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

Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*

Summary

The present report is submitted in accordance with Human Rights Council resolution 17/1.

In the report, the Special Rapporteur provides an overview of her activities during the period under review, from 1 March 2011 to 29 February 2012.

The report comprises a thematic analysis of a human rights-based approach to the administration of criminal justice in cases of trafficking in persons. The Special Rapporteur outlines the international legal framework and reviews key components, including the criminalization of trafficking offences, the non-criminalization of trafficked persons, the provision of protection and support for victim witnesses, the exercise of due diligence in the investigation and prosecution of cases, respect for the rights of suspects, the imposition of proportionate sanctions and penalties, efforts to address corruption and to seize assets, and international cooperation. Drawing on State responses to her questionnaire, she provides an overview of trends in State practice, highlighting emerging good practices and common challenges.

The report contains the Special Rapporteur's conclusions and recommendations.

* Late submission.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 17/1. It briefly outlines the activities of the Special Rapporteur on trafficking in persons, especially women and children, from 1 July 2011 to 29 February 2012, and contains a thematic analysis of the integration of a human rights-based approach in the administration of criminal justice in cases of trafficking in persons.

II. Activities carried out by the Special Rapporteur

2. With regard to the activities carried out from 1 March to 31 July 2011, the Special Rapporteur refers to her most recent report submitted to the General Assembly (A/66/283). Her activities from 1 August 2011 to 29 February 2012 are briefly outlined below.

A. Participation in conferences and consultations

3. On 4 July 2011, the Special Rapporteur convened an expert meeting on the theme, "Prosecution of trafficking in persons cases: integrating a human rights-based approach in the administration of criminal justice" in Geneva. Fifteen experts, mostly from prosecution and law enforcement backgrounds, participated in the one-day meeting to discuss progress, challenges and lessons learned in prosecuting trafficking in persons cases while ensuring respect for the human rights of trafficked persons. The outcome of the consultation is contained in an addendum to the present report (A/HRC/20/18/Add.3).

4. From 5 to 7 October 2011 the Special Rapporteur participated in the Human Dimension Implementation Meeting organized by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE), to discuss the OSCE Action Plan to Combat Trafficking in Human Beings in Warsaw. She also opened a panel discussion on the theme, "Enhancing child protection and preventing child trafficking".

5. From 10 to 12 October 2011, the Special Rapporteur participated in the fourth session of the Open-ended Interim Working Group on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, held in Vienna. The Special Rapporteur delivered a keynote speech on the importance of the identification of trafficked persons. By participating in the activities of the Working Group, she was able to increase her engagement with Member States and interact directly with the United Nations Office on Drugs and Crime (UNODC) and the Global Initiative to Fight Human Trafficking.

6. From 12 to 14 December 2011, the Special Rapporteur participated in the launch of the Arabic version of the Recommended Principles and Guidelines on Human Rights and Human Trafficking.¹

7. On 17 and 18 January 2012, the Special Rapporteur participated in the dialogue between special procedures mandate holders and the African Commission on Human and

¹ E/2002/68/Add.1.

Peoples' Rights, organized by OHCHR in cooperation with the African Commission, in Addis Ababa.

8. On 2 and 3 February 2012, the Special Rapporteur participated in the Informal Network of European National Rapporteurs and Equivalent Mechanisms, organized by the European Commission and the European Union Anti-Trafficking Coordinator.

B. Country visits

9. The Special Rapporteur visited Thailand from 8 to 19 August 2011, and Australia from 17 to 30 November 2011, at the invitation of the respective Government (see A/HRC/20/18/Add.1 and Add.2).

10. The Special Rapporteur also visited the United Arab Emirates from 11 to 17 April 2012, at the invitation of Government, and plans to visit Gabon in May 2012. The Special Rapporteur thanks all Governments for their cooperation with her in the planning and conduct of these missions.

III. Integration of a human rights-based approach in the prosecution of cases of human trafficking

11. International law requires States to prosecute trafficking and related offences.² The Special Rapporteur notes, however, that the prosecution of anti-trafficking responses is a broad category that includes not only the investigation and adjudication of trafficking cases but also encompasses a number of related spheres of activity, including the applicable legal framework, international legal cooperation and asset confiscation. Prosecution should therefore be seen as only a part of a strategy of criminalization.

12. For any effective criminalization strategy, the Special Rapporteur notes the need for a rights-based approach to trafficking.³ Such an approach has been widely endorsed by the international community, including the General Assembly⁴ and Human Rights Council.⁵ The commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking explains that a human rights-based approach is a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. It affirms that such an approach requires analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of States' obligations under international human rights law. It seeks to both identify and redress the

² Most States have ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 5 of the Protocol requires the establishment of trafficking as a criminal offence. The duty to criminalize has also been outlined in various regional treaties, including the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, art. III; Council of Europe Convention on Action against Trafficking in Human Beings, art. 18; and Directive I 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

³ See A/HRC/10/16.

⁴ Such as the United Nations Global Plan of Action to Combat Trafficking in Persons.

⁵ For example, Human Rights Council resolution 11/3, paras. 1, 3 (*f*), 6, 7, 8, and General Assembly resolution 63/156, preamble and paras. 5 and 18.

discriminatory practices and unjust distributions of power that underlie trafficking, maintain impunity for traffickers and deny justice to victims of trafficking.⁶

13. The Special Rapporteur emphasizes that all aspects of national, regional and international responses to trafficking should be anchored in the rights and obligations established by international human rights law. A human rights-based approach identifies rights-holders and their entitlements (for example, trafficked persons, individuals at risk of being trafficked, or individuals accused or convicted of trafficking-related offences), and the corresponding duty-bearers (usually States) and their obligations. This approach strengthens the capacity of rights-holders to secure their rights and of duty-bearers to meet their obligations. Core principles and standards derived from international human rights law should guide all aspects of the response at all stages.

14. Over the past decade, many States have made important progress in the development of effective and rights-based criminal justice responses to trafficking that are consistent with these principles and standards. It is nevertheless important to acknowledge that both commitment and capacity vary widely, and many challenges to implementing a rights-based approach remain.

15. In the present report, the Special Rapporteur thus seeks to contribute to a better understanding of the criminal justice response to trafficking by exploring examples of good practices and analysing some of the challenges faced by States. The Special Rapporteur will draw on the responses of States to her questionnaire (annex I). She thanks the States that submitted responses to her questionnaire (annex II) for their involvement.

A. Criminalization of trafficking

16. The criminalization of human trafficking is an essential aspect of any programme to combat and prevent trafficking in persons. The obligation on States to criminalize trafficking is clear; it is contained in all specialist trafficking treaties⁷ and its importance has been repeatedly confirmed through international and regional policy instruments,⁸ including by the United Nations Global Plan of Action to Combat Trafficking in Persons.⁹

17. It is important to emphasize that the relevant legislation must be clear, enforceable and comprehensive to ensure effective protection of the victim. States must criminalize trafficking as it has been defined by international law.¹⁰ This means that criminalization must cover a range of end purposes, including forced and exploitative labour; it must recognize the possibility of women, men and children being victims of trafficking; and that the trafficking in children must be defined differently to trafficking in adults. A trafficking law that covers only one of these aspects would fall short of this standard.

18. In formulating the criminal offence of trafficking, States must not criminalize only those offences that have been committed intentionally;¹¹ they must also ensure that the

⁶ *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, OHCHR, New York and Geneva, 2010, pp. 49-50.

⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 5; Convention on Action against Trafficking in Human Beings, art. 18; and European Union Directive I 2011/36/EU, art. 12.

⁸ See, for example, E/2002/68/Add.1, principle 12, and General Assembly resolution 64/178, para. 4.

⁹ General Assembly resolution 64/293, annex, para. 43 (b).

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, art. 2.

