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The Reports in Short

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The Special Rapporteur on trafficking in persons, especially women and children¹

Mandate holder

Sigma Huda.

Mandate

The mandate was established in 2004 to focus on the human rights aspects of the victims of trafficking in persons. The mandate refers to the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (the Guidelines) developed by OHCHR to provide a practical, rights-based approach to the prevention of trafficking and the protection of trafficked persons, with a view to facilitating the integration of a human rights perspective into national, regional, and international anti-trafficking laws, policies and interventions. The Guidelines and their implementation will be considered within the broader framework of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (the Protocol). The Special Rapporteur responds effectively to reliable information on possible human rights violations, and formulates recommendations on measures required to uphold and protect the human rights of the victims. In the discharge of the mandate, the Special Rapporteur is requested to cooperate fully with other relevant special rapporteurs, in particular the Special Rapporteur on violence against women, as well as relevant UN bodies, regional organisations, and victims and their representatives. The Special Rapporteur takes action on violations committed against trafficked persons and undertakes country missions to study specific situations.

Activities

- Mission to Bosnia and Herzegovina from 21 to 28 February 2005;
- Mission to Lebanon from 7 to 16 September 2005;
- The Special Rapporteur has sent 29 communications to governments and has received ten responses to date.

Annual report²

Scope

The report covers January to December 2005. It outlines the Special Rapporteur's activities and provides a thematic study on the relationship between trafficking and the demand for commercial sexual exploitation undertaken with the Special Rapporteur on the sale of children, child prostitution, and child pornography, and involving a questionnaire to all member States, intergovernmental organisations, and NGOs working on this issue.

Summary and key conclusions

The Protocol defines **trafficking** as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, edited by Eléonore Dziurzynski, Information Program, ISHR.

² E/CN.4/2006/62, 20 February 2006.

exploitation.” The definition is based on four elements: act, means, end result and victim status and emphasises that the consent of a victim of trafficking in persons is irrelevant and in the case child victims, that the means become irrelevant. While the clause of consent does not imply that the Protocol necessarily requires States to abolish all possible forms of prostitution, for the most part prostitution usually does satisfy the elements of trafficking.

The Protocol’s understanding of **demand** emphasises the need to conceive demand in relation to exploitation, irrespective of whether it also constitutes trafficking, and as that which fosters exploitation, not necessarily as a demand directly for that exploitation. While many of the actors on the demand side of trafficking also fall within the definition of traffickers, every trafficker constitutes part of the demand side because they foster the exploitation that leads to trafficking. The Special Rapporteur focuses on demand in sex-trafficking and in particular: the demand constituted by prostitute-users because sex trafficking is a particular form of trafficking in which the human rights of women and children are violated; the prostitute-user is simultaneously both the demand-creator and part of the trafficking chain; many prostitute-users are aware that the women and children they use in prostitution are subjected to the illicit means delineated in the Protocol; and because most prostitution does not exist without the use of one or more of the illicit means delineated in the Protocol.

Buying sex is a particularly **gendered act** that conforms to a social role that involves certain male-gendered ways of behaving and further joins together two forms of social power – sex and money – in one interaction, which both assigns and reaffirms the dominant social status of men over the subordinated social status of women. The demand for commercial sex is often further grounded in **social power disparities of race**, nationality, caste and colour. Racism and prejudice create conditions that both facilitate trafficking and place prostituted women and children at greater risk of additional harm. The legal right granted to men in some jurisdictions to engage in the use of prostituted persons may be in direct conflict with the human rights of persons in prostitution, and a human rights approach therefore privileges those rights over the legal rights granted to prostitute-users.

There is a debate around **the question of whether demand or supply drive the sex-trafficking market**, which depends on one’s understanding of the term supply. If supply is understood to include only the trafficking victims, it is clear that supply does not drive the market. On the other hand, if supply includes the economic, social, legal, political, institutional, and cultural conditions that make women and children vulnerable to being trafficked, then both supply and demand drive the sex-trafficking market. Many governments noted that a globalised, free market economy has increased the demand for cheap labour and services, but it is misleading to conceptualise the demand side of trafficking as principally an issue of globalisation. The use and abuse of trafficking victims by those who constitute the demand side of trafficking occurs as a local phenomenon as well, so both the national and international dimensions are important.

Responses to the questionnaire:

- The Swedish law that prohibits the purchase of sexual services formally recognises the gendered nature of the commercial sex industry. The Republic of Korea, the Philippines, and Chile have all enacted laws penalising prostitute-users;
- Numerous NGOs noted that criminalising the use of prostituted persons would reduce the demand for sexual exploitation and similarly legalising this practice would increase this demand, by banalising and legitimising prostitution. Furthermore, the legalisation of prostitution in a number of jurisdictions has not increased transparency or improved the conditions of prostituted persons;
- Several governments, including Denmark, Finland, Israel, the Netherlands, and the USA indicated that they have implemented extra-territorial jurisdiction that would enable the prosecution of child sex tourists;
- Several respondents noted that the influx of international aid workers, military personnel and peacekeepers in a situation of armed conflict or political instability often brings about a demand for services deriving from sexual exploitation. The UN, the USA and Norway have banned their military personnel from engaging in the use of prostituted persons and 46 nations of NATO have agreed to prohibit their military personnel from engaging in any use of prostituted women who are known to be controlled by traffickers;
- A variety of information, education and advocacy campaigns aimed at discouraging demand have been undertaken by governmental, non-governmental and community-based organisations in recent years, namely in Belgium, several states of the USA, the UK, Angola, Germany, Italy, Indonesia, Switzerland, Spain and Mexico.

