 16.2 of the Sustainable Development Goals, ensure effective implementation of the ILO Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182);**

<sup>77</sup> See also art. 35 of the Council of Europe Convention on Action against Trafficking in Human Beings; and Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, para. 81.



- (f) Strengthen measures to prevent trafficking of children in the agricultural sector through enhanced capacity of child protection systems, poverty eradication measures and expanded free access to education and vocational training, and by ensuring the participation of children in the design and implementation of prevention and protection measures;
- (g) Ensure universal access to health services for all workers and their families, irrespective of their migration or contractual status;
- (h) Strengthen the human and financial resources of labour inspectorates, and ensure their capacity to protect the rights of all agricultural workers, including agricultural workers in remote locations;
- (i) Strengthen identification and referral procedures for agricultural workers at risk of trafficking, including through deployment of multidisciplinary teams, to promptly identify and provide early unconditional assistance to victims and potential victims of trafficking in persons;
- (j) Ensure that legislation on labour standards and protection of workers applies to all workers, without discrimination or exceptions, irrespective of their migration status, contractual status or the temporality of their contracts;
- (k) Ensure that agricultural workers are provided with information on terms and conditions of work and protection services, in accessible formats and in a language they understand;
- (l) Ensure that a trauma-informed and gender-sensitive approach is adopted in all actions to combat trafficking in persons, including in identification and referral for protection of victims and persons at risk of trafficking, and in investigations of trafficking;
- (m) Strengthen legislation to regulate recruitment intermediaries in accordance with the ILO general principles and operational guidelines for fair recruitment and definition of recruitment fees and related cost;
- (n) Ensure that workers are provided with information about the working and living conditions prior to, or at the time of, the signature of the contract and prior to deployment at country of destination, and ensure that assistance, training and skills development are provided;
- (o) Recalling the recommendations of the Secretary-General in his report to the General Assembly of 27 December 2021,<sup>78</sup> make admission and stay processes more accessible to all migrant workers and their families;
- (p) Strengthen the capacity of trade unions, civil society organizations and human rights defenders to support agricultural workers, including through effective protection of rights to freedom of association and peaceful assembly and to collective organizing and collective bargaining, without discrimination;
- (q) Ensure effective access to social protection and universal health care for agricultural workers and their families;
- (r) Ensure access to education for workers' children, by making education facilities available in the rural areas where their parents work or by making the means available to travel to the nearest educational facility;
- (s) Ensure the rights of workers with disabilities are effectively protected and ensure non-discrimination, reasonable accommodation and disability inclusion in all labour anti-trafficking measures, including in the provision of information and assistance;

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<sup>78</sup> A/76/642, para. 61.

- (t) **Ensure effective access to compensation for agricultural workers who are victims of trafficking, including through provision of State compensation funds, free legal assistance without discrimination, and interpretation;**
- (u) **Ensure protection, including whistle-blower protections, for workers reporting exploitation and abuse to public authorities and law enforcement bodies, including of trafficking and forced labour;**
- (v) **Eliminate discriminatory stereotypes of vulnerability, risks of vulnerability and experiences of trafficking, to ensure that men and boys who are victims of trafficking or at risk of trafficking are provided with protection;**
- (w) **Combat discrimination and harmful stereotypes that limit access to assistance and protection of lesbian, gay, bisexual or trans persons and persons of diverse gender identities, owing to failures to identify them as victims of trafficking or as at risk of trafficking;**
- (x) **Eliminate visa regimes that tie workers to a specific employer or employment sector, and allow workers to freely change employers at no cost, ensuring also that visa fees are borne by employers;**
- (y) **Monitor seasonal worker visa regimes to ensure full compliance with labour and human rights laws, and ensure effective monitoring of employment and recruitment practices of employers benefiting from such visa schemes;**
- (z) **Ensure that immigration enforcement is separated from the protection of workers' rights, including through the establishment of firewalls between immigration enforcement, labour rights protection and all anti-trafficking measures, and through safe reporting procedures, ensuring implementation of the principle of non-punishment;**
- (aa) **Strengthen the capacity of embassies and consulates to provide assistance to migrant workers at risk of trafficking, and their families;**
- (bb) **Expand safe and regular migration routes for agricultural workers, including through the conclusion of bilateral labour migration agreements, respecting and ensuring the rights of migrant workers and their families;**
- (cc) **Ensure that effective, proportionate and dissuasive sanctions are imposed for crimes of trafficking;**
- (dd) **Strengthen the licensing and enforcement capacity of public authorities to effectively regulate recruitment agencies and intermediaries;**
- (ee) **Establish training programmes for prosecutors and judges on the subject of trafficking in persons for forced labour, paying attention to the particular context of agriculture and taking into account specific concerns related to discriminatory attitudes that have an impact on workers' access to justice;**
- (ff) **Provide for joint and several employer liability to ensure employers are ultimately accountable for violations committed by the recruitment intermediaries. Employers should be required to use recruitment intermediaries that are registered and certified by labour authorities and that disclose their entire recruitment supply chain;**
- (gg) **Strengthen measures to ensure accountability of employers and businesses engaged in trafficking in persons, including through civil and criminal liability, effective investigations and international cooperation, and effective, proportionate and dissuasive sanctions;**
- (hh) **Strengthen the capacity for investigation of technology-facilitated trafficking, including through international cooperation;**
- (ii) **Ensure effective access to remedies and to justice for victims of trafficking, through such litigation routes such as enabling class action lawsuits for workers, and consider adopting measures to reverse the evidential burden of proof in trafficking cases, while ensuring respect for the right to a fair trial and due process of law;**

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(jj) Recognize the agricultural sector as a high-risk sector and require compliance with mandatory human rights due diligence obligations regardless of the size of the company or employer, requiring disclosure of identified harmful impacts identified in respect of the rights of workers, risks of forced labour and trafficking, and environmental degradation, ensuring consultations with workers' representatives and affected communities and reporting on concrete and verifiable results achieved;

(kk) Ensure that data on trafficking in the agricultural sector are systematically collected, in compliance with international human rights standards on data protection and rights of privacy, to include data disaggregated by age, gender, disability, migration status, race and ethnicity, and other status;

(ll) Recalling article 17 of the United Nations Declaration on the Rights of Indigenous Peoples, and the particular risks of exploitation in agricultural work, ensure that indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law, and that States, in consultation and cooperation with indigenous peoples, take specific measures to protect indigenous children from economic exploitation, taking into account their special vulnerability and the importance of education for their empowerment;

(mm) Ensure that anti-trafficking measures (including in prevention, protection and redress) consider environmental conditions and climate impacts on agricultural livelihoods and economic security;

(nn) Ensure that preventative, adaptation and mitigation, legal and policy responses to climate change are developed, with the full and meaningful participation of affected individuals and communities, to address the impact of slow- and sudden-onset climate change events on trafficking in persons in the agricultural sector.