¹¹ *Ibid.*, art. 5.1.

victim's consent does not alter the offender's criminal liability.¹² States are further required to criminalize related offences, such as attempted trafficking offences or complicity in their commission,¹³ and ensure that criminal (and civil) liability can be extended to legal as well as natural persons.¹⁴ This obligation is important in ensuring the legal accountability of corporations and businesses engaging in trafficking, such as labour contractors, adoption agencies and entertainment venues.

19. The information received by the Special Rapporteur indicated that a significant majority of States have criminalized trafficking in persons. As the Protocol to Prevent, Suppress and Punish Trafficking in Persons is not self-executing, States will need to take proactive action to ensure its implementation in domestic law. Some States already had laws that met the requirements of the Protocol: Finland, for example, has had long established laws on trafficking, and its legislation met the standard of the Protocol, even before the Convention came into force.¹⁵ In recent years, a number of other States, including Lesotho,¹⁶ Lebanon¹⁷ and Romania,¹⁸ have passed new anti-trafficking laws.

20. In Asia, Cambodia, Indonesia, Malaysia and Viet Nam¹⁹ have also enacted new laws on trafficking following a thorough review of relevant national legislation.²⁰ Thailand, despite not having ratified the Trafficking Protocol, defines exploitation in a manner very close to its language.²¹

21. The information received indicated that only a minority of States do not have laws criminalizing human trafficking. For example neither Estonia²² nor Panama²³ has an anti-trafficking law, although relevant cases have reportedly been prosecuted under other criminal offences. The Special Rapporteur is pleased to learn that, a bill and an amendment to the criminal code are respectively pending adoption.

22. The Special Rapporteur observes, however, that legislation is not an end in itself. Even in States with strong anti-trafficking measures, laws are sometimes not enforced or there is a lack of implementing regulations. Indeed, certain countries with strong legal

¹² Ibid., art. 3. See also the Convention on Action against Trafficking in Human Beings, art. 3 (b), and the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, art. I (3).

¹³ United Nations Convention against Transnational Organized Crime, art. 5; Protocol to Prevent, Suppress and Punish Trafficking in Persons, art. 5(2) Convention on Action against Trafficking in Human Beings, art. 21; SAARC Convention, art. 3; Directive I 2011/36/EU, art. 3.

¹⁴ United Nations Convention against Transnational Organized Crime, art. 9; Protocol to Prevent, Suppress and Punish Trafficking in Persons, art. 5, Convention on Action against Trafficking in Human Beings, art. 22; Directive I 2011/36/EU, art. 5. See also the United Nations Global Plan of Action to Combat Trafficking in Persons, para. 44.

¹⁵ See submission by Finland.

¹⁶ Anti-Trafficking in Persons Act of Lesotho.

¹⁷ Act No. 164/ 2011 on prosecuting the crime of trafficking in persons; see submission by Lebanon, p. 2.

¹⁸ Law No. 678/2011 on the prevention and fight against trafficking in human beings; see submission by Romania, p. 1.

¹⁹ Law on Preventing and Combating Trafficking in Persons of 29 March 2011; see submission by Viet Nam, p. 2.

²⁰ See Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region, ARTIP Project, available from www.artipproject.org/.

²¹ A/HRC/20/18/Add.2, para.18.

²² See submission by Estonia, p. 1.

²³ United States Department of State, Trafficking in Persons Report 2011 (available from www.state.gov/j/tip/rls/tiprpt/2011/), p. 289.

platforms are sometimes described as safe havens because they do not enforce their own laws.

B. Non-criminalization of trafficked persons

23. Trafficked persons are often arrested, detained, charged and even prosecuted for such unlawful activities as entering illegally, working illegally or engaging in prostitution. The vulnerability of trafficked persons to such treatment is often directly linked to their situation: their identity documents may be forged or have been taken away from them, and the exploitative activities in which they are or have been engaged, such as prostitution, soliciting or begging, may be illegal in the State of destination. Criminalization is also possible in countries of origin, where returned victims of trafficking may be penalized for unlawful or unauthorized departure.

24. In many cases, criminalization is tied to a failure of the State to identify the victim correctly; trafficked persons arrested, detained and charged not as victims of trafficking, but as smuggled or undocumented workers. The Special Rapporteur notes that efforts to identify trafficked persons as victims deserving of protections are often complicated by the problem of “imperfect” victims.²⁴ Some victims may have committed crimes, whether willingly or as a result of force, fraud or coercion, prior to becoming or in conjunction with becoming a trafficking victim, thereby making it hard to distinguish victims from perpetrators.

25. While trafficked persons are not entitled to wholesale immunity from crimes they commit, the Special Rapporteur observes that the increasingly recognized standard is that they should not be prosecuted for offences relating to their status as trafficking victims.²⁵ Indeed, criminalization and/or detention of victims of trafficking is incompatible with a rights-based approach to trafficking because it inevitably compounds the harm already experienced by trafficked persons and denies them the rights to which they are entitled.

26. There are further severe consequences of criminalizing victims. Victims who develop a criminal record may have difficulties in recovery and reintegration.²⁶ In addition, the criminalization of victims is counterproductive to prosecutions because it destroys trust, retraumatizes victims and reinforces what traffickers may have told victims about law enforcement authorities.

27. International bodies, including the Open-ended Interim Working Group on Trafficking in Persons, have confirmed non-prosecution of trafficked persons as the relevant international legal standard.²⁷ The Recommended Principles and Guidelines on Human Rights and Human Trafficking also provide that trafficked persons “are not to be prosecuted for violations of immigration laws or for the activities they are involved in as a

²⁴ Jayashri Srikantiah, “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law”, *Boston University Law Review*, vol. 87, 2007, p. 157.

²⁵ See *Recommended Principles and Guidelines: Commentary* (see footnote 6), pp. 131, 133; UNODC Toolkit to Combat Trafficking in Persons, Tool 6.1; Council of Europe Action against Trafficking in Human Beings, chap. IV, art. 26; and E/2002/68/Add.1.

²⁵ Submission by Sweden, p. 4.

²⁶ “NY State Senate passes legislation allowing survivors of sex trafficking to clear prostitution convictions”, Urban Justice Center, press release, 16 June 2010. Available from www.sexworkersproject.org/press/releases/swp-press-release-20100616.html.

²⁷ See CTOC/COP/WG.4/2009/2, para. 12.

direct consequence of their situation as trafficked persons”.²⁸ Both the Human Rights Council²⁹ and the General Assembly³⁰ have made similar recommendations, as have regional bodies and instruments.³¹

28. The Special Rapporteur observes that, while numerous States do not have a specific law designed to minimize the criminalization of trafficking victims, many note that, as a matter of policy, trafficking victims are not prosecuted for status-related crimes.³² The Special Rapporteur observes, however, that some States have passed specific legislation in this regard.³³ For example, a Moldovan law provides that trafficked persons who have committed unlawful acts as a direct result of being trafficked will not be prosecuted for such offences.³⁴ In the United States, New York State recently passed a law to allow trafficking victims with prostitution-related convictions to vacate their judgements.³⁵

29. Other laws provide more limited protection for trafficked persons. For example, in Azerbaijan, trafficked persons are exempt from liability only for deeds committed under coercion or intimidation while being trafficked.³⁶ In Jamaica, the law provides for immunity from prosecution if a victim of trafficking breaches immigration or prostitution laws.³⁷ In Slovakia, while criminal liability for victims is not explicitly excluded, being a victim of trafficking is considered to be a mitigating circumstance.³⁸ Lithuanian law currently provides that victims of trafficking not be punished for engaging in prostitution; draft amendments to the Penal Code exempt victims of trafficking from any criminal act committed as a direct consequence of their situation.³⁹

30. In other States, however, statutes criminalize activities associated with trafficking without proper safeguards to identify victims of trafficking. For example, in India, the Ministry of Home Affairs issued a memorandum in 2009 instructing law enforcement to focus on the aspects of the Trafficking Act that criminalize exploiters.⁴⁰ Reports nonetheless indicate that the Act, which criminalizes the act of solicitation for prostitution, continues to be used to detain and penalize prostitutes, including those who are victims of trafficking.⁴¹

²⁸ Guideline 5. See also principle 7.

