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## Human Rights Council

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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

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

### **Report on the seminar: “A human rights approach to combating human trafficking: challenges and opportunities. Implementing the Recommended Principles and Guidelines on Human Rights and Human Trafficking” (Geneva, 27 and 28 May 2010)\***

Addendum

### **Views on the Recommended Principles and Guidelines on Human Rights and Human Trafficking**

#### *Summary*

The present report provides a compilation of the views of stakeholders on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, requested by the Human Rights Council resolution 11/3 on trafficking in persons, especially women and children.

The compilation is submitted in the context of the seminar aimed at identifying opportunities and challenges in the development of rights-based responses to trafficking in persons with a view to acknowledging emerging good practice and further promoting the practical application of the Principles and Guidelines, as per resolution 11/3. The Seminar was held in Geneva on 27 and 28 May 2010.

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\* Late submission.

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 11/3 on trafficking in persons, especially women and children, in which the Council requests the Office of the High Commissioner to organize a “two-day seminar aimed at identifying opportunities and challenges in the development of rights-based responses to trafficking in persons with a view to acknowledging emerging good practice and further promoting the practical application of the Recommended Principles and Guidelines on Human Rights and Human Trafficking” (para. 9). In accordance with the resolution, a seminar was held in Geneva on 27 and 28 May 2010.,

2. In addition, the Human Rights Council further requested the Office of the High Commissioner “to disseminate the Recommended Principles and Guidelines on Human Rights and Human Trafficking, and to collect the views of the stakeholders, including Governments, observers of the United Nations, relevant United Nations bodies, specialized agencies and programmes, regional bodies, non-governmental organizations and national human rights institutions, on the Recommended Principles and Guidelines, as well as on experiences and emerging good practices while applying them, and to make available to the Council a compilation of these views as an addendum” to the report from the two-day seminar (A/HRC/15/27).

3. To inform the compilation, the Office of the High Commissioner for Human Rights (OHCHR) requested the views of the various stakeholders by note verbale in July 2009. The present report was prepared on the basis of information received from Member States, namely:<sup>1</sup> Algeria, Argentina, Austria, Bahrain, Bangladesh, Belgium, Canada, Colombia, Czech Republic, Estonia, Finland, Germany, Greece, Guatemala, Guyana, Indonesia, Jamaica, Kazakhstan, Latvia, Lebanon, Madagascar, Mauritius, Mexico, New Zealand, Panama, Qatar, Serbia, Slovakia, Spain, Syrian Arab Republic, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay. Information has also been received from other sources, including: United Nations entities, such as the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Fund for Women (UNIFEM), the International Labour Organization (ILO), the United Nations Children’s Fund (UNICEF) and the United Nations Interregional Crime and Justice Research Institute (UNICRI); intergovernmental organizations, namely: the International Organization for Migration (IOM), the Organization for Security and Cooperation in Europe (OSCE), including the OSCE Office for Democratic Institutions and Human Rights, the Council of Europe and the Organization of the Islamic Conference; non-governmental organizations such as ECPAT International, Global Alliance Against Traffic in Women, Coalition against Trafficking in Women and International Federation Terre des Hommes; and national human rights institutions from India, Ireland, the Islamic Republic of Iran, Luxembourg, Nepal and Spain. The present report also takes note of the contributions to the two-day seminar.

4. The report is structured as follows: section II provides a brief introduction and background to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, while section III constitutes a compilation of experiences and emerging good practice with respect to applying a human rights-based approach in the context of identification, victim protection, criminal justice responses and prevention. Finally, the compilation also highlights challenges identified by stakeholders in applying a human rights-based approach to human trafficking.

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<sup>1</sup> Information received from Member States is available for consultation at the Office of the High Commissioner for Human Rights.

## II. Introducing the Recommended Principles and Guidelines on Human Rights and Human Trafficking

5. In July 2002 the High Commissioner for Human Rights transmitted a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking to the Economic and Social Council (E/2002/68/Add.1). In her report accompanying this document, the High Commissioner explained that development of the Principles and Guidelines was the response of her Office to the clear need for practical, rights-based policy guidance on the trafficking issue. She noted that OHCHR had adopted the Principles and Guidelines as a framework and reference point for its own work on this issue and encouraged States and intergovernmental organizations to make use of them in their own efforts to prevent trafficking and to protect the rights of trafficked persons (E/2002/68, para. 62).

6. The Principles and Guidelines are the result of a wide-ranging, informal consultation involving individual experts and practitioners, as well as representatives of United Nations agencies and programmes and other intergovernmental organizations working on trafficking and related issues. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.

7. As the title suggests, the Principles and Guidelines are divided into two parts. The first part contains 17 principles which, taken together, are intended to provide a solid basis for the development, implementation and evaluation of a rights-based response to trafficking. The principles have been designed for use as a checklist against which laws, policies and interventions can be measured. The principles are organized under four headings: the primacy of human rights; preventing trafficking; protection and assistance; and criminalization, punishment and redress. The principles included under the first heading are applicable to intervention at all stages of the trafficking cycle: recruitment, transportation and subjection to exploitation. The principles included under the subsequent three headings identify the object and parameters of intervention at different times in the cycle of trafficking: preventive measures before a person becomes trafficked; measures for the protection of and assistance to persons who have become trafficked; and criminal and civil proceedings against traffickers.

8. The second part of the document contains a series of 11 guidelines, most of which relate back to and expand upon one or more of the principles. The guidelines are intended to provide practical direction to States, intergovernmental organizations, non-governmental organizations (NGOs) and others on the steps that can be taken to ensure that the key principles are translated into effective and realistic responses. The Principles and Guidelines establish a framework for good practice and, using accepted international legal standards, provide more specific and detailed guidance for States in areas such as legislation, criminal justice responses, victim detention and victim protection and support.

