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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Commonwealth Human Rights Initiative, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 May 2021]

* Issued as received, in the language(s) of submission only.



Implementing the Non-Punishment Principle for Victims of Trafficking in the COVID-19 Pandemic

The Commonwealth Human Rights Initiative (CHRI) welcomes the first report of Ms. Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children, to be tabled during the 47th Regular Session of the UN Human Rights Council (UNHRC), addressing the importance of implementing the non-punishment principle to protect victims of human trafficking.

CHRI's recent report -- *Eradicating Modern Slavery: An assessment of Commonwealth governments' progress on achieving SDG Target 8.7*¹ -- outlines gaps in government responses to human trafficking and modern slavery. The COVID-19 pandemic and growing economic inequality threaten to further undermine efforts and undo the already too slow progress made to date. Member States must take proactive measures to protect victims of human trafficking, and those most vulnerable to trafficking.

THE NON-PUNISHMENT PRINCIPLE FOR VICTIMS OF HUMAN TRAFFICKING

The non-punishment principle is integral to providing full protection to victims of human trafficking, by recognising that victims of trafficking should not be held liable for criminal conduct that occurred as a result of their trafficking or during situations of exploitation. This provision should apply regardless of the ability or willingness of victims to cooperate with authorities,² and actions of law enforcement during trafficking investigations should not be taken at the expense of the victim's rights.³

Embodiment of this principle in both legislation and practice is lacking throughout the Commonwealth. Currently only 44 per cent of the 54 Commonwealth Member States have implemented the non-punishment principle in their legislative frameworks.⁴ Evidence shows that victims of trafficking have been treated as criminals for conduct of this kind in 33 per cent of Commonwealth countries between July 2017 and February 2020.⁵

The COVID-19 pandemic has further deterred the realisation of the non-punishment principle by derailing mechanisms to identify victims of human trafficking and properly analyse the links between their trafficking and alleged offences. We urge Member States to prioritise protections for victims, including implementing the non-punishment principle, and to incorporate these protections in COVID-19 response plans.

IMPLEMENTING THE NON-PUNISHMENT PRINCIPLE: IMPLICATIONS FOR MIGRANT WORKERS

Victims of trafficking must be granted immunity from punishment, prosecution, detention, and deportation, or such measures should be terminated once a situation is identified as a case of trafficking.⁶ Nonetheless, between July 2017 and February 2020, 39 per cent of

¹ CHRI and Walk Free 2020, *Eradicating Modern Slavery: An assessment of Commonwealth government's progress on achieving SDG Target 8.7*, available from: <https://www.humanrightsinitiative.org/publication/eradicating-modern-slavery>

² OHCHR, et. al. 2011, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, available from: https://ec.europa.eu/anti-trafficking/sites/default/files/un_commentary_eu_trafficking_directive_2011_1.pdf

³ Ibid.

⁴ CHRI and Walk Free 2020 (n.3)

⁵ Ibid.

⁶ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2013, *Policy and legislative recommendations towards the effective implementation of the*

Commonwealth governments detained or deported foreign victims of trafficking or forced labour on the basis of immigration violations.⁷

Early identification is crucial to the implementation of the non-punishment principle. States must ensure that public officials, such as police officers, border guards, labour inspectors, medical personnel, and personnel in detention centres for irregular migrants are trained to accurately identify victims of trafficking, so as not to punish victims for unlawful activities that are direct consequences of their having been trafficked.⁸ Victims in these facilities are often afraid to denounce traffickers due to threats, debt bondage, trauma, or lack of trust in the authorities and legal system.⁹

Strict border control measures in response to the pandemic should not additionally punish or burden victims of trafficking.¹⁰ Tightening of border controls during the pandemic has caused increased traffic for certain irregular migration routes,¹¹ heightening the risks of deportation, detention, and other forms of migration punishments. Restricting the movement of people to prevent the spread of COVID-19 must not encourage or enhance punitive measures against migrants who are also victims of trafficking, taking into consideration the non-punishment principle which guarantees their rights.

