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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

**Report of the Office of the United Nations High Commissioner for
Human Rights on the latest developments in the United Nations
relating to combating trafficking in persons as well as on the
activities of the Office on this issue***

Summary

The present report has been prepared in response to Human Rights Council resolution 8/12 entitled “Special Rapporteur on trafficking in persons, especially women and children”. The report reviews the recent policy developments and activities within the United Nations system to combat trafficking in persons, including the activities of United Nations entities, the Office of the High Commissioner for Human Rights (OHCHR), as well as of the United Nations human rights mechanisms. It further presents the Recommended Principles and Guidelines on Human Rights and Human Trafficking, developed by OHCHR in 2002.

* The present document is submitted late in order to reflect the most recent information.

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Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 8/12 entitled “Special Rapporteur on trafficking in persons, especially women and children”. In its resolution the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) “... to submit to the Council, at its ninth session, a report on the latest developments in the United Nations relating to combating trafficking in persons as well as on the activities of the Office on this issue, including by presenting the recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office”. As set out in the earlier note by the secretariat,¹ this report is submitted at the tenth session of the Council to ensure that a comprehensive overview of the developments on trafficking in the United Nations system is provided and distributed well in advance of the session.

2. Pursuant to the request of the Council, on 30 October 2008, OHCHR sent a request for written submissions from entities within the United Nations system and other international organizations. As of 15 December 2008, OHCHR had received responses from the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Division for the Advancement of Women, the Department of Economic and Social Affairs, the United Nations Office on Drugs and Crime (UNODC), the United Nations Environment Programme (UNEP), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Children’s Fund (UNICEF), the International Labour Organization (ILO), the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations University (UNU), the United Nations Interregional Crime and Justice Research Institute (UNICRI), and the International Organization for Migration (IOM).

3. The report is divided into four chapters. Chapter I presents an overview of the recent developments in the United Nations relating to combating trafficking in persons, bearing in mind global policy developments and the initiatives undertaken by United Nations entities. Chapter II reviews the activities of OHCHR related to combating trafficking in persons. Chapter III presents the Recommended Principles and Guidelines on Human Rights and Human Trafficking. Finally, Chapter IV presents Conclusions.

I. RECENT DEVELOPMENTS WITHIN THE UNITED NATIONS

A. System-wide initiatives

1. Policy developments

4. Policy development has continued through resolutions and recommendations adopted by United Nations intergovernmental bodies on the basis of their consideration of the reports submitted thereto.

¹ A/HRC/9/27.

5. In December 2008, the General Assembly adopted two resolutions aimed at strengthening the international efforts to prevent trafficking and to protect the victims of trafficking, especially women and girls: resolutions 63/156 entitled “Trafficking in women and girls” and 63/194 entitled “Improving the coordination of efforts against trafficking in persons”.

6. In the last two years the Secretary-General has presented a number of reports to the General Assembly and the Economic and Social Council, which deal with human trafficking and contain recommendations to prevent trafficking and protect the human rights of victims.² For example, the fourth report of the Secretary-General on trafficking in women and girls (A/63/215), published on 4 August 2008, highlights the fact that a comprehensive, multidisciplinary and gender sensitive approach, which includes all relevant stakeholders, is necessary to make progress in preventing and combating trafficking in women and girls. The report of the Secretary-General on the elimination of all forms of discrimination and violence against the girl child (E/CN.6/2007/2) drew attention to the discrimination and violence, including trafficking, that girls are subjected to during conflict and post-conflict situations.

7. The report of the Secretary-General on improving the coordination of efforts against trafficking in persons (A/63/90), published on 3 July 2008, reasserted that the General Assembly plays an important role in coordinating international action against human trafficking and facilitating the effective implementation of both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

8. In the in-depth study by the Secretary-General on all forms of violence against women,³ trafficking in women was addressed as one of the forms of violence against women. Several recommendations in the 2006 Secretary-General’s study on violence against children relate to trafficking of children and suggest measures to reduce risk factors, strengthen victim services, and enhance support to high-risk individuals and families.⁴

2. Major initiatives and meetings

9. As a key element of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), the first-ever global forum to fight human trafficking was organized in Vienna from 13 to 15 February 2008. The Vienna Forum drew over 1,600 participants from over 130 countries. Within the three themes of vulnerability, impact and action, the Forum contextualized the various dimensions of human trafficking and its relation to security, development and human rights. The event was preceded by a parliamentary forum, organized in partnership with the Inter-Parliamentary Union (IPU), which encouraged members of parliament to discuss concrete measures and good practices, and the launch of the Women Leaders’ Council brought together women leaders from around the world.

² See A/63/90, A/63/99, A/63/215, E/CN.6/2007/2.

³ A/61/122/Add.1 and Corr.1.

⁴ A/61/299 and www.violencestudy.org.