### Use of the Principles and Guidelines by United Nations agencies and others

9. Since 2002 the Principles and Guidelines have been cited in numerous policy documents and interpretive texts including, most significantly, the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*<sup>2</sup> (UNODC) and the commentary on the provisions of the

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<sup>2</sup> United Nations publication, Sales No. E.05.V.2.

Council of Europe Convention on Action against Trafficking in Human Beings.<sup>3</sup> Resolutions adopted by various European bodies and the Organization of American States have recommended that the Principles and Guidelines be used in integrating human rights as a normative framework for counter-trafficking work. There is wide support for and use of the Principles and Guidelines amongst the United Nations agencies most involved in this issue, including the Division for the Advancement of Women, UNICEF, UNIFEM, the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP), the United Nations Development Programme, UNICRI,<sup>4</sup> UNODC and the ILO.<sup>5</sup> The Special Rapporteur on trafficking in persons, especially women and children has adopted the Principles and Guidelines as a foundation and a framework for her work and has been using them as a tool for assessment and review of specific situations at the country level and in evaluating the effectiveness of national and regional anti-trafficking strategies. Intergovernmental organizations, including the Inter-Parliamentary Union and IOM, as well as non-governmental organizations, including Amnesty International, Anti-Slavery International, Human Rights Watch, Global Rights, ECPAT International, Physicians for Human Rights, Save the Children, and the Global Alliance Against Traffic in Women, have referred to the Principles and Guidelines in their research and advocacy efforts.

### III. Experiences and emerging good practice in applying the Recommended Principles and Guidelines

10. The majority of the respondents affirmed in their responses that a human rights-based approach to combating trafficking now enjoys widespread support and that there is growing agreement as to the key elements of an effective rights-based approach to trafficking. Generally, the replies indicated that the Principles and Guidelines have been instrumental in guiding the development of rights-based responses and are widely used in shaping strategies and actions against trafficking and ensuring the incorporation of a human rights approach in law and policy.

11. In terms of legal development, Algeria, Guatemala, Guyana and the Syrian Arab Republic, among others, have been guided by a human rights-based approach in general and the Principles and Guidelines in particular when developing or revising anti-trafficking legislation. For example, Guyana has been guided by the Principles and Guidelines in implementing anti-trafficking strategies such as the 2005 Combating Trafficking in Persons Act.

12. In the area of policy development, Bahrain, Finland, Spain and Qatar and others indicate that the Principles and Guidelines have served as guidance. For example, Finland revised its governmental action plan in 2008 to fully include the human rights approach to combating trafficking. The Ombudsman for Minorities – serving as the National Rapporteur on Trafficking in Human Beings since January 2009 – has identified the Principles and Guidelines as a useful tool in evaluating Finnish anti-trafficking strategies

<sup>3</sup> *Council of Europe Treaty Series*, No. 197 (2005). The Convention entered into force on 1 February 2008. As of 30 November 2009, 26 States had ratified it and it is open for accession to all States –both members and non-members of the Council of Europe.

<sup>4</sup> UNICRI implemented the Principles and Guidelines in particular in the development of training curricula, see “Trafficking in Human Beings and Peace-Support Operations: Pre-Deployment/In-Service Training Programme for International Law-Enforcement Personnel”.

<sup>5</sup> ILO has extensively used the Principles and Guidelines, see: *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement* (Geneva, ILO, 2005); B. Olateru-Olagbegi and A. Ikpeeme, *Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour*, (Geneva, ILO, 2006); *Combating Trafficking in Children for Labour Exploitation: A Resource Kit for Policy-makers and Practitioners* (Geneva, ILO, 2008).

and activities and making recommendations for improvement. The Principles and Guidelines will be used in drawing up recommendations for action to further develop legislation and measures against trafficking by the end of 2010. Spain reported that the Principles and Guidelines have inspired national policy development, including the Integral Plan to Combat Human Trafficking for Purposes of Sexual Exploitation, which was adopted in December 2008.

13. Others, including Belgium, Colombia, Estonia and Slovakia, underlined that the Principles and Guidelines have guided the implementation of the already existing anti-trafficking policy framework at the national level.

14. Despite application of the Principles and Guidelines as per the above, the responding national human rights institutions generally underlined that it is too early to comment on the effectiveness of the use of the Principles and Guidelines at the national level, given various social and economic conditions.

15. The Principles and Guidelines and the human rights-based approach have reportedly also played an important role in the development of standards and policy at the intergovernmental level. For example, the Council of Europe used the Principles and Guidelines to strengthen its Convention on Action against Trafficking in Human Beings, including in it a number of the provisions enshrined in the Principles and Guidelines as legally binding norms. Indeed, the “Explanatory report” to the Convention affirms that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims” (para. 125), as stipulated in the first principle of the OHCHR Principles and Guidelines. By imposing strict legal obligations on parties to comply with the requirements and measures contained in the Convention, this legal instrument safeguards and promotes the same values and principles, which are enshrined in the Principles and Guidelines. The Convention entered into force on 1 February 2008. At 30 November 2009, it had been ratified by 26 Council of Europe member States,<sup>6</sup> and had been signed but not yet ratified by another 15.<sup>7</sup> The Convention is not restricted to Council of Europe members; non-members and the European Community also may become Party to the Convention.