Key recommendations

- State parties should be encouraged to discourage the demand side of trafficking through the **criminalisation of the use of prostituted persons**. Any criminal sanction relating to the commercial sex industry should not be used to penalise trafficked women and children.

Mission to Bosnia and Herzegovina³

Scope

The report covers a mission to Bosnia and Herzegovina from 21 to 28 February 2005 during which the Special Rapporteur met with government officials, including the Ministers of Justice and Security, and representatives of international organisations, including the OHCHR country office and the UNICEF. The Special Rapporteur also met with non-governmental organisations (NGOs) and visited shelters for victims of trafficking.

Summary and key conclusions

The post-war period saw the deployment of a complex and significant international presence in the country, creating the perception of a demand for sexual services, starting trafficking for the purpose of sexual exploitation started in Bosnia and Herzegovina. The Government adopted a National Plan of Action (NPA) to combat trafficking in persons in December 2001, focusing on prevention, detection and prosecution of crimes related to human trafficking, as well as assistance and protection to victims.

- After the adoption of the NPA, the situation changed substantially with a large number of illegal female migrants leaving the country and several persons involved in trafficking serving prison sentences.
- **Measures taken to combat trafficking and identify victims** have suffered from a lack of coordination and cooperation between relevant actors and the increased involvement of the local police has produced a greater reluctance on the part of victims to come forward.
- The **borders of Bosnia and Herzegovina** are now legally under the complete control of the State Border Service (SBS), thereby reducing the number of illegal border crossings. There are however technical, financial and staffing issues which prevent complete border coverage, especially land border crossings, such as the crossing between Serbia and Montenegro and Bosnia and Herzegovina.
- In the past two years the **number of victims identified** has decreased dramatically. It has been argued that this is due to a change in the *modus operandi* of traffickers, moving the exploitation of trafficked women underground, using more local women and women from Serbia who are in the country legally and changing their methods of recruitment.
- Bosnia and Herzegovina is also emerging as a country of origin for **Bosnian victims trafficked from within and outside its borders to other countries in Europe**. This is particularly problematic since the protection framework has so far only focused on foreigners and does not mention internal trafficking, trafficking to third countries or trafficking for purposes other than prostitution in the Rule Book on the Treatment of Trafficking Victims (the Rule Book).
- There have been **extensive legislative reforms** with a new Criminal Code and Criminal Procedure Code making trafficking in persons a State-level crime, but some of its provisions relating to trafficking have been criticised for lack of clarity.
- The number of **prosecutions** is low because of a lack of clarity as to when a case should be referred to the State court as a trafficking case and when it should be tried at the local level. There is a general lack of cooperation between agencies responsible for combating trafficking. **Investigations** are also often insufficient and since prosecutions rely largely on testimony by victims, securing convictions is difficult.
- The **trafficking of children**, particularly internal trafficking, is also a problem, aggravated by a lack of coherent reporting and identification system and the fact that in practice, law enforcement officials and service providers apply the same procedures and standards to children and adults.

Key recommendations

- The Government should take a leading role in **implementing the National Plan of Action**.
- Further efforts are needed to **harmonise** the provisions of **entity-level criminal laws** with the **State criminal law** and **greater coordination** is needed between law enforcement agencies and with the prosecutors.
- **Legislative reforms** are also needed to ensure that **prostitutes are not criminalised** and that **protection of victims** is provided before, during and after trial.

³ E/CN.4/2006/62/Add.2, 30 November 2006.

- Measures should be taken to ensure better control of the **border with Serbia and Montenegro**.
- **SBS officers** should be given further training on identification of and procedures regarding victims of trafficking and specific guidelines should be developed to identify victims of trafficking, based on the OHCHR Legal Manual on Protection of Victims of Trafficking in Persons in Bosnia and Herzegovina.
- The **Rule Book** should be revised to address the question of protection of national victims and victims of trafficking for purposes other than prostitution.
- Greater attention should be devoted to addressing the **root causes of trafficking** into Bosnia and Herzegovina, with long-term prevention including anti-discrimination measures, job opportunities for women, and legal migration projects targeting women.
- **Awareness-raising programmes** are needed in the main countries of origin of victims but also in Bosnia and Herzegovina, addressing both women and children.
- Increased efforts are needed to **combat trafficking of children**, including through increased regular surveillance of premises suspected of harbouring trafficked children and other general prevention measures to identify children vulnerable to becoming victims of trafficking.