10. The General Assembly, for the first time, held a thematic debate on human trafficking on 3 June 2008. The Assembly President stated that despite the United Nations-backed agreements and initiatives, “there remains a vast gulf between the letter of the law and the situation on the ground”.⁵ The Deputy High Commissioner for Human Rights stressed that Governments have a legal obligation to exercise due diligence to take all appropriate measures to prevent trafficking and related exploitation.⁶ The debate underscored the fact that one of the fundamental prerequisites to successful anti-trafficking efforts is the widest possible collaboration among Member States, relevant international organizations, civil society and the private sector.

11. World Congress III against Sexual Exploitation of Children and Adolescents was held in Brazil in November 2008, organized by UNICEF jointly with the Government of Brazil, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT), and the non-governmental organization (NGO) Group for the Convention on the Rights of the Child. The Congress reviewed the new dimensions of commercial sexual exploitation - including trafficking. The outcome document provides a basis for follow-up, including in the area of trafficking of children.

B. Initiatives by United Nations entities, including activities in support of national efforts

1. Coordination activities

12. In March 2007, UN.GIFT was launched as a partnership between UNODC, ILO, IOM, UNICEF, OHCHR, and the Organization for Security and Cooperation in Europe (OSCE), which are all members of the Steering Committee. UN.GIFT aims to mobilize State and non-State actors to eradicate human trafficking. A dedicated website has been launched to support advocacy efforts and better coordination (www.ungift.org). The initiative is coordinated by a Steering Committee, which meets monthly.

13. Since 2006, a broad range of activities and partners have been coordinated through the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), chaired by UNODC. The group aims to foster coordination and cooperation among relevant United Nations agencies and other international organizations in order to assist States in preventing and combating human trafficking. The Intergovernmental Organizations (IGO) Contact Group on Trafficking and Migrant Smuggling is coordinated by OHCHR and includes United Nations agencies, international organizations and representatives from the NGO Caucus on Trafficking to strengthen cooperation, particularly in the areas of law and policy. The Global Migration Group (GMG) is another mechanism for promoting inter-agency coordination on combating trafficking, which brings together the heads of 18 agencies for better coordinated approaches to international migration.

⁵ United Nations Daily News, 3 June 2008.

⁶ See <http://www2.ohchr.org/english/press/newsFrameset-2.htm>.

2. Data collection, research, studies and support for policy development

14. The United Nations entities and other organizations are conducting various activities in order to improve the availability of data. From April 2007, UNODC carried out under UN.GIFT, a major data collection exercise on national responses to trafficking in persons in order to collect primary information, focusing on countries' legislative and administrative frameworks, the criminal justice response, and the services provided to victims. The Division for the Advancement of Women, Department of Economic and Social Affairs, will launch a database on violence against women in March 2009, during the fifty-third session of the Commission on the Status of Women. It will contain information on measures undertaken by States in a number of areas, such as legal framework, policies and programmes, services for victims, data and statistics, and promising practices. UNICRI is developing anti-trafficking projects that include a specific assessment component aimed at the collection and analysis of information and data on trafficking patterns and modalities, routes and flows and existing counter-trafficking measures. It has also created three databases that contain relevant legal instruments, a list of institutions working against the sexual exploitation of minors and an updated bibliography on trafficking in human beings.⁷

15. Since 2000, IOM has been developing a global human trafficking database as a unique tool that facilitates the management of assistance, voluntary return and reintegration activities for victims of trafficking, and strengthens the research capacity and understanding of the causes, processes, trends and consequences of trafficking. The IOM will soon be publishing a number of reports that form part of the Thematic Research Series of the database. Drawing upon non-personal data held within the system, the series will specifically address the issues of re-trafficking, the trafficking of males, and traffickers and organized crime.

16. UNU undertook research to deepen understanding of the social, economic and political contexts of human trafficking and contribute to policy discussion and strategic interventions in the fight against trafficking. The project included a field mission to Phnom Penh to conduct discussions with United Nations agencies and NGOs engaged in combating trafficking. In 2008, the project produced a book entitled *Trafficking in Humans: Social, Cultural and Political Dimensions*.⁸

17. UNICEF is running a global database, collected through its Multiple Indicator Cluster Survey⁹ on issues measurable through household surveys, including birth registration, child labour, child marriage, child disability and child discipline. Global data are not yet available on trafficking of children and UNICEF is working with partners to develop methodology and indicators in this area in the future. The UNICEF Innocenti Research Centre hosts the Child

⁷ http://www.unicri.it/wwd/trafficking/legal_framework/index.php, <http://www.unicri.it/wwd/trafficking/irisem/index.php>, <http://www.unicri.it/wwd/trafficking/bibliography/index.php>.

⁸ See <http://www.unu.edu/unupress/2008/traffickinginhumans.html>.

⁹ See www.childinfo.org.

Trafficking Research Hub website,¹⁰ which is dedicated to data collection, knowledge transfer and the development of methodologies related to research on child trafficking. Other recent publications include a Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe,¹¹ and a report entitled South Asia in Action: Preventing and Responding to Child Trafficking.¹² UNICEF has also produced Guidelines on the Protection of Child Victims of Trafficking.¹³ This technical resource serves as a platform for developing policies and practices and assists Governments, international organizations, NGOs and other service providers with the protection of child victims of trafficking.