UPHOLDING THE NON-PUNISHMENT PRINCIPLE: IMPLICATIONS FOR CHILDREN

Children are particularly vulnerable to abuse and exploitation in times of crisis and scarcity.¹² International obligations and standards require that governments protect trafficked children from prosecution, detainment, and punishment arising from offences related to their trafficking. States must remain cognisant of how the COVID-19 pandemic and emergency responses to the pandemic affect child victims of trafficking, and ensure that the non-punishment principle is properly applied to the most vulnerable groups, including children.

Restrictions to curb the spread of COVID-19 have resulted in school closures for more than 168 million children,¹³ and, over a year into the pandemic, close to half of the world's students are still affected by partial or full school closures.¹⁴ School closures and a lack of interaction with teachers, social workers, and friends has deprived children of safe spaces in which their status as potential victims of trafficking can be identified -- a necessary step in the realisation of the non-punishment principle.¹⁵

non-punishment provision with regard to victims of trafficking, available from:
<https://www.osce.org/files/f/documents/6/6/101002.pdf>.

⁷ Commonwealth Human Rights Initiative and Walk Free 2020 (n.3).

⁸ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2013 (n.9).

⁹ Ibid.

¹⁰ UNODC 2020, Impact of COVID-19 Pandemic on Trafficking in Persons, available from:
https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf.

¹¹ Migration and Data Portal 2021, Migration Data Relevant for the COVID-19 Pandemic, available from: <https://migrationdataportal.org/themes/migration-data-relevant-covid-19-pandemic>.

¹² OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2013 (n.9).

¹³ UN Children's Emergency Fund 2021, COVID-19: Schools for more than 168 million children globally have been completely closed for almost a full year, says UNICEF, available from:
<https://www.unicef.org/press-releases/schools-more-168-million-children-globally-have-been-completely-closed>.

¹⁴ UNESCO 2020, Education: From disruption to recovery, accessed at:
<https://en.unesco.org/covid19/educationresponse>.

¹⁵ Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children 2020, COVID-19 Position Paper: The impact and consequences of the COVID-19 pandemic on trafficked and Exploited Persons, available from:
<https://www.ohchr.org/Documents/Issues/Trafficking/COVID-19-Impact-trafficking.pdf>.

The pandemic has driven households to rely on child labour in order to cope with economic and health precarity.¹⁶ CSOs from the Commonwealth 8.7 Network in Cameroon, Nigeria, and Ghana have all noted an increase in street children and children involved in criminal activity since the beginning of the pandemic. The combination of school closures and increasing poverty has driven more children to the streets, heightening their vulnerability to trafficking.¹⁷

Despite the disproportionate vulnerability of children, only 56 per cent of Commonwealth States have specialised child-friendly services, such as separate children's shelters, to effectively support victims of child trafficking.¹⁸ As the risks of child trafficking increase, States must provide adequate support services and legal frameworks to protect victims.

The non-punishment principle must be upheld for child trafficking victims by ensuring law enforcement and other authorities recognise that children cannot consent to being trafficked, or to any conduct which occurs as a result of this exploitation.¹⁹ Children must not be improperly probed about their consent to exploitation, and information gathered must not be used for purposes of establishing their criminal liability.

RECOMMENDATIONS

CHRI urges the UNHRC and the Special Rapporteur to call on Member States to:

1. Implement the non-punishment principle by providing protection to victims of human trafficking from punishments, whether civil, criminal, or administrative, for offences occurring as a result of their being trafficked, including immigration violations.
2. Remove barriers to victim participation in the criminal justice system by strengthening protection mechanisms, including the adoption of non-prosecution provisions to ensure that victims of human trafficking are not punished for conduct that occurred as a result of their trafficking.
3. Strengthen efforts to defend children against heightened risks of exploitation, abuse, neglect, and trafficking caused by the COVID-19 pandemic.
4. Ensure that identification, support, and rehabilitative services for survivors of human trafficking are accessible, adequately resourced, and available to all.

¹⁶ UN Children's Emergency Fund and the ILO 2020, COVID-19 and Child Labour: A time of crisis, a time to act, available from: <https://data.unicef.org/resources/covid-19-and-child-labour-a-time-of-crisis-a-time-to-act/>.

¹⁷ UNODC 2020 (n.15).

¹⁸ CHRI and Walk Free 2020 (n.3).

¹⁹ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings 2013 (n.9).