²⁹ Human Rights Council resolution 11/3, para. 3.

³⁰ General Assembly resolution 63/156, para. 12.

³¹ Convention on Action against Trafficking in Human Beings, art. 26. See also the explanatory report thereto, paras. 272-274. Directive I 2011/36/EU, art. 8.

³² See submissions by Albania, p. 9, Peru, p. 5, and Australia, p. 10.

³³ In their submissions, Albania, Argentina, Azerbaijan, Cyprus, Croatia, Jamaica and the Republic of Moldova indicated that their anti-trafficking laws contained provisions that protect victims of trafficking from prosecution for status-related offences.

³⁴ Law No. 241-XVI on Preventing and Combating Trafficking in Human Beings, chap. V, art. 32.

³⁵ New York State Bill A7670/S4429 allowing sex trafficking survivors to clear prostitution convictions, signed into law on 15 August 2010.

³⁶ Submission by Azerbaijan, p. 6.

³⁷ Submission by Jamaica, p. 2.

³⁸ Submission by Slovakia, p. 5.

³⁹ Submission by Lithuania, p. 4.

⁴⁰ Available from <http://mha.nic.in/pdfs/Advisory-on-HTrafficking-150909.pdf>.

⁴¹ United States Department of State, Trafficking in Persons Report 2011 (see footnote 23), p. 190.

C. Identification of victims

31. Timely and efficient identification of victims is central to the criminalization of trafficking, as it affects the ability of law enforcement officials to prosecute traffickers effectively and is fundamental in terms of being able to provide trafficked persons with the necessary support services. The Special Rapporteur observes, however, that the issue of identification raises a number of complex pragmatic questions, in particular concerning how, where and by whom identification should be performed.

32. The Special Rapporteur is aware of the fact that each victim of trafficking has a unique story and experience, which makes it difficult to create categorical rules about identification of victims. Yet while there is no one clear formula for best identifying victims, a number of examples and already existing practices may provide guidance on the issue.

33. Indicators, including those developed by the International Labour Organization (ILO), the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) are increasingly being used as a tool to identify trafficked persons.⁴² The Special Rapporteur encourages law enforcement agencies, including police and immigration, to draw on existing indicators in the identification processes.⁴³

34. Police are often at the forefront when identifying victims, and thus play a critical role in this process. While they may be experienced in law enforcement in general, they may not have specific expertise in trafficking in persons; for this reason, the Special Rapporteur highlights the importance of ensuring that they are given appropriate training to identify victims of trafficking accurately and with sensitivity.

35. In response to Special Rapporteur's questionnaire on specific actions taken by Governments to facilitate quick and accurate identification of trafficking victims, numerous responses, in particular from Estonia, Finland, Georgia, Germany, Japan, Lithuania, Malta, the Netherlands, Romania, and Sweden, indicated that task force or agencies coordinating in country anti-trafficking work have organized specialized training sessions to enhance the capacity of front-line officers, especially the police, immigration, border guards and labour inspectors, to identify actual and potential trafficking victims and to make referrals to appropriate services. Most of the sessions were carried out in collaboration and/or with funding from international organizations, including IOM, ILO, UNODC, the European Union, the United States Agency for International Development, the Asia Regional Trafficking in Persons Project and the Swedish International Development Cooperation Agency. Some Governments have gone even further to develop national referral mechanisms, standard operating procedures or brochures, manuals, handbooks and/or other tool kits to build capacity and raise awareness to facilitate rapid and accurate identification of victims.⁴⁴

36. Jamaica, for example, through its National Task Force against Trafficking in Persons, and in collaboration with non-governmental organizations, has developed trafficking indicators, protocols and referral mechanisms for agencies involved in the identification, counselling and protective care of rescued or potential victims.⁴⁵ Bulgaria has a comprehensive list of indicators for identifying victims of trafficking as part of its

⁴² A/64/290, para. 37.

⁴³ Ibid., paras. 37- 41.

⁴⁴ For instance, Germany makes indicators for victim identification known by distributing brochures to the relevant target groups. Submission by Germany, p. 3.

⁴⁵ Submission by Jamaica, p. 4.

national referral mechanisms developed in cooperation with non-governmental organizations. Bulgaria also provides training on trafficking in human beings and victim identification to diplomats, consular and military attaches through the Diplomatic Institute at the Ministry of Foreign Affairs.⁴⁶ The National Anti-Human Trafficking Task Force in Sri Lanka is currently developing and implementing standard operating procedures that would assist in the accurate and timely identification of victims of trafficking, and establish a referral mechanism to provide assistance and protection.⁴⁷ Similarly, in April 2011, in the Republic of Moldova, the National Committee for Combating and Prevention of Trafficking in Persons approved the draft of an interdepartmental regulation on the identification of victims and potential victims of trafficking. The draft, which is awaiting final adoption and publication by the Ministry of Justice, will be an operational tool for organizations engaged in the national referral system and is aimed at streamlining and standardizing the identification process.⁴⁸

37. Community-based organizations and victim support agencies are also becoming increasingly important in the identification of victims of trafficking. For example, in Australia, non-governmental organizations accounted for 13 per cent of all referrals in the period 2009–2010.⁴⁹ In keeping with a human rights-based approach, the Special Rapporteur observes that victims identified by non-governmental organizations should only be referred to the police if they give their consent. Importantly, Government financial support for victim support agencies should not make such funding contingent on requiring them to pass on information about identified victims.

38. Other mechanisms include agreements and partnerships between Government and non-government agencies, including victim service providers, to ensure that victims identified by non-State actors have access to Government support services.⁵⁰

D. Support for victims of trafficking

39. There is growing recognition for the need to provide victims of human trafficking with support services, which, however, must be designed and delivered in a manner that is compatible with a human rights-based approach.

40. Some States have introduced reflection and recovery periods in order to provide immediate support and protection to victims not conditional on cooperation with criminal justice processes. During these periods, trafficking victims receive assistance, including shelter, health care and legal advice to enable them to make informed decisions about whether to participate in the criminal justice process. Such periods of reflection have the added advantage of giving investigators and prosecutors time to gather evidence.⁵¹

41. For example, Canada provides trafficking victims with a 180-day period of reflection and options for obtaining temporary residence permits, including for stays of up to three years.⁵² The Netherlands offers a period of reflection of three months that is not conditional on participation in the justice process and provides immigration remedies to foreign trafficking victims, including, in certain circumstances, options for permanent

⁴⁶ Submission by Bulgaria, pp. 6-7.

⁴⁷ Submission by Sri Lanka, pp. 4-5.

⁴⁸ Submission by the Republic of Moldova, p. 5.

⁴⁹ Submission by Australia, p. 10.

⁵⁰ For example, see submission by Albania, p. 8.

⁵¹ A/HRC/17/35, para. 27.

⁵² Submission by Canada, p. 6.

residence status.⁵³ In accordance with measure No. 7 of its Action Plan to Combat Human Trafficking (2006-2009), Norway affords victims a six-month period of reflection free of conditions, which includes access to assistance and services. Italy does not limit the time given to trafficking victims to recuperate and to decide whether to assist authorities. In addition, foreign child victims receive an automatic residence permit until the age of 18.⁵⁴

42. The Special Rapporteur notes that other States have linked the provision of assistance and protection to cooperation with national criminal justice agencies. For example, in Norway, in accordance with measure No. 5 of its Action Plan to Combat Human Trafficking, permanent residency permits are available for trafficking victims who face retribution or hardship in their country of origin as long as they give a statement to police outside of court and for those victims who testify in court. In some legal systems, the issue of conditional assistance is complicated by a legal requirement on victims to cooperate in an investigation or prosecution if that cooperation is deemed necessary. The Special Rapporteur notes that, in accordance with international law, support and protection should not be made conditional on the victim's capacity or willingness to cooperate in legal proceedings.⁵⁵

43. The Special Rapporteur is concerned, however, by practices where victims of trafficking are mandatorily detained in shelters. Although the Special Rapporteur recognizes that the motivation for this may be to protect victims, she notes that the routine detention of victims of trafficking violates, in some circumstances, the right to freedom of movement and, in most, if not all, circumstances, the prohibitions on unlawful deprivation of liberty and arbitrary detention.⁵⁶ International law absolutely prohibits any discriminatory detention of victims, including detention that is linked to the sex of the victim. The routine detention of women and of children in shelter facilities, for example, is clearly discriminatory and therefore unlawful.