18. The ILO publishes global reports on forced labour and child labour, containing examples of good practices in the implementation of the Declaration on Fundamental Principles and Rights at Work. In addition, the Multilateral Framework on Labour Migration, called for by member States at the International Labour Conference in 2004, includes principles and good practice examples on the protection of migrant workers against abusive practices, including forced labour and trafficking. The report by the Committee of Experts on the Application of Conventions and Recommendations on the 2007 General Survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105)¹⁴ is particularly relevant in examining the impact of ILO supervisory machinery on the fight against trafficking in persons. In the survey, the Committee referred to its continuous work since 2001 in drawing the attention of the International Labour Conference to the problem of trafficking in human beings for forced labour. The periodical supervision of ratified ILO child labour conventions (in particular, Convention No. 182 (1999) on the Worst Forms of Child Labour) has been raising the issues of child trafficking for labour and sexual exploitation in a number of countries.

19. A number of United Nations entities are in the process of developing or have already developed guidelines, as a platform for the formulation of policies and practices on combating human trafficking. WHO is collaborating with IOM on the development of guidelines for health providers on trafficking in persons, aiming to provide practical, non-clinical advice to help health providers understand the phenomenon, recognize some of the associated health problems and consider safe and appropriate approaches to providing health care to victims of trafficking. The first draft of the health guidelines, developed by experts on health and human trafficking, were to be released at the end of 2008. It is expected that they will be tested in different countries, leading to a final set of guidelines in 2010.

¹⁰ <http://www.childtrafficking.org/>.

¹¹ Available at: http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf.

¹² Available at: http://www.unicef.org/infobycountry/files/IRC_CT_Asia_Summary_FINAL4.pdf.

¹³ Available at: www.unicef.at/fileadmin/medien/pdf/UNICEF_Guidelines_on_the_Protection_of_Child_Victims_of_Trafficking.pdf.

¹⁴ Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_089199.pdf.

20. Under the auspices of UN.GIFT a number of research and policy development activities were undertaken, organized in expert group initiatives (EGI), which each partner organization undertook to develop. For example, during the Vienna Forum, a special session, “Quantifying human trafficking”, was devoted to discussing information gaps and limitations in crime and criminal justice data. The material produced through the EGIs will provide tools in support of such activities as needs assessments, capacity-building, data collection, victim support and protection.¹⁵ For example, in January 2008 IOM held an expert group discussion on “Developing New Approaches to the Study of Human Trafficking” with 20 leading researchers from across the world.

3. Prevention measures

21. United Nations entities continue to engage in and/or support preventive measures, including awareness-raising and advocacy.

22. UNICRI has carried out intensive awareness campaigns on the issue of trafficking in women and minors for the purpose of sexual exploitation, with the aim of sensitizing potential victims, political and religious leaders, public institutions, and the general public, in addition to raising awareness on the services available to victims. Examples include television and radio spots, market campaigns, movable billboards, school visits and multidisciplinary round tables.

23. UNODC released an updated toolkit to combat trafficking in persons in October 2008. It comprises 123 tools that offer guidance, recommended resources, and promising practices to policymakers, law enforcers, judges, prosecutors, victim service providers and civil society who are working towards preventing trafficking, protecting and assisting victims.¹⁶

24. ILO called for a business alliance against forced labour that is now taking shape. In 2008, guidance tools for employers were published, following a series of workshops with business leaders across the world. At national levels, ILO has initiated joint prevention programmes with employers' organizations or chambers of commerce, such as in Brazil, China, Jordan, Russia and Viet Nam and has supported global and national trade union federations in becoming actively involved in the prevention and identification of forced labour practices, including human trafficking. With regard to fighting child trafficking, ILO has implemented a range of subregional and national initiatives with Governments, workers and employers.¹⁷

¹⁵ Further information on the expert group initiatives can be found at: <http://www.ungift.org/ungift/en/initiatives/expert-groups.html>.

¹⁶ Available at: http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf.

¹⁷ See “Child trafficking: the ILO’s response through IPEC”, ILO, 2007, available at: <http://www.ilo.org/ipecinfor/product/viewProduct.do?productId=6484>.

4. Capacity-building

25. Capacity-building measures have been undertaken in the area of trafficking in persons, especially women and girls, for different stakeholders, including government and civil society actors, at the national and local levels. UNODC, under its mandate to assist Member States implement the Palermo Protocols, continues to provide technical assistance in the area of trafficking in persons in all regions. In the last two years, UNODC has implemented 26 projects around the world. In February 2008, UNICRI started implementing a programme on trafficking of women and adolescents from Nigeria to Italy. It includes capacity-building and training in Nigeria, together with awareness-raising and women empowerment activities. The project also aims to expand the access of trafficking victims and potential victims to microfinance so that they can develop viable income-generating activities.

26. IOM has conducted project activities on human trafficking in departments of justice, home affairs, interior, social welfare and development, health, and education, as well as with a broad range of civil society actors. In conducting its work, IOM is working with other institutions, such as the national Red Cross and Red Crescent societies and religious institutions, as partners in implementing its counter-trafficking projects.