16. OSCE advocates the human rights-centred perspective, and facilitates its integration into national laws, policies and interventions. OSCE also supports the integration of the human rights perspective at the regional and international levels. It remains at the core of all OSCE programmatic anti-trafficking activities based on the relevant OSCE political commitments of 2000-2008. The commitments, starting from 2002, were elaborated taking due account of the OHCHR Principles and Guidelines. The OSCE Office for Democratic Institutions and Human Rights has devoted much of its work to promoting the establishment of national referral mechanisms in participating States as part of a rights-based approach to trafficking. The Organization of the Islamic Conference reported on the establishment of a permanent independent human rights commission to focus on the protection of all human rights, including in the context of combating human trafficking.

17. The five responding United Nations entities found the Principles and Guidelines to be practically useful, in particular alongside other human rights instruments. UNICEF found the Principles and Guidelines to be short, straightforward and easy to understand and translate into doable activities with little implementation difficulty. The Principles and

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<sup>6</sup> Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Latvia, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, the former Yugoslav Republic of Macedonia and the United Kingdom of Great Britain and Northern Ireland.

<sup>7</sup> Andorra, Finland, Germany, Greece, Hungary, Iceland, Italy, Ireland, Lithuania, Netherlands, San Marino, Sweden, Switzerland, Turkey and Ukraine.

Guidelines are of practical assistance in working with Member States, and UNICEF uses them alongside other human rights instruments and in particular those focused on child rights.

18. Key guides and publications developed by the ILO use the Principles and Guidelines and refer to their provisions. For example, in 2005, the ILO published *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement*. The guide highlights the relevance of key ILO Conventions to the successful implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol) and refers to the Principles and Guidelines, and highlights the link between human and fundamental labour rights. In 2008, the ILO published *Combating Trafficking in Children for Labour Exploitation: A Resource Kit for Policy-makers and Practitioners*. The publication refers to the Principles and Guidelines, draws from them and emphasizes the importance of addressing the labour exploitation dimension of child trafficking. In collaboration with UNICEF and under UN.GIFT, the ILO further published, in 2009, the *Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation*, which is based on the Principles and Guidelines.

19. UNIFEM and UNODC have also used the Principles and Guidelines in developing policies and programmes to address trafficking in different regions of the world. For example, UNODC advocates for the implementation of the Principles and Guidelines across its programmes and projects, more specifically in the UNODC *Toolkit to Combat Trafficking in Persons; Combating Trafficking in Persons: A Handbook for Parliamentarians*, which was developed in the framework of UN.GIFT and in cooperation with the Inter-Parliamentary Union (April 2009); and in the Framework for Action for an Effective Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, developed by UNODC in cooperation with other international organizations, including OHCHR.

20. The Principles and Guidelines have also been useful for the respondent non-governmental organizations. The Coalition against Trafficking in Women, ECPAT International and the Global Alliance Against Traffic in Women found the Principles and Guidelines and the elaboration of the human rights-approach to trafficking vital, and welcomed in particular provisions such as those pertaining to partnership between law enforcement and NGOs, and underlined the use of the Principles and Guidelines for benchmark analysis of good practice. As an example, International Federation Terre des Hommes has taken into consideration the Principles and Guidelines and the UNICEF Guidelines on the Protection of Child Victims of Trafficking in developing campaign work and field projects. In conformity with guideline 8 of the OHCHR Principles and Guidelines, the Federation's field projects are focused on the provision of care and support for trafficked children, recognizing thereby their specific rights and needs as children. Moreover, in order to avoid negative impact from its anti-trafficking work, especially with regard to trafficking across borders, the Federation drafted a policy paper on the "Return of Foreign Unaccompanied Children" in Europe. This policy paper elaborates further on the Principles and Guidelines by establishing criteria for evaluating whether the return to the country of origin serves the best interest of the child, or the contrary.

21. The following subsections highlight more specific experiences and emerging good practice with respect to applying a human rights-based approach in the context of identification, victim protection, criminal justice responses and prevention.

## **A. Good practices and opportunities when applying a human rights-based approach to identification, victim protection and support**

22. In their responses, stakeholders confirmed that victim protection and support lie at the heart of the human rights approach to anti-trafficking. Such protection and assistance should be provided on a non-conditional and non-discriminatory basis. As the Principles and Guidelines make clear, victims should not be criminalized for status-related offences. They should also not be detained in immigration centres, prisons or shelters. Respondents pointed out that failure to identify victims of trafficking is a serious obstacle to the recognition and protection of their rights. Victims must also be allowed to have access to remedies, including compensation, for the harms committed against them. Victims of trafficking have a right to be protected against further harm. The situation of child victims requires special attention to their vulnerabilities and their special rights.

### **1. Member States**

23. The Czech Republic has taken steps to explicitly raise awareness and focus on victim protection. Kazakhstan tries to support the victims individually and also cooperates with civil society actors in the process. Slovakia emphasizes the need for supporting research and developing an effective model of assistance for the victims. Victim protection is a primary focus for the United Kingdom, however encouraging victims to report to the authorities remains a challenge. The response of the United Kingdom lists a number of projects and measures that have furthered the cause of victim protection (such as the National Referral Mechanism, the POPPY Project and the Blue Blindfold campaign as well as the United Kingdom-launched European Union Action Plan on Trafficking (2005)) and elaborates on the central role of the United Kingdom Human Trafficking Centre. Through its experience, the United States has found that “restoring victims, both physically and psychologically, provides the added benefit of enabling them to more fully participate in successful prosecution of the people who exploited them”. The United States emphasizes the difficulties inherent in building trust between the victim and his or her case manager among the major challenges it has faced, therefore the Government ensures that trained professional coordinators and specialists facilitate the provision of services to the victim. It points out that the availability of trained translators and the complex needs of the victims continue to pose a challenge.