44. In Thailand, concerns persist that children and women identified as victims of trafficking are automatically placed in Government-run shelters, pursued if they "escape" and, in some cases, forced to spend years awaiting processing. Such detention not only impedes the rights of victims but also discourages and diminishes the quality of victim cooperation with authorities. Above and beyond the infringement of victims' human rights, the Special Rapporteur observes that such an approach can serve as a disincentive for victims to report cases to authorities.⁵⁷

E. Cooperation between criminal justice and victim support agencies

45. Numerous international legal and policy instruments agree that any effective anti-trafficking effort must involve close collaboration between criminal justice agencies and victim support agencies, including non-governmental organizations.⁵⁸

⁵³ Submission by the Netherlands, p. 9.

⁵⁴ See United States Department of State Trafficking in Persons Report 2011 (see footnote 23), p. 61, and www.state.gov/documents/organization/164454.pdf.

⁵⁵ See, for example, E/2002/68/Add.1, guideline 6.1., Legislative Guide, Part 2, para. 62, and *Recommended Principles and Guidelines: Commentary* (see footnote 6), p. 14.

⁵⁶ International Covenant on Civil and Political Rights, arts 9 and 10.

⁵⁷ A/HRC/20/18/Add.4.

⁵⁸ See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 6 (3) and 9 (3); the Convention on Action against Trafficking in Human Beings, art. 35, the United

46. Working at the forefront and on the ground, victim support agencies will often be the first to come into contact with trafficked persons; they thus serve a fundamental function by referring victims to the appropriate authorities for assistance, helping to file complaints and reporting illegal activity to law enforcement. Moreover, in States where resources may be limited for anti-trafficking programmes, such agencies can provide valuable support by operating shelters, giving free legal assistance or offering medical or psychological care. Even where resources are abundant, the provision of assistance by victim support agencies remains invaluable, because victims may be more likely to trust a non-governmental organization than criminal justice agencies.

47. Partnerships may suffer, however, if there is a lack of trust between criminal justice agencies and victim support agencies, in particular if those supporting victims are not provided adequate funding, not trusted to participate in legal processes, or excluded from anti-trafficking efforts. Where such relationships are properly developed, however, the results can be very fruitful.

48. It should also be acknowledged, however, that there are limits to the services that victim support agencies may be able to provide. States remain responsible for ensuring the well-being of victims, and it is important that they are cognizant of the mandates, resources and capacity of non-governmental organizations and victim service providers to administer necessary assistance to victims.

49. The conclusion of memorandums of understanding laying out cooperation mechanisms and delineating roles and responsibilities between criminal justice agencies and victim service agencies has been one way to foster understanding and increase communication.⁵⁹ Various provinces in Thailand have adopted internal memorandums signed by Government officials, the Royal Thai Police and victim support agencies. The memorandums clarify the roles and responsibilities of each entity, elucidate working principles and definitions, and are intended to introduce systems to improve the working relationship between the parties.⁶⁰ In the Republic of Moldova, a memorandum of understanding was signed by the Ministry of Internal Affairs, the General Prosecutor's Office, the Ministry of Social Protection, IOM and a number of non-governmental organizations and service providers. As a result, the organizations and other service providers in the country offer an array of services for victims, including medical and legal assistance, case monitoring, special assistance for children and services to help with re-integration, such as vocational training, employment counselling, grants for business development and social welfare assistance.⁶¹

50. Even in the absence of formalized cooperation agreements, increased cooperation can yield important results. For example, although no formal cooperation mechanisms exist between non-governmental organizations and criminal justice agencies in Belarus, in recent years there has been an increase in practical cooperation between them in providing

Nations Global Plan of Action to Combat Trafficking in Persons, General Assembly resolution 63/156 and Human Rights Council resolution 11/3.

⁵⁹ See Task force against Trafficking in Human Beings, Model Memorandum of Understanding, available from www.ungift.org/doc/knowledgehub/resource-centre/CBSS_Model_Memorandum_of_Understanding.pdf.

⁶⁰ International Covenant on Civil and Political Rights, paras. 25-26.

⁶¹ Submission by the Republic of Moldova, p. 15.

assistance to trafficking victims.⁶² As a result, non-governmental anti-trafficking organizations have reported that communication with officials has improved and, in some instances, the relevant agencies have permitted specialists from the organizations to attend police interviews and closed court hearings upon victims' requests.⁶³ More recently it was reported that non-governmental organizations had assisted in the training of Government officials in victim identification.⁶⁴

51. In the Netherlands, the Co-ordination Centre on Human Trafficking, La Strada (CoMensha), is an independent organization that works with the national government by preparing reports to inform the recommendations and actions of the Dutch National Rapporteur on Trafficking in Human Beings. CoMensha also registers trafficking victims, makes referrals to partner organizations or authorities, maintains regional networks to coordinate shelter, legal services, medical care and other forms of assistance for victims and provides capacity building trainings to practitioners.⁶⁵

52. Government agencies and non-governmental organizations may collaborate in other innovative ways, as seen in the development of a new reporting mechanism in the Philippines. Recognizing that Filipinos are some of the most prolific users of short message service (SMS) technology in the world, a plan entitled "SOS SMS for Overseas Filipino Workers in Distress" was created in 2006. For Filipinos abroad, SOS SMS is an all-hours text-based ICT mechanism implemented in coordination with non-governmental organizations and Government agencies to enable trafficked persons to solicit help via any SMS-enabled telephone system. The programme allows for instantaneous and inexpensive reporting, and facilitates counselling, guidance and emergency assistance.⁶⁶

53. In India, non-governmental organizations play a significant role both in rescuing victims of trafficking and in providing them with assistance and reintegration services. A judgement made by the fifth Additional Metropolitan Session Judge Court in Hyderabad, Andhra Pradesh, involving a trafficked child illustrates how collaboration resulted in the conviction of two traffickers and support for the minor-victim. In this case, the victim was able to escape her traffickers and contact a non-governmental organization, Prajwala, based in Hyderabad. Prajwala filed a complaint on behalf of the victim, which led to a criminal investigation conducted jointly by police, the Forensics Department and the organization. The traffickers were arrested and the victim was given safe shelter. Prajwala provided psychological counselling and organized a mock trial, with the help of the Public Prosecutor, to prepare the victim to give testimony in court. The case was adjudicated in less than one year and the traffickers were sentenced to a prison term and fined.⁶⁷

⁶² "OSCE representative encourages Belarus to work closer with NGOs to combat human trafficking", Organization for Security and Cooperation in Europe, press release, 8 April 2008, available from www.osce.org/cthb/49611.

⁶³ United States Department of State, Trafficking in Persons Report 2010 (available from www.state.gov/j/tip/rls/tiprpt/2010/), p. 80.

⁶⁴ Submission by Belarus, pp. 5-9.

⁶⁵ Submission by the Netherlands, pp. 8-9.

⁶⁶ "OFW helpline featured at a migration fair in Brussels", ABS-CBN news, 3 December 2008, available from www.abs-cbnnews.com/pinoy-migration/12/03/08/ofw-helpline-featured-migration-fair-brussels.

⁶⁷ See UNODC, Compendium of Best Practices on Anti-Human Trafficking by Non-Governmental Organizations, 2008.