27. UNICEF focuses on supporting Governments in building and strengthening national child protection systems, comprised of the set of laws, policies, regulations and services needed across all social sectors - especially social welfare, education, health, security and justice. At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation. UNICEF has supported training for judges, prosecutors, police, immigration officials and social workers on child rights and protection measures for child victims of trafficking in Serbia, Montenegro and Angola.

28. UNICEF, jointly with the World Tourism Organization and ECPAT International is supporting the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, a project aimed at involving the private sector and the tourism industry to actively combat child sex tourism and the trafficking of children.

29. ILO is engaged in assisting a number of countries in the development of national trafficking statistics, thereby working closely with national bureaux of statistics. It relies on already existing tools, such as national labour force surveys, to ensure sustainability.

30. UN.GIFT is also supporting capacity-building of State and non-State actors by elaborating capacity development tools. One such tool is the Law Enforcement First Aid Kit which was reviewed by experts at a meeting in May 2008. ILO and UNICEF have developed a training manual to help fight child trafficking. Under the umbrella of UN.GIFT, UNODC in India is working with the Pacific Asia Travel Association (PATA) to facilitate the development of a code of conduct for "safe and honourable tourism".

31. United Nations peacekeeping operations have also been involved in anti-trafficking activities. For example, the United Nations Mission in Liberia (UNMIL) is reviewing the Liberia children's bill, intended to address all gaps in the current legislation that make it possible for

children to be fraudulently adopted outside Liberia. UNMIL is also contributing to the development of a social welfare policy for Liberia, which will provide a policy framework to regulate adoptions and movements of children within and outside Liberia. UNMIL led a subregional assessment of the work carried out in preventing and addressing trafficking in persons in West Africa.

5. Support for legislative development

32. United Nations entities have collaborated with national authorities to improve laws to combat trafficking in persons, especially in women and girls. For example, UNODC has developed a model law to tackle trafficking in persons. It provides a comprehensive set of provisions, dealing with all relevant issues, and is flexible enough to meet the special needs of a diverse range of legal systems. UNODC has developed advanced training modules to combat trafficking covering all aspects of the crime and integrating human rights, which will be released in 2009.¹⁸

33. In May 2008, the Division for the Advancement of Women, Department of Economic and Social Affairs, in collaboration with UNODC, organized in Vienna an expert group meeting on good practices in legislation on violence against women. An expert paper was submitted on “Legal Approaches to Trafficking as a Form of Violence against Women: Implications for a More Comprehensive Strategy in Legislation on the Elimination of Violence against Women”. The meeting adopted a framework containing recommendations on what should be included in legislation on violence against women in terms of its implementation and monitoring, prevention, protection, support and assistance to victims, investigation and legal proceedings, among others.¹⁹

34. The Handbook for Parliamentarians: Combating Child Trafficking, developed by UNICEF and IPU, has been translated and widely used by legislators around the world.

35. In the context of its mandate to provide technical advice on draft legislation, ILO has commented on several draft laws concerning migration, including provisions on trafficking, for example in Albania, Lebanon, Maldives, Mauritania, Republic of Moldova, Syrian Arab Republic, Timor-Leste, Ukraine, United States of America.

¹⁸ Other UNODC publications can be found at: http://www.unodc.org/unodc/en/human_trafficking/publications.html.

¹⁹ Information on the expert group meeting, including the papers submitted and the final report of the meeting, is available on: http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm.

6. Services for victims/survivors of trafficking

36. The United Nations entities continue to support different stakeholders in enhancing services for victims of human trafficking.

37. UNICEF works to strengthen the protective environment for children, to improve the health, education and well-being of children. The services for all children, including victims of human trafficking, include referral mechanisms, shelters, counselling, health care, guardianship, access to education and legal advice. UNICEF also provides training to local non-governmental organizations that operate shelters for trafficked women and a hotline for victims.

38. IOM, over the past 10 years, has offered specific protection and direct assistance to 15,000 trafficked and exploited persons. Its primary aim is to prevent trafficking in human beings and protect its victims, while offering them the options of safe and sustainable integration and/or voluntary return and reintegration. While the majority of individuals offered protection by IOM have been females trafficked for sexual exploitation (8,326 cases out of a total of 12,681 from 2000 to 2007), there has been a growing proportion of trafficked men assisted by IOM and its partners; with 355 trafficked males assisted in 2007 compared to 19 in 2001. During the same period, the organization also increased its support to individuals subjected to labour exploitation from 58 in 2001, to 602 in 2007.

39. ILO implements technical cooperation projects to prevent trafficking (including child trafficking) in about 40 member States. Many of these projects include components on victim rehabilitation through skills training, education, psychosocial counselling, job placement services, microfinance and other measures aimed at the empowerment of victims.

40. Within its programme on trafficking in women and adolescents, UNICRI aims to expand the access of trafficking victims and potential victims to microfinance so that they can develop viable income-generating activities.

41. In 2008, UNODC conducted an orientation session for NGO partners on developing corporate partnerships with a special focus on the rehabilitation of trafficking victims and prevention programmes at the community level.