24. Uruguay has recently hosted two international seminars focusing on support programmes for victims of trafficking. However, it notes the difficulty in increasing the number of special services for victims. A number of countries have developed special centres to accommodate victims of sexual abuse and trafficking. Qatar points to the need to provide victims with shelter, legal support and a right to appeal to the court and to seek redress and remedies, medical and psychological support and translation services. The Syrian Arab Republic pays special attention to the vulnerable to ensure their integration into society and offers them the right support and respect in order to restore their humanity and dignity. An emerging good practice in Togo is the cooperation among various actors in providing assistance to victims.

25. In Lebanon an effective cooperation exists between the General Directorate of Public Security and the Caritas-Lebanon association, where Caritas provides financial and medical assistance to victims and runs a 24-hour medical clinic, and assists in providing women victims of trafficking with temporary shelter and services to address their basic needs. The association also works to secure lasting solutions for their future, including voluntary repatriation to their home countries. The National Committee of Facilitation was formed, including members of the Ministry of Interior and Municipalities, General Directorate of Public Security, the Ministry of Social Affairs, the Ministry of Labour and



Caritas-Lebanon, under the supervision of the ILO and others, in addition to the representatives of the embassies of the source countries for migrant workers, such as the Philippines, Sri Lanka and Bangladesh. The aim of this committee is to establish a suitable legislation to guard the rights of female domestic workers according to Lebanese law. As a result, a model employment contract was created and translated in different languages to raise the foreign domestic workers' awareness of the conditions of employment and their rights under Lebanese law, before coming to Lebanon, as well as to assist employers who hire foreign domestic workers.

26. In Madagascar, trafficking of domestic workers for labour exploitation and domestic servitude, as well as trafficking of children in the context of international adoption, are major problems. The Government has undertaken various actions to tackle trafficking, including the production of a film called *Fandrika*, to raise awareness of different types of internal trafficking within Madagascar, particularly of girl children in the rural areas. The Principles and Guidelines have been efficiently used to combat human trafficking in Panama; with them in mind, the country has developed activities, programmes and strategies against trafficking in the area of victim protection and criminal justice, including investigations and prosecutions of the crime.

## 2. Intergovernmental organizations

27. OSCE emphasizes that trafficking should be viewed as a human rights problem rather than one of law enforcement or immigration control; this way victims are not returned to their countries of origin without access to judicial remedies or without information on their rights. Victims are failing to seek health or other assistance for fear of being criminalized or denounced or deported (OSCE/Office for Democratic Institutions and Human Rights). The IOM mission in Ukraine provides comprehensive reintegration assistance in cooperation with NGOs and a medical rehabilitation centre for victims of trafficking.

28. With regard to the Council of Europe Convention, the main features and measures aimed at preventing trafficking in human beings, protecting its victims and prosecuting traffickers are the following:

(a) The Convention is the first international legally binding instrument which affirms that trafficking in human beings constitutes a violation of human rights and is an offence to the dignity and integrity of the human being, therefore respect for human rights and the protection of victims are the paramount objectives of this Convention. Victims cannot merely be considered as tools to prosecute traffickers - on the contrary, they are the very reason why this modern form of slavery is being fought;

(b) No other international text defines victims, leaving it to each State to define who is a victim and therefore deserving the measures of protection and assistance. In the Council of Europe Convention a victim is any person who is subject to trafficking as defined in the Convention. The consent of a victim to the exploitation is irrelevant - victims of trafficking must be recognized as such in order to prevent police and public authorities from treating them as illegal migrants or criminals;

(c) Victims of trafficking are entitled to a wide range of mandatory assistance measures, in particular, physical and psychological assistance and support for their reintegration into society. Victims have the right to receive compensation and State parties must adopt legislative and other measures to guarantee compensation. Victims must be granted a recovery and reflection period of at least 30 days to recover and escape from the influence of the traffickers and to take a decision on their possible cooperation with the law enforcement authorities; a renewable residence permit may be granted to victims either on

humanitarian grounds and/or on the basis of the victims' cooperation with the law enforcement authorities;

(d) The Convention provides for the possibility of criminalizing those who used the services of a victim if they were aware that the person was a victim of trafficking.

### **3. United Nations entities**

29. UNICEF points out that one of the emerging good practices in developing anti-trafficking initiatives is the substantive (as opposed to tokenistic) involvement of children in the development of programmes and initiatives. The right of the child to have his or her views taken into account as per article 12 of the Convention on the Rights of the Child is reinforced in guideline 8 of the Principles and Guidelines. Furthermore, listening to the voices of the victims and their experiences ensures that programmes and projects are anchored in addressing the needs and gaps as articulated by those who suffered the crime of trafficking.

30. Through a wide range of technical cooperation projects, the ILO seeks to promote and implement international labour standards, including standards related to human trafficking. Through evaluation of these projects, the ILO has collected information on good practices on the prevention of human trafficking and victim protection, such as (a) the importance of understanding risk factors that create vulnerability to trafficking before planning interventions, (b) the importance of improved access to basic services for marginalized groups, (c) comprehensive national plans on action against trafficking that cover all forms of trafficking and provide for specific protection and compensation measures (including budgetary allocations), (d) regulation and monitoring of private recruitment agencies, including agencies recruiting under disguise, (e) the creation of an independent rapporteur on human trafficking, (f) the importance of age-specific outreach assistance to children at risk of trafficking, including education to children below the minimum working age and skills training, job placement services and decent work for youth of working age and (g) efforts to improve data collection with due regard to victim's rights.

