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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Mandate of the Special Rapporteur on trafficking in persons, especially women and children

Background Note

Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms

Berlin, Federal Republic of Germany, 23-24 May 2013

Introduction

Human trafficking has been characterized as a heinous crime which shames and challenges humanity. The grave violations resulting from trafficking in persons have led to increasing efforts and cooperation in combatting this practice which is at the fore front of the human rights agenda at international, regional and national levels. As the UN Human Rights Council has noted, trafficking in persons violates fundamental human rights and continues to pose serious challenges to humanity. In this context, the mandate of the Special Rapporteur on trafficking in persons, especially women and children, was established in 2004 by the then Commission on Human Rights to focus on the human rights aspects of trafficking in persons. The current mandate-holder, Ms. Joy Ngozi Ezeilo, was appointed by the Human Rights Council in June 2008.

In its Resolutions on trafficking in persons, especially women and girls, including Resolution 63/156, of 18 December 2008, Resolution 61/144 of 19 December 2006, and Resolution A/RES/59/166 of 20 December 2004, the UN General Assembly has recommended considering setting up or strengthening national coordinating mechanism, for example, a national rapporteur or an inter-agency body. Moreover, in its Recommended Principles and Guidelines on Human Rights, the UN Office of the High Commissioner for Human Rights (OHCHR) recommends that States and, where applicable, intergovernmental and non-governmental organizations, consider establishing mechanisms to monitor and evaluate the human rights impact of anti-trafficking laws, policies, programmes and interventions. The UN Global Plan of Action to Combat Trafficking in Persons encourages effective cooperation and coordination of efforts at the national, bilateral, sub-regional, regional and international levels and taking advantage of the networks provided by relevant organizations to share best practices in capacity-building for responding to and combating trafficking in persons.

In her report to the 10th session of the Human Right Council, the Special Rapporteur committed to pay particular attention to human rights violations against trafficking victims by working with Governments to put in place national mechanisms that will help to identify victims and provide protection and assistance to them while at the same time prosecuting and punishing traffickers¹. In this regard she recommended that “States should consider the appointment of a national rapporteur who will liaise with the Special Rapporteur to gather, exchange, and process information on trafficking in persons and monitor action². In exercising

¹ A/HRC/10/16, para. 38

² A/HRC/10/16, page.27

her mandate, the Special Rapporteur has noted the importance of having national rapporteurs and equivalent mechanisms, which help in coordinating, monitoring and evaluating anti-trafficking policies. In particular, the analysis and data provided by national rapporteurs and equivalent mechanisms are instrumental in measuring the effectiveness of steps taken to prevent human trafficking, to prosecute suspects and to protect victims.

The Special Rapporteur's mandate also includes, among others, identifying and sharing best practices as well as challenges and obstacles in order to uphold and protect the human rights of the victims; and giving particular emphasis to the identification of concrete areas and means for international cooperation to tackle the issue of trafficking in persons. In this connection, the Special Rapporteur has emphasized that cooperation and exchange of expertise and good practices among countries would contribute to raising the effectiveness of anti-trafficking efforts.

In October 2010, the Special Rapporteur convened a consultation in Dakar on the role of regional and sub-regional mechanisms in international efforts to counter trafficking in persons, especially in women and children. The participants of this meeting highlighted that a pre-requisite to effective and wider cooperation was effective coordination at the national and regional levels through structures such as focal points, coordinators or rapporteurs. Also, in February 2012, the Special Rapporteur participated in the meeting of the Informal Network of European National Rapporteurs or Equivalent Mechanisms, organized by the European Commission and the European Union Anti-Trafficking Coordinator, where the participants shared information on their work and activities and discussed the challenges of and good practices for implementing the existing National Referral Mechanisms, the advantages of having Transnational Referral Mechanisms as well as the issues of victim identification and safe return to prevent re-trafficking.

This background note is produced as a tool meant to facilitate discussions during the expert consultation on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms convened by the Special Rapporteur on 23 and 24 May 2013 in Berlin. The objectives of the meeting are as follows:

1. To promote exchange of information on current trends, good practices and lessons learnt from the activities of various national rapporteurs and equivalent mechanisms;
2. To consider and discuss possible ways of promoting partnership and cooperation between national rapporteurs and equivalent mechanisms from various regions of the world;
3. To provide an opportunity for participants to meet with one another and create and enhance networking between national rapporteurs and equivalent mechanisms from countries of different regions.

The expected outcome of the consultation is to develop - based on the observations and conclusions of the participants - a set of recommendations for fostering cooperation and sharing of expertise and good practices among national rapporteurs and equivalent mechanisms from different regions of the world.

Legal Review

Human rights violations resulting from trafficking are prohibited by international Human Rights law. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights

explicitly prohibit violations such as the deprivation from the right to liberty and security, the subjugation to servitude, the deprivation from the freedom of movement, the deprivation from private property, the deprivation from the right to just and favourable remuneration, the deprivation from dignified standards of living adequate for the health and well-being of individuals, which are violations characteristics of trafficking in person. Many other international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (CRC), the Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography, the Optional Protocol to CRC on Involvement of Children in Armed Conflict, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, provide key provisions prohibiting human rights violations resulting from trafficking and constitute the international legal framework to combatting this practice³. Over the last decade, there has been growing concern across stakeholder groups about human trafficking for sexual and labour exploitation. This concern led the international community to adopt a new instrument in 2000 called the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Protocol supplements the UN Convention against Transnational Organised Crime, and came into force in December 2003. The Protocol offers UN Member States, lawmakers and the global community an internationally-agreed definition of human trafficking, which is defined 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 exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

While complex, this definition emphasizes the following key points⁴:

Action: Human trafficking involves recruitment, transportation, transfer, harbouring and/or receipt of a person.