42. UN.GIFT has partnered with Bharatiya Kisan Sangh, an India-based NGO working in Jharkhand, to ensure that cases of victims of trafficking are given due process of law. In May 2008, the NGO facilitated public hearings with representatives from the National Commission for Women and other senior government officials. As a result of these hearings, over 300 cases have been taken up by the local administration and admitted into the formal judicial process.

7. Strengthening the efforts to combat human trafficking - challenges, lessons learned and the way forward

43. As shown by the activities of United Nations entities, a holistic approach is fundamental to achieving results in combating trafficking in persons. Human trafficking will not be eradicated without political will and commitment at the highest levels to make it a priority locally, nationally, regionally and internationally.

44. As ILO pointed out, coordination efforts, like UN.GIFT, have been effective in sharing information and identifying the comparative advantages of member organizations in the fight against human trafficking. They have also served to raise global awareness and partially influence policymaking through high-level conferences and joint statements. These efforts could be strengthened through an independent and well-funded secretariat that prepares the groundwork of inter-agency cooperation. Inter-agency collaboration is most effective when agencies work to their respective strengths, complement and add value to each other. The development (and implementation) of national action plans on a range of related issues such as forced labour, child labour and trafficking is an area where inter-agency coordination could contribute to more efficient use of resources.

45. In promoting a human rights approach to combating trafficking, OHCHR advocates putting human rights at the centre of any viable anti-trafficking strategy, based on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, as a platform providing a comprehensive framework for combating trafficking from a human rights perspective.

46. UNICEF has emphasized the need to create a protective environment, where children are free from violence, exploitation, and unnecessary separation from family; and where laws, services, behaviours and practices minimize children's vulnerability, address known risk factors, and strengthen children's own resilience. It is important that activities and provision of services to prevent trafficking benefit all children who may be vulnerable to abuse and exploitation, including to trafficking.

47. A notable trend in recent years has been a marked increase in the identification of trafficked males as well as persons trafficked for labour exploitation, including women trafficked into domestic servitude. Discussions led by IOM have also included how an increase in the number of safe and legal migration channels may decrease the incidence of trafficking, and how a broader protection framework for all migrants could improve the rate of identification of those who have been trafficked.

48. As observed by UNEP, environmental degradation is becoming an important cause of migration, both internal and across borders, due to its devastating impact, especially on the livelihoods of the poorest communities, which contributes to their vulnerability to human trafficking. It will be important to include environmental considerations into discussions of the root causes of human trafficking.

49. The protection of fundamental labour rights is an important safeguard against trafficking. This requires strong labour administrations, social dialogue and cooperation with other stakeholders. Good practice examples in this regard are documented as a result of ILO technical assistance to member States.

50. A human rights approach to combating trafficking requires an effective criminal justice response to trafficking, where perpetrators are held accountable, while the rights of trafficked persons are protected at all stages of law enforcement. UNODC stresses that an effective law enforcement response depends on the participation of all levels of society from local communities and non-governmental organizations to migration officials and prosecutors.

II. ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND THE UNITED NATIONS HUMAN RIGHTS MECHANISMS

A. Office of the United Nations High Commissioner for Human Rights

51. OHCHR has continued to work on trafficking in persons through formulating and promoting a human rights approach to every aspect of combating trafficking by all stakeholders.

52. OHCHR is engaged in a number of activities related to human trafficking at the country level. For example, in 2008, it provided comments to the Government of Panama on its draft legislation and procedures on migration, which also dealt with provisions on human trafficking. The comments were submitted jointly with IOM, UNICEF and the Office of the United Nations High Commissioner for Refugees.

53. In Nepal two consultations were held with national and local government officials on legal and policy issues relating to combating trafficking, and training for the National Human Rights Commission and government representatives was organized in December 2006. Support and partnership on a research project with the Office of the National Rapporteur at the National Human Rights Commission in Nepal on “gender vulnerability, trafficking, and human rights in western Nepal”, initiated in 2007, is to be concluded in 2009.

54. OHCHR has been involved in developing projects on combating human trafficking in Thailand, in collaboration with other United Nations agencies. It has been working on a joint project on trafficking with ILO and the Ministry of Labour in Lebanon on developing a model contract for migrant workers in Lebanon, in an attempt to prevent trafficking.

55. In collaboration with members of the United Nations Country Team and civil society, in 2008, OHCHR worked in partnership with the Government of the Republic of Moldova to strengthen the anti-trafficking legislative framework and to develop the capacity of civil society to engage in anti-trafficking efforts.

56. The Centre for Human Rights and Democracy in Central Africa participated in the development of a reference manual for prosecuting traffickers in persons in Cameroon, organized by the American Bar Association (ABA), which was first used in September 2008 for training police trainers on trafficking. In October 2008, the Centre organized, in partnership with the Economic Community of Central African States (ECCAS), in Libreville, Gabon, an expert consultation on child trafficking in central Africa, with the participation of 25 experts.