### **4. NGOs**

31. According to the Coalition against Trafficking in Women, agreements of understanding are needed between source and destination countries; demand for commercial sexual exploitation should be targeted by creating disincentives and decriminalizing the victims of trafficking; success should be measured by monitoring new legislation, the extent to which victims have access to services and the quality of services themselves.

### **5. National human rights institutions**

32. National human rights institutions (NHRIs) emphasized the following issues:

(a) NHRIs to be allowed to report on the issue of trafficking and victim protection to the United Nations human rights treaty-monitoring bodies, such as the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, and also to participate in the substantive sessions of the Human Rights Council focusing on the issue of trafficking (National Human Rights Commission of India);

(b) OHCHR to take the lead in promoting a broad spectrum of initiatives which pursue the objectives set out in guideline 11 (Ombudsman of Spain);

(c) Identifying the root causes and factors leading to human trafficking, according to the region it occurred and adopting special strategies to address and prevent it;

regularly reviewing and evaluating the existing legal capacity to prevent and combat trafficking with a view to adjusting and revising laws and practices incompatible with a victim-centred approach (Islamic Human Rights Commission – Islamic Republic of Iran);

(d) Victims are often not properly accommodated to suit their needs, however the establishment of an Anti-Human Trafficking Unit within the Irish Department of Justice, Equality and Law Reform is an example of good practice in strengthening coordination of efforts on providing better protection to victims (The Irish Human Rights Commission);

(e) Special focus is needed on improving early warning systems for identifying potential victims of trafficking, while taking advantage of their stay in administrative centres such as border posts or temporary residence centres for immigrants (CETI); special measures to identify and assist unaccompanied children, and incorporating the issue on the agenda of the regional administrations; to ensure that agencies and public authorities change their perception and focus more on the fight against the exploitation of human beings and not primarily on the breach of immigration law and on punishing the victims for status-related offenses (Ombudsman of Spain);

(f) The establishment of an institutional mechanism at the National Human Rights Commission of Nepal responsible for the prevention and protection of the rights of trafficked persons and the publication of an annual report on the situation of trafficking, especially of women and children, have served as mechanisms to monitor the human rights impact of anti-trafficking laws, policies and programmes and in particular how they impact on victims.

## **B. Good practices and opportunities when applying a human rights-based approach to criminal justice responses**

33. The responses of stakeholders underlined the increasing awareness of the fundamental link between criminal justice responses to trafficking and victim protection. The majority of respondents emphasized that criminal justice responses to trafficking should be aimed at both ending impunity of traffickers and securing justice for victims. This section provides a summary of some of the ideas, experiences and emerging good practice shared by stakeholders regarding a human rights approach to criminal justice responses.

### **1. Member States**

34. Jamaica highlighted the need for a dedicated taskforce within the national police to deal with human trafficking and robust anti-trafficking legislation to ensure that the Government allocates more funds for investigation and to increase the vigour with which perpetrators are prosecuted. In Germany, the Principles and Guidelines correspond to the German standards and have already been incorporated into daily police work. Cooperation between police and specialized NGOs has proven to be a successful practice to further improve the incorporation of a human rights perspective into the practical application of the Principles and Guidelines to combat trafficking in women. For example, the impact of anti-trafficking measures on the crime situation is measured each year via the annual situation report on trafficking in persons, which is published by the Bundeskriminalamt ([www.bk.de](http://www.bk.de)). The Federal Criminal Police Office has also initiated research programmes carried out either by the Institute of Criminology or by a commissioned institution. In Mauritius, a Child Protection Unit has been set up in collaboration with the Police Department to provide immediate assistance, as appropriate, and protection to child victims of abuse, especially sexual abuse. Also, a Day Care/Drop-in Centre was launched in December 2003 in Bell Village, Mauritius, to assist child victims of sexual abuse and

exploitation, including victims of trafficking, and to help their reintegration in society and address their needs of recovery. A special hotline has been made available to the public for the referral of cases of child prostitution to the authorities.

35. The Ministry of Foreign Affairs of Mexico, in coordination with the NGO Promujer, initiated in October 2009 an International Seminar on Violence against Women and the Role of Police, which is directed to the federal, state and municipal levels. The seminar included a module on issues related to human trafficking, attempting to raise awareness in the police bodies on their primary responsibility for guarding the security and immediate well-being of the victims of this crime. Uruguay has created the Committee for the Eradication of Commercial and Non-Commercial Sexual Exploitation of Children and Adolescents which spearheaded a law that supports the development of plans to protect women, children, and adolescents against trafficking, with particular attention to applying a human rights approach to criminal justice. Colombia has created a cross-institutional committee dedicated to human rights which also advises the national Government on what actions are needed to address trafficking. Argentina gives special consideration in the criminal justice system to victims of trafficking, in particular women and children. The Syrian Arab Republic suggests employing more women in law enforcement to assist in the trafficking investigation process. According to Lebanon, signing formal memoranda of understanding which establish close cooperation between law enforcement and civil society, particularly service providers, is essential.

## **2. Intergovernmental organizations and United Nations entities**

36. OSCE observed that currently not all stakeholders address trafficking as a human rights problem but primarily as a problem of law enforcement and immigration control. UNODC stressed that the Principles and Guidelines detail a number of elements that should be part of the criminal justice component of a national strategy to address trafficking in persons. Effective law enforcement must address not merely the application of law in individual cases, but also the broader multi-faceted and highly complex issues relevant to the origins, causes and effects of trafficking in persons. This requires a collaborative, multi-agency, long-term, coordinated, strategic action using the participation and input from all levels of society, from local communities and NGOs to migration officials and prosecutors. The human rights of trafficked persons must be at the centre of efforts to combat trafficking and must be protected at all stages of the law enforcement process. For law enforcers, it is essential that trafficked persons are not criminalized but instead that their rights are respected and their special needs are addressed, while perpetrators are held accountable.