Mission to Lebanon⁴

Scope

The report covers a mission to Lebanon from 7 to 16 February 2005, during which the Special Rapporteur met with members of Parliament and the Government, the President of the National Commission for Lebanese Women, senior law enforcement officials, government experts, senior diplomats, UN officials, representatives of civil society and victims of trafficking.

Summary and key conclusions

- Lebanon is a transit and destination country for **domestic migrant workers**, a considerable number of whom are trafficked into exploitative labour situations, and **foreign women** are exploited in the sex industry. Despite some progress, the Government's international obligations have yet to translate into the necessary **legal** and **institutional reforms** with Lebanese law criminalising only certain component acts of trafficking and specific types of trafficking for sexual purposes.
- Certain groups who are particularly vulnerable to trafficking and exploitation are excluded from the protection of **labour law**, such as domestic workers and women in the regulated sector of the sex industry, and are instead subject to separate legal regimes that can be in violation of applicable international norms.
- There has been a large influx of **migrant women** coming to Lebanon to serve as **domestic workers**, organised by private employment agencies. Under the current system of migration policies, these women are at the mercy of their employer since the validity of their visa depends on continued employment. Furthermore, administrative directives condone restrictions on their freedom of movement and responsibility for monitoring of working conditions is left to the private employment agencies.
- While the Penal Code prohibits secret **prostitution**, there is official tolerance and regulation of a commercial sex industry procuring foreign women for prostitution. Women are often kept in the sex industry through a system of debt bondage, but also through physical and sexual abuse. Some General Security Department directives facilitate these forms of sexual exploitation.
- Since the 1970s, **child labour** has substantially declined but remains a problem in low-income families. Street children and other children from socio-economically marginalised backgrounds are exploited as beggars by organised groups of adult handlers, and while official statistics indicate very low levels of sexual abuse and exploitation of children, the actual numbers are likely to be much higher.

Key recommendations

- The Government should develop a **comprehensive national strategy** on trafficking to bring Lebanon into compliance with its international obligations.
- The Government should conclude **bilateral** or **multilateral agreements** on the standardisation and mutual recognition of employment contracts, the monitoring of employment agencies, and safe repatriation and social reintegration of trafficked persons with countries sending large numbers of migrant workers.

⁴ E/CN.4/2006/62/Add.3, 20 February 2006.

- The Government should ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, and relevant International Labour Organization (ILO) conventions.
- Lawmakers should initiate **legislative reform** on trafficking, and the adequacy of the legislative framework on migration should be reviewed in light of the large-scale migration to Lebanon. The protection of the **Labour Code** should be extended to domestic workers and women working in the regulated sex industry.
- Specific **guidelines** and **procedures on the identification of victims of trafficking** should be developed and potential victims should be given adequate legal, medical and social assistance.
- Trafficked persons should not be detained or prosecuted for illegal presence in Lebanon or unlawful activities that are a direct consequence of their situation as trafficked persons.
- Increased efforts should be made to identify and combat all forms of **child trafficking**, notably by providing special training on trafficking and the rights of children.
- All **countries sending significant numbers of migrants** to Lebanon should establish embassies or consulates in Lebanon that are sufficiently staffed and resourced to exercise effective consular protection to nationals.
- **Human rights NGOs** and the **media** should give more attention to the human rights of foreign nationals, especially migrant workers and women in the sex industry, and should address discrimination by the State and society with regard to race, colour, ethnicity, social status and gender.

Summary of cases transmitted to Governments and replies received⁵

Scope

The report contains summaries of the Special Rapporteur's urgent appeals and other communications to governments on individual cases and general situations of concern to the mandate, as well as government replies received.

Summary and key conclusions

- During the period under review, from 1 November 2004 to 31 December 2005, the Special Rapporteur sent **29 communications to 23 countries**.
- All communications were sent **jointly with other independent experts**, notably the Special Rapporteur on the sale of children, child prostitution and child pornography (20) and the Special Rapporteur on violence against women, its causes and consequences (14).
- As of 10 February 2006, the Special Rapporteur had received **10 replies**.
- The communications concerned a **wide array of issues**, including trafficking for purposes of commercial sexual exploitation; forced marriage; forced labour; child labour; exploitation of children in armed conflict; disappearances of children; contemporary forms of slavery; and systematic sexual violence by States or armed non-state actors.
- Some communications addressed factors that cause or exacerbate trafficking in persons, such as inadequate legislation; law enforcement gaps; corruption; refoulement; discrimination; and lack of access to education.
- The Special Rapporteur sent communications to Bahrain; Cambodia; China; the Democratic Republic of the Congo; the Dominican Republic; Greece*; India; Indonesia*; Israel; the Democratic People's Republic of Korea*; Kuwait*; Malawi*; Myanmar; Niger; Pakistan*; Saudi Arabia*; Serbia and Montenegro*; the Sudan; the United Arab Emirates*; the United Kingdom of Great Britain and Northern Ireland; the United States of America*; Yemen; and the Occupied Palestinian Territory.

⁵ E/CN.4/2006/62/Add.1, 27 March 2006.