57. OHCHR is a member of the Steering Committee of UN.GIFT, and participated in the Vienna Forum, including in the workshop on proactive prevention, which discussed appropriate messages and innovative media, preventing demand and measuring success. OHCHR participates in the Inter-agency Group on Violence against Children which aims to increase cooperation among different partners, including on trafficking. OHCHR also participates in the OSCE Alliance Expert Coordination Team (AECT), aiming to promote the human rights of trafficked persons and migrants through research and advocacy.

58. On 2 June 2008, OHCHR co-sponsored and participated in the seminar “Countering human trafficking: partnerships for protection and capacity-building”, held primarily for representatives of Member States in New York, with the participation of United Nations staff, civil society and private sector representatives. The Deputy High Commissioner for Human Rights opened the seminar and advocated the need for effective implementation of the human rights approach to combating trafficking by all stakeholders.

59. OHCHR co-organized with the Government of Mexico an international seminar on the protection of children’s rights in the context of migration in October 2008, with special attention to the protection of unaccompanied migrant children and the dangers they face of becoming victims of trafficking.

60. OHCHR assisted the independent expert in the preparation of the United Nations Study on Violence against Children that addressed, among other issues, trafficking in children. OHCHR has developed a follow-up strategy to the study, which provides a platform for action and aims to integrate its recommendations into all OHCHR activities. OHCHR conducted three expert consultations with the UNICEF Innocenti Research Centre on research methodologies on trafficking.

61. OHCHR took part in World Congress III against Sexual Exploitation of Children and Adolescents, in Brazil in November 2008. A workshop on human rights and combating trafficking of children, organized by OHCHR, gathered as panellists the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery, the Chairperson of the Committee on the Elimination of Discrimination against Women, representatives of IOM, UNICEF, ILO, UNODC, the Director of the Ricky Martin Foundation and the founder of Projeto Uere, a Rio-based NGO working to educate and empower poor children in the community.

62. There has been considerable discussion as to how to prosecute the labour exploitation outcome of trafficking, whether this would reduce demand, and whether it is appropriate or effective to use the international criminal justice framework to do so. OHCHR has produced a paper, which analyses international jurisprudence, in order to provide guidance as to how prosecution of the clients of the services of victims of trafficking for sexual exploitation can be addressed.

B. United Nations human rights mechanisms

1. Human rights treaty bodies

63. The human rights treaty bodies regularly raise trafficking and related issues in the consideration of States parties’ reports. The treaty bodies have expressed concern regarding the persistence of trafficking despite the adoption by States of legislation, national action plans and other measures.

64. The Human Rights Committee has repeatedly identified trafficking as constituting a potential violation of articles 3, 8, 24 and 26 of the Covenant. The Committee has recognized the danger that anti-trafficking measures can have an adverse impact on the rights and freedoms of

trafficked persons. The Committee has identified that the increase in vulnerability to trafficking related to discrimination and violence against women can be addressed through a range of practical measures.²⁰

65. The Convention on the Elimination of All Forms of Discrimination against Women explicitly prohibits trafficking and exploitation of the prostitution of women (art. 6). The Committee on the Elimination of Discrimination against Women has taken up the issue of demand in fuelling trafficking, and related exploitation and the need to raise public awareness of the unlawful and exploitative nature of human trafficking. The Committee expressed concern regarding the practice of conditioning the receipt of residence permits to victims' willingness to cooperate with the authorities.²¹

66. The Committee against Torture has pointed out the importance of providing assistance to victims of human trafficking, on the sole basis of their need, regardless of whether they collaborate with investigators.²²

67. The Convention on the Rights of the Child prohibits trafficking in children as well as sexual exploitation of children and forced or exploitative labour (art. 35). The preamble to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography expresses grave concern at "the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography". The Committee on the Rights of the Child has addressed the issue of demand as part of a comprehensive response to trafficking and related exploitation.²³ The Committee also addressed the issue of unaccompanied and separated children noting in its general comment No. 6 that "trafficking of such a child, or 're-trafficking'"²⁴ in cases where a child was already a victim of trafficking is one of many dangers faced by unaccompanied or separated children.

²⁰ See for instance, CCPR/CO/84/SVN, para. 11, CCPR/CO/84/THA, paras. 20 and 21, CCPR/CO/82/ALB, para. 15.

²¹ See for instance CEDAW/C/FRA/CO/6, paras. 30 and 31, CEDAW/C/MEX/CO/6, paras. 24 and 25.

²² See for instance CAT/C/AUS/CO/3, para. 32.

²³ See for instance CRC/C/KEN/CO/2, paras. 65 and 66.

²⁴ Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, para. 52.

2. Special procedures of the Human Rights Council

68. At its sixtieth session, the Commission on Human Rights decided to appoint a Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children.²⁵ In her first thematic report to the Commission, the Rapporteur focused on defining trafficking and its human rights implications.²⁶ Her second thematic report included a study on the relationship between trafficking and the demand for commercial sexual exploitation, with human rights-based recommendations for Governments.²⁷ Her report to the fourth session of the Human Rights Council contained a study on forced marriages in the context of trafficking in persons.²⁸ She recommended that States implement laws that prevent trafficking, including measures to discourage the demand, to criminalize and prosecute trafficking in persons and provide assistance and protection to the victims.