## **3. NGOs and NHRIs**

37. ECPAT International pointed out that the tendency to criminalize victims is a persistent problem in many States. The National Human Rights Commission in India pointed out good practices emerged from the Action Research which saw a few cases of transborder trafficking resolved. Various nodal officers have been installed in each State across the country to deal with the investigation and prosecution of trafficking in collaboration with welfare agencies. These nodal officers were trained on how to apply the Principles and Guidelines.

## **C. Good practices and opportunities when applying a human rights-based approach to prevention**

38. The respondents affirmed their understanding that States are under an international legal obligation to prevent trafficking and that this requires them to consider and deal with the many factors that contribute to the vulnerability that underlines much trafficking,

including unjust and restrictive migration regimes; global trade policies that exacerbate inequalities within and between countries; discrimination against vulnerable groups including women, children, migrants and minorities; and the demand for the goods and services produced through trafficking. The respondents emphasized their efforts to address trafficking through applying a human rights approach to prevention, including focusing on measures such as ensuring the empowerment of women, tackling poverty and the lack of educational and job opportunities, raising awareness, engaging the larger community, working with business and training officials, which are all important strategies to prevent trafficking and related exploitation.

## 1. Member States

39. Estonia places particular emphasis on preventative actions against trafficking and generally its preventative work has been successful. The judicial and legislative organs of Guatemala, along with representatives of civil society and intergovernmental organizations, formed the Inter-institutional Commission for Combating Human Trafficking in 2004. The objective of the Commission is to be an inter-institutional body for consultation, management and formulation of initiatives and promotion of consensus for effectively combating human trafficking in line with international and national law. As a result of this coordination and cooperation, Guatemala has developed a comprehensive public policy against human trafficking and for protection of the victims, as well as the Strategic Plan of Action for 2007-2017. The Secretariat of Public Security of Mexico has a Prevention and Assistance Programme for victims of trafficking, targeting civil servants, tourist services and commercial port areas, airports, railway companies and border officials, aiming to develop strategies and build the capacity of various institutions to combat and prevent trafficking.

40. In Canada in 2009 the Minister of Public Safety announced a partnership with the Canadian Crime Stoppers Association to launch a national awareness campaign. The partnership provides access to Crime Stoppers' national 1-800 tip-line. Canada also reported on its commitment to comprehensive implementation of the North Atlantic Treaty Organization (NATO) policy on combating trafficking in human beings. This policy represents a political commitment to prohibit forces and civilian personnel deployed under NATO command from engaging in human trafficking activities or facilitating them. Efforts are being undertaken to ensure that the necessary knowledge, values and skills are provided to all Canadian Forces members and civilian contractors engaged on international missions, such as the anti-trafficking training which was provided to all law enforcement officers who were selected to participate in the international peacekeeping missions in Haiti and Côte d'Ivoire.

41. In 2004, the Government of the United States, through the Department of Health and Human Services (HHS), launched the Rescue and Restore Victims of Trafficking campaign as a national effort to raise awareness about human trafficking through the media, coalition-building and training. This campaign also includes the National Human Trafficking Resource Centre (NHTRC), a 24-hour national telephone and e-mail hotline that provides victims of trafficking with assistance, law enforcement, social services providers and good Samaritans. From December 2007 through September 2008 alone, NHTRC received a total of 4,147 calls, including 553 tips regarding possible human trafficking incidents, 398 requests for victim care referrals, 949 calls seeking general human trafficking information, and 167 requests for training and technical assistance. Of calls referencing potential trafficking situations, 40 per cent referenced trafficking of foreign nationals, while nearly 18 per cent referenced trafficking of United States citizens or legal permanent residents. HHS also initiated a United States Domestic Trafficking in Persons Notification Pilot Program to increase public awareness of and victim assistance for United States citizens and legal permanent resident who are victims of trafficking. The

Notification Pilot Program provided suspected trafficking victims with information regarding benefits and services for which United States citizens may be eligible, simply by virtue of their citizenship. As a result, eight participating NGOs identified 240 suspected United States domestic trafficking victims, all of whom received from the HHS Notification programme information on possible assistance.

42. The following specific issues were raised by stakeholders: Indonesia emphasized the importance of prevention above all; Latvia approaches the issue with educational and victim support activities; Qatar uses religion as a form of education in its preventive work: religious leaders in mosques explain how Islam prohibits trafficking; New Zealand's main focus is on prevention, which has formed the basis for the Plan of Action to Prevent People Trafficking; Kazakhstan emphasizes the need for strong cooperation on prevention between law enforcement and NGOs, particularly in joint information and awareness-raising campaigns: in September 2009, the Ministries of the Internal Affairs, Justice, Education and Science, as well as the United States Embassy in Kazakhstan and the Feminist League, an NGO, organized a theatre show, entitled *Night Stars*, for students from Astana, based on testimonies of victims of human trafficking, the campaign "Say NO to Slavery" involved distributing leaflets, information booklets and CDs on the issue; Greece shared its experience and good practice in applying measures in the field of education, training, awareness raising, domestic and international cooperation in order to prevent trafficking.