1. The role of victims of trafficking in investigations and prosecution

54. Victims of trafficking play a critical role in the criminal prosecution of traffickers and their accomplices. The Special Rapporteur is well aware that the complexity of the crime of trafficking and related evidentiary complications can make investigations and prosecutions difficult, if not impossible, without the cooperation and testimony of victims. It is, however, important to clarify that a human rights approach to trafficking does not preclude the active involvement of victims in the investigation and prosecution of their exploiters. Rather, such an approach confirms that States, through their national criminal justice agencies, should be working towards recognizing victims of trafficking as an essential resource who are provided with the protection and support they need to participate safely and effectively in criminal justice processes.

55. It should be recalled that these persons are first and foremost victims of trafficking who, by virtue of that status, are entitled to immediate protection and support. International law clearly states that all trafficked persons have a right to protection from further harm, a right to privacy, and a right to physical and psychological care and support. Trafficked persons also have a right to be informed of their legal options and given the time, space and help required to consider those options carefully. In some cases, this may require the regularization of the trafficked person's legal status to allow them access to services and to protect them from deportation.

2. Safety and privacy of victims

56. During trials, challenges persist when ensuring safety and privacy for victims, minimizing unnecessary delay and ensuring that victims receive appropriate treatment. In response to such concerns, prosecutors in the United States have prepared redacted court filings, devoted attention during interviews to avoid disclosing potentially identifying information about victims and made special arrangements, including with members of the media, to address privacy concerns in public court proceedings.⁶⁸ Certain South-east Asian countries, such as Viet Nam and Thailand, have provisions in their laws to protect the privacy of victim-witnesses; however, implementation remains a challenge, and more analysis is needed to assess whether certain protections, in particular provisions that allow children to be examined in court by social workers or psychologists rather than by attorneys, comply with minimum fair trial standards.⁶⁹

3. Corroborative evidence

57. Proactive investigations that seek to collect evidence to obviate or support victim testimony are another way for States to realize their due diligence obligation to prosecute trafficking without unduly burdening victims. The Special Rapporteur notes that alternative or corroborative evidence may be difficult to collect in trafficking cases because of limited resources and a lack of trained officials, particularly in States most affected by trafficking. The situation may also be compounded by the hidden nature of the crime and the lack of concrete records or indicators of criminal activity. It is important to acknowledge that substituting victim testimony with alternative evidence may not allow for full and effective

⁶⁸ Kevin Koliner, "Best Practices to Combat Human Trafficking: Human Trafficking in the United States", Harvard University, Kennedy School Webinar, 25 May 2011; see www.innovations.harvard.edu/cache/documents/17076/1707648.pdf.

⁶⁹ ASEAN Responses to Trafficking in Persons, April 2006 (available from www.artipproject.org/artip-tip-cjs/resources/specialised_publications/ASEAN%20Responses%20to%20TIP_2006.pdf), pp. 64, 70 and 80.

prosecution. Nevertheless, the added value of such evidence merits attention, not least because the discovery of additional or corroborative evidence may alleviate some of the pressure put on victims during the prosecution process.

58. The development of alternative evidence-gathering techniques has received some attention from States, particularly in recent years. In 2009, a memorandum issued by the Government of India (see also paragraph 30 above) stated that, in order to increase conviction rates, States should build cases based on documentary, forensic and material evidence and lessen the degree of reliance on victim-witness testimony. In the United States, at both the State and federal levels, experts have commented on the value of bolstering a victim's testimony with alternative forms of evidence through such methods as surveillance exercises, subpoenas of phone records, interviews of numerous witnesses and victims, public record searches, information received from confidential informants and warrants to search cars, homes and e-mail.⁶⁸ Similarly, reviewing potential sources of evidence, such as transportation receipts, phone records and social websites, has been reported as helpful in bolstering victim testimony.⁷⁰

59. Another good practice is where States have taken measures to provide victim-witnesses with important information about participation in the justice process and to address privacy and safety concerns during trials. In the United Kingdom of Great Britain and Northern Ireland, the Crown Prosecution Service has a policy of keeping victims informed about case developments, hearing dates, verdicts and sentences.⁷¹ In order to help agencies provide victim-witnesses with information in a language they understand, UNODC and the Global Initiative to Fight Human Trafficking (UN.GIFT) have developed a tool, "VITA", to identify the nationality and language of trafficked persons.⁷²

4. Success of specialized institutions

60. Given that the complexity of the trafficking crime requires specialization and expertise, a number of States have established specialized agencies or institutions on trafficking. Many national police forces have specialized trafficking units. Some of these units operate on the national level; in other countries, such as Cambodia, the Lao People's Democratic Republic and Myanmar, have decentralized the specialist response to the provincial level.⁷³

61. Success has been achieved in Nigeria through the creation of a national agency for the prohibition of traffic in persons and other related matters.⁷⁴ The agency's mandate is two-fold: law enforcement and providing victims with assistance. It recently reported that it had secured convictions against 111 individuals for trafficking violations and rehabilitated

⁷⁰ See Lauren Hersh, "Sex Trafficking Investigations and Prosecutions", in *Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims* (Jill Laurie Goodman and Dorchen A. Leidholdt, eds. 2011), available from www.nycourts.gov/ip/womeninthecourts/LMHT.pdf, pp. 264 - 265.

⁷¹ See CPS Policy for prosecuting cases of Human Trafficking at www.cps.gov.uk/consultations/consultation_on_human_trafficking.html#p13.

⁷² See UNODC and UN.GIFT, "Victim-Translation-Assistance, A Handbook for Law Enforcement Officers and Victim Service Providers", 2010. Available from www.unodc.org/documents/human-trafficking/UN.GIFT/Final_VITA_Booklet_Part_I.pdf.

⁷³ Willem Pretorius, "Law Enforcement Responses to Trafficking in Persons in South East Asia", available from http://www.artipproject.org/artip-project/documents/Paper_LE-Responses%20to%20TIP_22Oct08_fnl.pdf.

⁷⁴ Submission by Nigeria, p. 10.

more than 4,000 victims since it began its work in 2003.⁷⁵ The agency works with other federal agencies, civil society and international organizations to coordinate victim assistance and centralize information on anti-trafficking activities, and has helped to establish State-level anti-trafficking committees.⁷⁶

62. In Pakistan, the Federal Investigation Agency has set up specialized anti-trafficking units.⁷⁷ India has also developed anti-human trafficking units in a number of its police departments designed to investigate trafficking cases. While reports have indicated that many of the units lack resources, India has earmarked funding to establish new ones as part of its efforts to strengthen its national law enforcement response.⁷⁸

63. Another important issue is the extensive backlog of trafficking cases in the courts. The establishment of specialized courts could help to remedy this; for example, Argentina and Uruguay have created specialized courts to deal exclusively with trafficking cases.⁷⁹ More recently, the Chief Judge of Edo State in Nigeria granted approval to develop two special courts to try human trafficking cases.⁸⁰ The United States⁸¹ and Mexico⁸² have each made efforts to develop specialized units to prosecute cases of trafficking in persons.

64. Insufficient data and accompanying analysis on patterns of criminal activity continue to hinder efforts to investigate and prosecute trafficking cases. To address this problem, Peru has developed a database system for its national police force to record and manage trafficking cases, which can be used to generate statistical reports and qualitative intelligence information to enhance investigative capacity.⁸³ In Colombia, an operational anti-trafficking in persons centre coordinates and tracks investigations, prosecutions and victim assistance programmes.⁸⁴

5. Rights of the accused

65. The strength of criminal justice responses to trafficking are partly reflected by the incorporation of internationally accepted procedural guarantees for the accused. The provision of protection and support for victims must be balanced against respect for the rights of those accused of trafficking crimes. Failure to provide for the rights of the accused could compromise the integrity of proceedings and undermine trust in the justice process.

⁷⁵ Ucheekukwu Olisa, "Human Trafficking: NAPTIP secures conviction of 110 persons", *Nigerian Tribune*, 9 June 2011. Available from www.tribune.com.ng/index.php/news/23292-human-trafficking-naptip-secures-conviction-of-110-persons.

⁷⁶ Submission by Nigeria, pp. 10-11.

⁷⁷ See Pakistan National Action Plan for combating Human Trafficking, available from www.fia.gov.pk/HUMAN.htm.