69. At its seventh session in March 2008 the Human Rights Council extended the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography to work in close coordination with, among others, the Special Rapporteur on trafficking in persons, especially women and children, bearing in mind their complementarity.²⁹ Both the former and current Special Rapporteurs on the sale of children, child prostitution and child pornography have addressed the issue of trafficking in both country³⁰ and thematic reports.³¹ In her first annual report to the Human Rights Council in September 2008, the current Special Rapporteur noted certain definitional issues relevant to her mandate, namely that the notion of the “sale of children” may be interpreted narrowly or else more broadly, to cover “child trafficking”.³² She added that the transnational and regional perspective will be a priority in country visits, along with joint or coordinated visits with other special procedures mandate holders.

70. The Special Rapporteur on violence against women, its causes and consequences, addressed the question of trafficking in persons, especially women and girls, in her thematic reports to the sixty-first and sixty second-sessions of the Commission on Human Rights.³³ In her

²⁵ Decision 2004/110.

²⁶ E/CN.4/2005/71.

²⁷ E/CN.4/2006/62.

²⁸ A/HRC/4/23.

²⁹ Resolution 7/13.

³⁰ E/CN.4/2005/78/Add.2, E/CN.4/2006/67/Add.2, E/CN.4/2006/67/Add.3, A/HRC/4/31/Add.2, A/HRC/7/8/Add.2.

³¹ A/HRC/9/21 and E/CN.4/2006/67.

³² A/HRC/9/21, para. 16.

³³ E/CN.4/2005/72 and E/CN.4/2006/61.

report on intersections between culture and violence against women to the fourth session of the Human Rights Council,³⁴ the Special Rapporteur emphasized that cases of forced marriage should be regarded as human trafficking. In her most recent report, she presented indicators on violence against women, including those relating to trafficking.³⁵

71. The Special Rapporteur on the human rights of migrants regularly addresses the issue of trafficking in persons when reporting on issues related to cross-border migration. He sends communications to Governments, often jointly with the Special Rapporteur on violence against women and the Special Rapporteur on trafficking in persons. The Special Rapporteur devoted a section of his most recent annual report in February 2008 on the criminalization of irregular migration to trafficking,³⁶ highlighting the distinction between trafficking and smuggling in persons.

72. In resolution 6/14 the Human Rights Council established a new mandate of a Special Rapporteur on contemporary forms of slavery, including its causes and consequences, replacing the Working Group on Contemporary Forms of Slavery. The Special Rapporteur aims to address “the causes and consequences of forced labour and how it has an impact on men, women and children. She will take a particular focus on domestic labour and on child labour as it pertains to the economic exploitation of children”.³⁷

3. The Human Rights Council and the Universal Periodic Review

73. At its seventh session the Human Rights Council adopted resolution 7/29 on the rights of the child, urging States to take all necessary measures to eliminate and criminalize child trafficking and increase cooperation to prevent and dismantle networks of trafficking in children and address the needs of victims.

74. At its ninth session, the Human Rights Council adopted resolution 9/5 on human rights of migrants, which encouraged States to enact domestic legislation and to take further effective measures to combat and prosecute international trafficking and smuggling of migrants, and to protect and assist the victims.

75. The Working Group on the Universal Periodic Review, which held its first session in April 2008 and second session in May 2008, discussed the problem of trafficking in women and girls and made recommendations to address this phenomenon in 22 of the 32 countries it considered.

³⁴ A/HRC/4/34.

³⁵ A/HRC/7/6.

³⁶ A/HRC/7/12.

³⁷ A/HRC/9/20, summary.

III. THE RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING

76. Since its earliest involvement in the issue of trafficking, OHCHR has sought to promote and support a human rights approach to combating trafficking in persons. OHCHR has focused on elaborating a series of tools that can be used by States, intergovernmental organizations, human rights bodies, non-governmental organizations and individuals to further the goal of preventing trafficking and protecting the rights of victims. The foundation for this work has been the Recommended Principles and Guidelines on Human Rights and Human Trafficking³⁸ developed in 2002 by OHCHR in consultation with United Nations agencies and international experts. This instrument is set to be strengthened by the forthcoming release of a detailed commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking and an implementation guide for the Recommended Principles and Guidelines. The Principles and Guidelines explicitly advocate a human rights approach to trafficking: one that is normatively based on international law including human rights standards and operationally directed to promoting and protecting human rights. A human rights approach to trafficking requires analysis of the ways in which human rights violations arise throughout the trafficking cycle and of the obligations of States under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distribution of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims.

A. The Recommended Principles and Guidelines on Human Rights and Human Trafficking

77. 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. 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. The High Commissioner 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.³⁹

78. 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.

³⁸ E/2002/68/Add.1.

³⁹ E/2002/68, para. 62.

79. 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.

80. 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.

81. 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. Unlike the principles, the guidelines are intended to provide practical direction to States, intergovernmental organizations, NGOs and others on the steps that can be taken to ensure that the key principles are translated into effective and realistic responses.