## **2. Intergovernmental organizations and United Nations entities**

43. The Council of Europe has established monitoring mechanisms in its Convention on Action against Trafficking in Human Beings to assess the success of combating trafficking; the IOM mission in the Republic of Moldova measures success in prevention through regular monitoring and evaluation of counter-trafficking projects. Among the main measures to prevent trafficking in human beings enshrined in the Convention are awareness-raising for persons vulnerable to trafficking and actions aimed at discouraging "consumers".

44. The UNIFEM South Asia Sub-regional Office has extensively used the Principles and Guidelines in the design and implementation of its project entitled "Improving protection for trafficking survivors and vulnerable women and children - human rights towards the prevention of trafficking".

## **3. NGOs**

45. In 2007 the Global Alliance Against Traffic in Women produced a publication entitled *Collateral Damage: The Impact of Anti-trafficking Measures on Human Rights around the World*, which was firmly based on principle 3 of the OHCHR Principles and Guidelines. That principle states that anti-trafficking measures "shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants". *Collateral Damage* was developed in response to the request in guideline 3 that States, intergovernmental organizations and NGOs monitor and evaluate "the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact" and distinguish "between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another". Through this research, the organization reportedly found that very few Government agencies, intergovernmental organizations, NGOs and others working in the anti-trafficking field have heeded much of the advice of the Principles and Guidelines to date.

#### 4. NHRI

46. In Nepal, evidence show that trafficking is increasing and the importance of effective reporting and monitoring activities is particularly emphasized (National Human Rights Commission of Nepal); part of the Spanish action outlined by the Ombudsman of Spain has been focused on improving early warning and protection of potential victims of trafficking. The Ombudsman reports that Spain has implemented laws emphasizing a plan of action to prevent trafficking, as well as assistance and protection to the victims. Spain has integrated various recommendations to separate prevention and the treatment and assistance given to victims, as a way to streamline prevention, services offered to victims, and the criminal justice system.

### D. Challenges in applying a human rights-based approach

47. Despite significant progress in the field of anti-trafficking, challenges remain regarding the full application of the Recommended Principles and Guidelines on Human Rights and Human Trafficking. This section provides a summary of the issues identified as challenges by different stakeholders.

#### 1. Member States

48. For Germany the major challenge in anti-trafficking is to reach a political consensus over the measures to be taken to combat it. A constant challenge in implementing anti-trafficking policies is to find a balance between these different areas of interest, while ensuring that the human rights approach is the guiding principle for all measures taken.

49. Specific issues which pose challenges, raised by the stakeholders in their responses, included the following: the collection of reliable and comparable statistical data is a challenge (Austria, Serbia, Spain); the collection of reliable data and the exchange of information, in particular on the issue of trafficking for labour exploitation, needs to be strengthened (Germany); effective awareness-raising (Austria, Bangladesh, Uruguay and Qatar) and addressing the root causes, such as eradicating poverty (Bangladesh); the identification of victims, how to reach the yet unrecognized victims, how to investigate and prosecute the perpetrators when victims are just passing through/transiting the country (Finland); more effort should be made to sensitize civil society actors about human trafficking, emphasizing that the problem goes beyond the area of sexual exploitation and that victims should be aware of this (Colombia); difficulty in distinguishing between trafficking and other similar crimes, such as migrant smuggling, resulting in unnecessary expenditure; the need for annual training seminars due to high turnover in the members of the media (Guyana); difficulty for developing countries who face serious economic constraints which are likely to impede the necessary steps to tackle trafficking (Jamaica).

50. Indonesia noted the low level of knowledge and awareness of human rights and trafficking among the general public and lack of trained and qualified professionals involved in anti-trafficking; improving coordination between sectoral and regional agencies on counter-trafficking, given the vastness of the geographical area covered; lack of sufficient and dedicated funding to anti-trafficking activities, especially limited funding to develop special social rehabilitation programmes for women and child victims of trafficking; the lengthy process and time involved in rehabilitation of victims of trafficking in particular; limited number of specialized officials based in the regions and districts; still limited engagement of local governments in implementing the strategies of the central Government on anti-trafficking; the need to undertake capacity-building programmes for social workers; and the need to further develop the monitoring of victims upon return to their families.

51. Further, respondents identified the following issues: insufficient financing hinders the full implementation of the Principles and Guidelines (Latvia, IOM-Ukraine); political instability limits countries from adopting legislation that addresses human trafficking (Lebanon); addressing the existing sociocultural circumstances that render the status of women and children more disadvantaged than that of men, and eradicating poverty (Togo); strengthening the horizontal cooperation between similar institutions of various countries; setting up special victim-centred programmes; ensuring a constant level of adequate human resources with a higher degree of training; securing financial resources and ensuring the adequate implementation of its own migration law (Panama); societal and cultural values often make victims unwilling to report the crime; increase in trafficking, particularly for sexual exploitation, in the context of migration during situations of armed conflict (Syria); intense migration flow since 2000, increasing the number of individuals pushed by poverty and necessity into the hands of traffickers; sensitizing the general public to the dangers of trafficking in order to establish a “zero tolerance” attitude; establishing an adequate support system for the victims, which should include social, labour and legal aspects of protection (Spain); officials involved in applying anti-trafficking legislation need to be trained on the victim-centred approach in order to provide greater assistance to victims (Qatar); difficulties in encouraging victims to report or to support criminal proceedings and the hidden nature of the crime (United Kingdom, Madagascar); asset confiscation is not possible without a financial investigation process (Ukraine); availability of translators, especially if a victim’s native language is lesser known; complications inherent in building trust between a traumatized victim and his/her case manager; victims’ complex needs, especially when a group of victims strains an NGO service provider’s capacity; and ensuring that all levels of law enforcement are trained to identify and protect potential victims, rather than to treat them as criminals (United States); creating adequate databases to record the trafficking phenomenon.