⁷⁸ United States Department of State, *Trafficking in Persons Report 2010* (see footnote 63), India, p. 189.

⁷⁹ See submission by Argentina, p. 48, and A/HRC/17/35/Add.3, para. 49.

⁸⁰ See Clement Idoko, "FG reiterates commitment to combat human trafficking", *Nigerian Tribune*, 1 March 2011, available from www.tribune.com.ng/index.php/news/18216-fg-reiterates-commitment-to-combat-human-trafficking.

⁸¹ United States Department of Justice, "Department of justice announces launch of human trafficking enhanced enforcement initiative", press release, 1 February 2011, available from www.justice.gov/opa/pr/2011/February/11-ag-140.html.

⁸² Submission by Mexico, p. 15.

⁸³ Global Initiative to Fight Human Trafficking, *The Vienna Forum report: a way forward to combat human trafficking*, New York. Available from www.un.org/ga/president/62/ThematicDebates/humantrafficking/ebook.pdf.

⁸⁴ Submission by Colombia.

6. Punishments

66. International law places an obligation on States to impose effective and proportionate punishments for trafficking and related offences.⁸⁵ When considering the appropriate standard, it is important to recognize that punishments that are disproportionate to the harm caused will create distortions that can only hinder effective criminal justice responses. For example, inadequate penalties can fail to deter future crimes and to deliver justice to victims, and potentially impair the effectiveness of international cooperation procedures, such as extradition, which are triggered by a severity test linked to the gravity of sanctions. On the other hand, rigid or extremely severe punishments, such as mandatory minimum custodial terms or provisions for capital punishment, may not meet the required human rights and criminal justice standards.

67. The Special Rapporteur notes that the proportionality requirement may demand the imposition of more stringent penalties for aggravated offences. Egyptian law has codified aggravated circumstances to include involvement in an organized crime network or transnational activity; death threats, serious harm, torture or the use of weapons; instances where the perpetrator was related to the victim or responsible for the victim's care; the involvement of a public official; where the death of a victim, permanent disability or incurable disease occurred; or where the victim was a child, incapacitated or disabled.⁸⁶ Argentina has introduced certain aggravating circumstances in its law, including when the perpetrator is related to the victim; the crime is committed by more than three people; and the crime involved more than three victims or where certain recruitment methods were used if the crime involved a victim under the age of 13.⁸⁷

F. International cooperation

68. Given the transnational nature of human trafficking, acts may often take place across borders, creating jurisdictional issues. For this reason, a number of States have given their courts jurisdiction over the crime of trafficking even if the crime takes place in a foreign jurisdiction.⁸⁸ Others have legislated that if at least one of the acts of trafficking (for example, recruitment, accommodation or exploitation) is committed on national territory, prosecution may be pursued even if the act was carried out abroad.⁸⁹

69. The Special Rapporteur notes that international cooperation and collaboration in the investigation process is also important; for example, Malta grants investigators the legal authority to take all measures they would be entitled to take in a domestic case if so requested by a foreign judicial authority.⁹⁰ The Special Rapporteur also recalls the positive example noted at the expert meeting, where the collaboration of law enforcement authorities from Nigeria and other European destination countries regarding the trafficking of persons from Nigeria into the Netherlands and Europe led to the arrest of traffickers in Belgium, France, Germany, Italy, the Netherlands, Spain and the United Kingdom, as well

⁸⁵ Organized Crime Convention, art. 11. See also art. 2(9) (b), and the Convention on Action against Trafficking in Human Beings, art. 23.1.

⁸⁶ Law No. 64 on Combating Human Trafficking, art. 6.

⁸⁷ See submission by Argentina, p. 1, and A/HRC/17/35/Add.4, para. 14.

⁸⁸ See for example submissions by Greece, Lithuania, Madagascar, Slovenia, Sri Lanka and Sweden.

⁸⁹ See submissions by Brazil, Germany, Nigeria, the Republic of Moldova, Romania, Sri Lanka and Sweden.

⁹⁰ Submission by Malta, p. 2.

as in the United States and Nigeria.⁹¹ The Netherlands built on the experience by providing the Nigerian agency for the prohibition of traffic in persons (see paragraph 61 above) with training and technical assistance for detectives, prosecutors and border police.⁹² Another example of cross-border collaboration can be seen in Rwanda, whose national police Anti-trafficking unit has collaborated with police in Burundi to rescue victims. In addition, Rwanda has set up the Isange Centre to rehabilitate victims and has made efforts to train law enforcement officials, including by sending them abroad.⁹³

70. Extradition is another important legal mechanism for ensuring the effective prosecution of suspects, precluding the ability of traffickers to flee to a “safe haven” State.⁹⁴ The United Nations Convention against Transnational Organized Crime requires States parties to treat offences established in accordance with the Protocol as extraditable offences under domestic law, and to ensure that such offences are included as extraditable offences in current and future extradition treaties. A number of regional instruments, such as the Inter-American Convention on International Traffic in Minors, in its article 10, specifically identify trafficking as an extraditable offence. A number of States have explicitly provided that trafficking is an extraditable offence.⁹⁵

71. While extradition is instrumental in ensuring the efficient prosecution of suspected traffickers, thereby upholding the interests of both the victim and the State, the Special Rapporteur notes the importance of ensuring a rights-based approach to extradition, which would require consideration of the human rights implications of action at all stages of the extradition process. Such safeguards include an evidentiary test to protect individuals from being extradited on the basis of groundless allegations and/or from requests made in bad faith or to punish a person on account of their race, sex, religion, nationality, ethnic origin or political opinions.⁹⁶ The Special Rapporteur also emphasizes the fact that the right to a fair trial, as provided for in articles 9, 14, 15 and 16 of the International Covenant on Civil and Political Rights, must apply to all extradited persons. Similarly, the principle of non-refoulement prohibits the return of a person where she or he would suffer discrimination or where this would result in the extradited individual being subjected to torture or cruel, inhuman or degrading treatment or punishment.⁹⁷

G. Capacity-building

72. A corollary of the fact that States have a responsibility to investigate, prosecute and adjudicate trafficking crimes with due diligence is the development of criminal justice agencies and institutions equipped to handle trafficking and other crimes. Integrated training that promotes a rights-based approach and provide technical skills is of critical value in the fight against trafficking.⁹⁸

⁹¹ A/HRC/20/18/Add.3, para. 48.

⁹² Submission by the Netherlands, p. 4.

⁹³ United States Department of State, Trafficking in Persons Report 2011 (see footnote 23), Rwanda, p. 308.

⁹⁴ United Nations Convention against Corruption, art. 44.

⁹⁵ For example, see submission by Madagascar, p. 2.

⁹⁶ United Nations Convention against Transnational Organized Crime, art. 16, para. 14.

⁹⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, International Covenant on Civil and Political Rights, art. 13, and Universal Declaration of Human Rights, art. 14.

⁹⁸ See *Recommended Principles and Guidelines: Commentary* (see footnote 6), pp. 197-198.

73. The Special Rapporteur was pleased to learn from the responses received that a majority of States provided training programmes to raise awareness of officials in a wide range of Government agencies, including the judiciary, the police, the health sector and within specific ministries. These programmes are sometimes arranged by specialized officials within Governments, while at other times are supported by multilateral and bilateral partnerships, including with international organizations such as IOM and UNODC.⁹⁹

74. In addition to training, efforts to organize, empower and coordinate the activities of criminal justice officials and agencies are important in building the capacity of national responses. Lack of commitment or knowledge on the part of prosecutors and judges may result in poorly prepared legal arguments and briefs, improper application of the law, inappropriate sentencing, ineffective use of witnesses or evidence and insufficient attention to protection for victims. Lastly, lack of cooperation between police and prosecutors diminishes the effectiveness of the criminal justice response.