82. 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.

B. Use of the Recommended Principles and Guidelines on Human Rights and Human Trafficking by United Nations agencies and others

83. Since 2002 the Principles and Guidelines have been cited in numerous policy documents and interpretive texts including, most significantly, the Legislative Guide to the Organized Crime Convention and the Protocols thereto (UNODC) and the commentary on the provisions of the European Trafficking Convention (Council of Europe).⁴⁰ 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, the United Nations Development Fund for Women (UNIFEM), the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP), the United Nations Development Programme (UNDP),

⁴⁰ Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series No. 197, 16 May 2005, entered into force on 1 February 2008. As of 17 November 2008, 19 States have ratified it and it is opened for accession to all States, members and non-members of the Council of Europe.

UNICRI,⁴¹ UNODC and ILO.⁴² The Special Rapporteur on trafficking in persons 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. International organizations, including IPU and IOM, as well as non-governmental organizations including Amnesty International, Anti-Slavery International, Human Rights Watch, Global Rights, ECPAT, Physicians for Human Rights, Save the Children, and the Global Alliance Against Traffic in Women (GAATW) have referred to the Principles and Guidelines in their research and advocacy efforts.

C. The commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking

84. Since 2002, there have been repeated calls for additional guidance on the Recommended Principles and Guidelines to be made available to intergovernmental organizations, Governments, civil society organizations and others involved in anti-trafficking initiatives. In 2008, OHCHR responded by developing a detailed commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking. The purpose of the commentary is to provide a comprehensive legal and policy analysis of all aspects of the Principles and Guidelines, thereby assisting in their use as a tool for the development and application of responses to trafficking that are fully informed by international law and policy.

85. The commentary utilizes the work of the international human rights mechanisms as well as of States and intergovernmental agencies, in taking forward the human rights approach advocated by the Principles and Guidelines. However, it makes clear that prioritizing human rights does not mean that other objectives or approaches are invalidated. For example, States are still required to develop strong and effective criminal justice responses to trafficking. Nevertheless, at each step of every response, the human rights impact of that step and of the overall response must be considered and monitored. The ultimate objective of responses to trafficking should be to prevent it, to protect individuals from trafficking-related violations of their rights and to provide assistance when such violations are not - or cannot be - prevented. The commentary has been designed in a way that will enable it to be used as a tool for analysing the performance of relevant actors with respect to their legal obligations to prevent and respond to trafficking and related exploitation. A panel of experts, drawn principally from United Nations agencies and human rights mechanisms, reviewed the technical quality of the draft. The results of that review are currently being incorporated and it is expected that the commentary will be publicly available in the first half of 2009.

⁴¹ 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”.

⁴² ILO has extensively used the Principles and Guidelines, see: Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement (Geneva, ILO, 2005); B. Olateru-Olagbegi and A. Ikpe, 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 policymakers and practitioners (2008).

D. Operationalizing the Recommended Principles and Guidelines on Human Rights and Human Trafficking

86. OHCHR is currently considering whether further tools, for example, a practical implementation guide, could be developed to support States and others in ensuring that responses to trafficking are effective, in conformity with international standards and reflect established and emerging good practices. Such a tool could also provide practical guidance on a review of national action plans against trafficking in persons from a human rights perspective.

IV. CONCLUSIONS

87. **The sheer scope of the problem of trafficking almost defies description. Every year, millions of human beings are tricked, sold, forced or otherwise coerced into situations of exploitation from which they cannot escape. They are the commodities of a transnational criminal industry which generates billions of dollars and operates with virtual impunity, due to inefficient law enforcement, compounded, in many cases, by corruption and complicity. The pool of potential victims in every part of the world is expanding due to widespread inequalities, lack of employment opportunities, insecurity of food and livelihoods, violence, conflict, discrimination and poverty.**

88. **The partners in UN.GIFT have endeavoured to raise alarm bells and mobilize actions to counter the trafficking of human beings through the Vienna Forum and increased coordination of activities between United Nations entities involved in combating trafficking, and there have been encouraging developments at the national, regional and international levels. Through United Nations human rights mechanisms, Member States have increasingly reported on progress and on the measures undertaken to combat trafficking from a human rights perspective.**

89. **However, attempts to deal with the human consequences of trafficking remain largely ineffective. Some anti-trafficking efforts have even been harmful to the very people they aimed to protect, as victims of trafficking at times become “collateral damage” in law enforcement operations. With the increasing international focus on human trafficking worldwide in recent years, it has been recognized that it will not be possible to effectively counter the global trade in human beings without shared commitments to human rights, human development and human security, and that human rights must be at the centre of any credible anti-trafficking strategy.**

90. **Trafficking in persons is a human rights violation that can only be overcome if all players, inside and outside Government, can work together on a basis of sound information about the phenomenon and understanding of its causes and consequences and the effectiveness of various interventions. Progress has been made in improving coordination at the regional and international levels, but further efforts should be made to share best practices and implement best strategies. There is a need for a truly integrated response to the problem at the national and international level, including within the United Nations.**