## **2. Intergovernmental organizations and United Nations entities**

52. IOM in the Republic of Moldova and Georgia noted the difficulty in identifying victims of trafficking and the definition of trafficking itself, given that the Principles and Guidelines have adopted the Trafficking Protocol definition, which is a crime-orientated approach. UNICEF pointed out that challenges lie in the insufficient advocacy and promotion of the use of the Principles and Guidelines as a practical tool for practitioners tasked with the responsibility of combating trafficking. UNICRI finds it hard to measure results and qualitative data of the phenomenon because of the diverse national approaches and definitions. UNIFEM has encountered difficulties applying the Principles and Guidelines stemming from the multiple layers and hierarchy of relevant rights. For example, the legal framework in some countries criminalizes trafficking, which serves to scare sex workers, who then avoid authorities. The exclusion of civil society organizations from contributing to the identification of trafficking victims is evidence that not all States view trafficking as a human rights problem; some view it as more of a law-enforcement or immigration-control problem. The global economic crisis has contributed to an increase in labour trafficking and the lack of initiatives to identify and investigate labour trafficking has left many victims wrongly labelled as irregular migrants (OSCE/Office for Democratic Institutions and Human Rights).

53. For the ILO, the following issues are particularly pertinent: (a) commitment by member States to support the measurement of human trafficking, including child trafficking; (b) identification of victims of trafficking for labour exploitation and referral to special assistance measures; (c) overzealous application of immigration law that prevents potential victims from seeking justice; (d) ineffective enforcement of laws that criminalize the perpetrators of human trafficking; (e) lack of awareness among enforcement bodies on trafficking and forced labour (including labour inspectorates); (f) lack of effective



cooperation mechanisms; (g) insufficient outreach and service provision for hard-to-reach children and families at risk of trafficking; and (h) inadequate measures to prevent human trafficking.

### 3. NGOs

54. ECPAT International has identified the following challenges in implementing a human rights and child rights approach to trafficking: effective monitoring and evaluating anti-trafficking activities; the lack of understanding of a child rights approach by other stakeholders (Governments, law enforcement, private sector) has resulted in low prioritization of children's issues and lack of specialization of services provided to trafficked children; despite a commitment to children, the enforcement of laws to prosecute traffickers and implementation of child-friendly procedures during investigation and the legal process remain weak, with criminalization of trafficked children still common in several countries; the lack of resources towards programmes and initiatives in promoting and institutionalizing child rights within Governments and other stakeholders is aggravated by the current unfolding global financial crisis which is increasing the vulnerability of the most disadvantage populations, including children, while resulting in the reduced ability of donor countries to provide traditional support for anti-trafficking work; the "demand" for child trafficking for sexual exploitation is not sufficiently being addressed by Governments.

55. According to International Federation Terre des Hommes, many challenges still impede a full implementation of the Principles and Guidelines. Identification of child victims of trafficking remains particularly weak. There is still a lack of proper investigation by law enforcement authorities into whether the involvement of children in begging and/or illegal activities is due to children exploitation and/or trafficking. Moreover, even though States increasingly refer to a human rights approach in addressing child trafficking, practices such as detention and deportation of children are still applied by some. All States need to enhance their efforts to address social exclusion and discrimination to ensure a better protection of their citizens against trafficking and other severe human rights violations. The Coalition against Trafficking in Women recognizes as a challenge that even when States adopt proper laws and legal frameworks, the next critical step - implementation and appropriation of funds to support anti-trafficking laws - is frequently absent; demand is not addressed as a priority; it is not sufficient for States to adopt laws that recognize human trafficking as a crime. The Coalition also found that the Principles and Guidelines lacked a clear mandate on important points such as the definition of trafficking which, in its view, is disparate to the definition in the Trafficking Protocol. Consequently, some States have adopted a partial and limited definition of trafficking in their laws, excluding many victims from receiving assistance.

56. Anti-trafficking policies cannot succeed without a human rights framework that changes the paradigm of how law enforcement officials and civil society view trafficking victims and those who participate in their exploitation by creating the demand that fuels the market, noted The Global Alliance Against Traffic in Women. It pointed out that a strong way to promote collaboration at the national level is to demonstrate coherence at the international level by various United Nations agencies and in particular UNODC and OHCHR, for example, working together to promote a rights-based approach to trafficking. The inclusion of the benchmarks in the Principles and Guidelines in the terms of any established mechanism to review the United Nations Convention on Transnational Organized Crime would be one effective and tangible way of achieving such coherence. In addition, the Global Alliance referred to the appropriation of the "rights" discourse by States who talk of implementing a "rights-based approach" without upholding human rights in their anti-trafficking responses in practice. Without addressing broader abuses of migrants trafficking will continue apace.

**4. NHRI**

57. The failure to clearly separate immigration laws and policies from laws and policies that relate to trafficking is a challenge found by the Irish Human Rights Commission. The Commission has also noticed a lack in consistency and interpretation in application of the indicators of a trafficking victim. The Islamic Human Rights Commission faces a number of challenges, including a lack of any comprehensive laws on prevention, a lack of a single and unified definition on the issue, a lack of supportive measures to protect victims, a lack of training courses, the existence of discriminatory laws, a lack of monitoring and a lack of a comprehensive database to gather information. The Islamic Human Rights Commission itself lacks sufficient means to take effective action. The National Human Rights Commission of Nepal reported that challenges to its work include a lack of skilled human resources and coordination, a weak network of NGOs, lack of integration between policy and practice and a lack of a national database.

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