75. The Special Rapporteur is pleased to learn that States have begun to create specialized law enforcement, prosecutorial and adjudicative units to combat trafficking. Funding and resource allocation remain important issues.¹⁰⁰

76. The Special Rapporteur notes the important role that non-governmental organizations can play in training officials. For example, in Australia, they are invited to give presentations to investigators.¹⁰¹ In Nicaragua, Casa Alianza Nicaragua has organized workshops for both journalists and police to raise awareness about trafficking and to stress the need to protect victims and to improve investigations.¹⁰²

77. Based on the responses administered, the Special Rapporteur notes that foreign Government donors and also international organizations make important contributions through the design, implementation and evaluation of law enforcement development programmes.

H. Asset seizure

78. By undermining the financial gain of traffickers, asset recovery plays an important role in the criminal justice response to trafficking. The financial information obtained in asset recovery can also serve as corroborative evidence and, by strengthening the prosecution, protect the rights of present and potential victims of trafficking.

79. Articles 12 to 14 of the United Nations Convention against Transnational Organized Crime requires States parties to have sufficient powers to facilitate the seizure of assets, and sets out the requirements and procedures for it. Article 23, paragraph 3 of the Council of Europe Convention on Action against Trafficking in Human Beings states that each party to the Convention should adopt “such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences”.

⁹⁹ For example, in Belarus, Nigeria, Peru, Sri Lanka, the Syrian Arab Republic, Viet Nam and Zambia.

¹⁰⁰ For example, Guatemala has created a small prosecutorial unit for trafficking offences, although it has only three staff members and lacks sufficient funding; see United States Department of State, *Trafficking in Persons Report 2011* (footnote 23), Guatemala, p. 176.

¹⁰¹ Submission by Australia, p. 17.

¹⁰² See www.covenanthouse.org/news/view/nicaragua-fights-human-trafficking.

80. The Special Rapporteur notes that linking asset seizure to victim support is in line with a rights-based approach to human trafficking. Recovered assets can be a key source of funds when providing victims with compensation.¹⁰³ The Special Rapporteur reminds States that trafficking victims have a right to compensation for the harm committed against them.¹⁰⁴ Indeed, article 6, paragraph 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children provides that States parties legal systems must take measures that offer the possibility of compensation to victims.¹⁰⁵

81. In some States, laws explicitly provide that restitution and compensation be made to victims of trafficking out of the proceeds of assets seizure. In Cambodia, for example, articles 46 and 47 of the Law on Suppression of Human Trafficking and Sexual Exploitation afford victims “preference over property confiscated by the State” for the payment of damages. Other schemes have been established to allow the direct transfer of funds to victims; for example, in Nigeria, the Victim of Trafficking Trust Fund manages the proceeds of confiscated assets for the welfare and rehabilitation of the victim.¹⁰⁶ In 2008, in England and Wales (United Kingdom of Great Britain and Northern Ireland), in the matter of *AT v Dulghieru*, the High Court awarded compensation of £611,000 to four trafficking victims of the £786,000 that had been confiscated.¹⁰⁷

82. A number of States have established funds for victims in which seized assets are deposited; for example, in Egypt, article 27 of the Anti-Trafficking Law provides for the creation of a fund to assist victims of human trafficking sourced from proceeds of confiscated assets, fines and donations from foreign or national entities. Similarly, in Lesotho, the Anti-Trafficking Act 2011 provides for assets to be forfeited and confiscated, to be deposited in a trust fund for victims of trafficking.

83. The Special Rapporteur notes that there are other instances where, despite laws allowing for the seizure of assets, the proceeds of funds confiscated have reportedly failed to be distributed to victims. For example, in Bosnia and Herzegovina, which has a comprehensive anti-trafficking law,¹⁰⁸ in a landmark case in 2009, a trafficking ringleader was sentenced to 12 years in prison, fined \$14,286, and over \$204,600 in assets were seized. There is, however, no evidence that these funds went to the victims.¹⁰⁹ Similarly, in the Czech Republic, following the successful prosecution of eight gang members for trafficking, the assets of the accused, estimated at more than \$1.5 million, were seized. Again, no evidence was found that the funds had been distributed to the victims.¹¹⁰

¹⁰³ See UNODC, Model Law against Trafficking in Persons, available from www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf, and E/2002/68/Add.1, principle 16, guideline 4.4.

¹⁰⁴ See A/HRC/17/35, paras. 28-39.

¹⁰⁵ See also the Council of Europe Convention on Action against Trafficking in Human Beings.

¹⁰⁶ See Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, sects. 35-38; and the submission by Nigeria, p. 7.

¹⁰⁷ *AT, NT, ML, AK v Gavril and Tamara Dulghieru*, 2009, EWHC 225 (QB).

¹⁰⁸ See Criminal Code of Bosnia and Herzegovina, art. 111, para. 2, and submission by Bosnia and Herzegovina, p. 7.

¹⁰⁹ United States Department of State, Trafficking in Persons Report 2010 (see footnote 66), Bosnia and Herzegovina.

¹¹⁰ Tom Jones, “Police arrest gang for pimping and human trafficking”, Czech Position, 29 July 2011. Available from www.ceskapozice.cz/en/news/society/police-arrest-gang-pimping-and-human-trafficking.

84. Other laws allow for the confiscation of assets from convicted trafficking offenders but do not directly support victims. For example, in Armenia, although article 266 of the Criminal Code provides for the confiscation of assets from convicted trafficking offenders, it does not specify where those funds would go. Thus, in 2010, although the Government provided partial funding of \$17,000 for a shelter for 21 trafficking victims, it was not clear whether the funding was derived from the proceeds of asset confiscation.

85. A better alternative would be for confiscated assets to be allocated specifically to programmes supporting victims of trafficking; for example, the Government of Australia has committed funds allocated under the Proceeds of Crime Act from confiscated assets of criminals to key non-governmental anti-trafficking organizations.¹¹¹

86. Lastly, the Special Rapporteur notes that, since traffickers often operate on an international basis, their assets may be located in another State than the one where trafficking is organized. She therefore urges States to cooperate to develop and enforce laws on international asset recovery.

IV. Conclusions and recommendations

87. **A review of national criminal justice responses to trafficking reveals that, while States have begun to incorporate and implement elements and standards found in international human rights law, much remains to be done. Low prosecution and conviction rates around the world confirm that even those States with advanced criminal justice systems and sophisticated anti-trafficking strategies must look to improve their performance. Of particular concern is the need to ensure that the rights of all persons, most particularly but not exclusively victims, are respected.**

A. Proper identification of trafficked persons

88. **States must take proactive steps to build the capacity of front-line officials from all agencies that might encounter trafficking crimes or victims for quick and accurate identification of trafficking victims. Governments should establish national referral mechanisms for identifying and assisting victims, in close cooperation with all actors, especially victim service providers and non-governmental organizations. States, as part of efforts and cooperation at the subregional level, should consider the adoption of transnational referral mechanisms for trafficked persons. This would encourage law enforcement cooperation in investigation, arrest and prosecution.**

B. Ensuring the non-criminalization of trafficked persons

89. **Laws and policies that do not contain adequate safeguards to prevent the prosecution of trafficking victims for status-related offences must be revised, in particular by taking steps to ensure that they are not prosecuted for offences related to their status as trafficked persons, including sex crimes, begging, working or immigration violations. In addition, it is important that States provide post-conviction remedies, such as the possibility to quash judgements for status-related offences.**

¹¹¹ A/HRC/20/18/Add.1.

C. Criminalization of crimes relating to trafficking in persons

90. In addition to criminalizing trafficking in persons in conformity with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, States must ensure the criminalization of other crimes relating to trafficking in persons, including – but not limited to – corruption, money-laundering, debt bondage, obstruction of justice and participation in organized criminal groups.

D. Facilitating the safe and productive involvement of victims in prosecution

91. Victims of trafficking are legally entitled to take an active and meaningful role in efforts to convict their exploiters, and should be supported to that end. This would therefore require the adoption of reflection and recovery periods accompanied by the provision of assistance not conditional on cooperation with the authorities.

92. States should protect the safety and well-being of victim-witnesses, in particular in view of the fact that victims may be subject to threats or reprisal from traffickers.

93. The Special Rapporteur urges States to extend protection and assistance to victim-witnesses in cases of trafficking in person pretrial, during trials and post-trial. Experience has shown that victim-witnesses are most vulnerable post-trial, when they usually no longer benefit from witness protection programmes.

94. In addition, judges and lawyers involved in trafficking cases should be trained to recognize the sensitive nature of trafficking cases, and be provided with tools to ensure effective and respectful trials, especially to protect victims of sex trafficking and to speed up the access of victims to justice.

E. Promoting cooperation between criminal justice and victim support agencies

95. The role of victim support agencies in identifying trafficking cases and victims, providing information on trends in human trafficking and delivering services and support should be recognized and facilitated by States. Efforts should be made to build confidence and to encourage greater coordinated collaboration. The conclusion of bilateral agreements and memorandums of understanding on key areas of delivery will aid communication and build trust. In partnering victim support agencies or other civil society organizations, States must not delegate the responsibility to provide for the well-being of victims and must remain vigilant to ensure respect for human rights.

F. Improving investigations and prosecutions

96. Training is an important component of anti-trafficking strategies, and the development of specialized anti-trafficking units may assist States to strengthen capacity to investigate and prosecute trafficking. Such units must be bound by clear mandates to address anti-trafficking matters, and be adequately equipped and funded.

97. The Special Rapporteur urges States to engage in proactive investigation, employing new technologies and methods that focus on gathering evidence to prove

culpability for trafficking crimes without heavy or sole reliance on the testimony of victims. Trafficked persons should not be used as instruments for criminal investigations. In all cases, it is imperative that States integrate gender and aged-based perspectives into investigations and prosecution.

G. Appropriate penalties

98. Punishment for trafficking in persons must be effective, appropriate and dissuasive. Again, it must be proportionate to the offence committed, and proceeds from the crime should be confiscated.

99. States are urged to disaggregate data on prosecution for trafficking offences by sex, age, year, nationality of convicted persons, form of exploitation, sanctions/penalties and terms of imprisonment, as well as other indicators that would assist in gathering intelligence on understanding the phenomenon of trafficking in persons.

H. Preventing unintended negative consequences

100. As States work to adopt a rights-based approach, they should be cognizant of the fact that certain laws and policies may have unintended negative consequences for victims of trafficking. Laws or policies that infringe the right to movement for victims or that impose mandatory detention or rehabilitation in the name of protection are in violation of human rights laws and may deny victims the right to a proper remedy. Care should be taken to enact clear and enforceable legal frameworks that comply with international standards and principles. Such frameworks must take practical constraints into account and be tailored to the State's legal system in order to provide protection and assistance to trafficked persons during the criminal justice process.

101. The Special Rapporteur notes that political pressure to prosecute traffickers may lead to over-enforcement, shortcuts and unacceptable trade-offs. It is important that efforts by States to end impunity for traffickers should include appropriate safeguards in the criminal justice responses that protect victims, witnesses and suspects, and integrate gender and aged-based perspectives into investigations and prosecution.

102. Lastly, the Special Rapporteur urges States to intensify efforts to strengthen the technical capacity of criminal justice administrators, in particular, that of judges, prosecutors and the police. A comprehensive curriculum on trafficking in persons, including online courses, should be mainstreamed in ongoing education training programmes.

Annex I

[English and French only]

Questionnaire on trafficking in persons, especially women and children

Criminal justice responses to trafficking in persons

Criminalization of trafficking in persons

1. Has your government adopted legislation to proscribe a criminal offense of trafficking in persons? If so, what definition is used for trafficking in persons in such legislation?
2. Is that definition different if the victim is a child? If so, please describe that difference.
3. How are key terms in the law defined, such as “exploitation,” “means,” “forced labor,” and “child”?
4. Is consent an element in the definition of the criminal offence of trafficking? If so, please describe the type of consent that will vitiate the commission of the crime of trafficking in persons.
5. Does the trafficking law apply extraterritorially *i.e.*, does the law apply if the crime takes place in a foreign jurisdiction? If so, describe under what circumstances the law can be applied.
6. What penalties or sanctions exist to punish those found guilty of trafficking in persons crimes?
7. How many cases have been brought or tried under such legislation in the last five years? If possible, please provide separate numbers for arrests, prosecutions and convictions, and any other useful information on these cases (*e.g.*, the type of cases; the disposition, any penalties imposed; whether and how trafficking victims participated in the proceedings).
8. What has your government done to facilitate the quick and accurate identification of trafficking victims? (*e.g.*, indicators, training on identification, cooperation with victim service providers and non-governmental organizations (NGOs), and referral mechanisms).
9. Are there any laws or policies in place to ensure that trafficking victims are not punished for status-related offences (such as illegal migration, illegal work, etc.), or that allow victims who have been prosecuted for status-related offences to quash their conviction or vacate a judgment?

Investigation and prosecution

10. What protections exist under your domestic laws for trafficking victims who serve as witnesses during criminal investigations and trials? Please provide specific examples to illustrate the type of protections provided and how these protections have functioned in practice.
11. At what stage of legal proceedings are protection and assistance available to victim-witnesses in trafficking in persons cases (pre-trial, during trial and/or post trial)?

12. Are different or additional protections available for child or women victim-witnesses who participate in trafficking in persons cases? If so, please describe these protections.

13. Please describe efforts to gather alternative or corroborative evidence (*i.e.*, evidence other than victim testimony) in cases of trafficking in persons and any success or challenges that have arisen.

Asset confiscation

14. If your government has domestic legislation to allow for seizing and confiscating assets derived from or used in criminal activity, how has such legislation been used to seize and confiscate the assets of traffickers? How much has been confiscated over the last five years?

15. Are any mechanisms in place to ensure that confiscated assets can be used for the benefit of victims of trafficking? If so, how do such mechanisms function? Please provide specific examples.

Capacity-building efforts and specialized mechanisms

16. What efforts have been made by your government to strengthen the technical capacity of criminal justice officials who are or may be involved in the investigation and prosecution of trafficking in persons cases? If training has been provided, please provide details.

17. Have specialized investigation or prosecution units or specialized courts been established in your country? If so, please describe the mandate and structure of such units and courts, and the types of cases investigated, prosecuted or heard.

National and international cooperation

18. Please describe any collaboration (formal or informal) that takes place between government agencies and victim service agencies or NGOs to facilitate the prosecution of cases and the involvement of victims as witnesses. Please also describe any challenges to such cooperation.

19. To what extent have your criminal justice agencies undertaken international cooperation with respect to the prosecution of trafficking in persons cases? Please provide specific examples of international cooperation that your government has undertaken in the last five years that have facilitated the prosecution of trafficking in persons cases in your country (or of trafficking in persons prosecutions conducted in another country). Please also describe any formal agreements that may have been concluded to facilitate such cooperation.

20. Is your national anti-trafficking response supported by international organizations or bilateral development agencies? If so, please describe whether - and if so how - this support has strengthened your criminal justice response to trafficking in persons.

Other matters

21. Please attach copies of any policies, plans of action, legislation or jurisprudence and any evaluations, reviews or assessments focused on the prosecution of trafficking cases in your country. Please also submit any further comments or information that you may deem relevant.

Annex II

[English only]

Countries that replied to the questionnaire

Albania, Algeria, Argentina, Australia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Colombia, Croatia, Cuba,* Cyprus, Djibouti, Egypt, El Salvador, Estonia, Finland, Georgia, Germany, Greece, Guatemala,* Jamaica, Japan,* Kuwait,* Latvia, Lebanon, Liechtenstein,* Lithuania, Madagascar, Malta,* Mauritius, Mexico*, Monaco, Morocco, Mozambique, Namibia,* Netherlands, Nepal,* Nigeria, Norway, Paraguay, Peru,* Republic of Moldova, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan,* Togo,* Ukraine, United Arab Emirates, United States of America,* Viet Nam, Zambia

* Questionnaires received after deadline.