Means: Human trafficking involves the threat or use of force, deception, abduction, the abuse of power or a position of vulnerability, or other forms of coercion.

Purpose: The purpose of human trafficking is exploitation, which can include the prostitution of others, forced labour, slavery or servitude.

Referencing exploitation, the Protocol makes a direct link to forced labour, slavery and practices similar to slavery, key issues related to human trafficking in the global economy. This recalls human rights abuses falling under the jurisdiction of other legally-binding instruments, notably core ILO Conventions and international human rights instruments. Forced labour and slavery are crimes punishable under international law. In 1926, the first international treaty prohibiting slavery was adopted by the League of Nations, which offered the following definition: slavery is “the status or condition of a person over whom any or all of the powers attaching to the right of

³ A/HRC/10/16, para.20

⁴ ICAT The International Legal Frameworks concerning Trafficking in Persons, p.2

ownership are exercised.”⁵The prohibition of slavery was strengthened with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Supplementary Convention on the Abolition of Slavery) in 1956 and the International Covenant on Civil and Political Rights in 1966⁶. Significantly, the Supplementary Convention on the Abolition of Slavery, by referencing practices “similar to slavery,” updated the 1926 definition to include other forms of exploitation including servitude and debt bondage, highly relevant to contemporary considerations of human trafficking. A few years following the adoption of the 1926 Slavery Convention, the International Labour Organisation (ILO) adopted its first international instrument against forced labour, Convention 29 of 1930, which in 1998 was identified by ILO constituents as one of eight “core” ILO Conventions⁷. Convention 29 includes the internationally-recognised definition of forced labour, which is identified as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Taken together, the concept of trafficking for the purpose of forced labour can be understood as referring to the recruitment, transportation and harbouring of a person by illicit or coercive means for work or service that is undertaken against a person’s free will, backed-up by a threat or a penalty of any kind. For business and other labour market actors, understanding the definition and risks associated with trafficking for labour exploitation is of the utmost importance.

Following the adoption of the Palermo Protocol in 2000, many countries have improved their legal infrastructure in order to define, prohibit and sanction human trafficking, and protect its victims. Over the last five years, a number of countries have passed comprehensive anti-trafficking laws, and defined National Action Plans; while other countries have created legal mechanisms to monitor and/or punish Trafficking activities within their borders.

Legally-binding instruments are central reference points for governments in designing their domestic legal and institutional instruments. For ratifying States, they set out a framework for national laws. In this context, it is also relevant to note the development of non-binding principles on State responses to human trafficking. The Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the Office of the High Commissioner for Human Rights (OHCHR), set out that States should consider criminalizing all practices covered by the definition of trafficking, including debt bondage, forced labour and enforced prostitution.

National Institutional Development & Monitoring

There is a long and compelling call by international instruments for the establishment of National Rapporteurs or equivalent mechanisms to monitor the situation of human trafficking within a country, but also evaluate the degree of implementation of existing legislations as well as the level of efficiency of National Action plan and policy orientation along with strengthening the gathering and use of data and reporting on trafficking in human beings.

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking provided the following provisions:

3. Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating

⁵ League of Nations, Convention to Suppress the Slave Trade and Slavery.

⁶ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

⁷ ILO, Forced Labour Convention, 1930 (No. 29)

*trafficking and/or assisting trafficked persons and relevant sectors of civil society.*⁸(Guideline 1, para. 3)

*7. Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.*⁹ (Guideline 1, para.7)

*5. Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another*¹⁰(Guideline 3, para. 5)

The UN General Assembly resolution 61/144 and resolution 63/156 recommend the establishment or strengthening of national coordinating mechanisms such as national rapporteur or inter-agency mechanisms. The resolutions further encourage the interaction between State and non-states institutions to foster the exchange of information and data reporting on the root causes, factors and trends in trafficking especially for women and children.

Establishing a National Rapporteur or equivalent mechanism is an important step towards the implementation of data collection, research and analysis of the trafficking situation in concerned countries. The United Nations Global Plan of Action to Combat Trafficking in Persons identifies research and collecting suitably disaggregated data as key factors enabling the proper analysis of the nature and extent of trafficking in persons¹¹. The value of having an established National Rapporteur or equivalent mechanism should improve understanding about the nature of the problem in its various forms within any given State. This is crucial in developing the adapted steps to efficiently and durably combating trafficking.

The OHCHR Recommended Principles' Guideline One on the promotion and protection of Human rights underlines the necessity to review anti-trafficking legislation, policies and programmes (Guideline 1, para 2). In this regard National rapporteur and equivalent mechanisms have also been identified as means to implementing systematic monitoring of the effectiveness of measures and policies undertaken to prevent and combat trafficking in persons. In addition to evaluating the effectiveness of national action plans, such mechanisms serve to assess the positive impact, as well as negative externalities of government policies and plans of action against human trafficking. National Rapporteurs and equivalent mechanisms represent a channel for recommendations aiming at improving policies and practices addressing all forms of trafficking¹².

It is widely recognized that efforts for systematic reliable data collection are lacking in divers part of the world which constitutes a continuing challenge in fighting human trafficking. The UNODC Trafficking in Person 2012 report underlines that despite the growing number of States Parties to the Palermo Protocol, implementation and impact on the ground are yet to be observed.

⁸ E/2002/68/Add.1. page 5

⁹ E/2002/68/Add.1, page 5

¹⁰ E/2002/68/Add.1, page 7

¹¹ A/RES/64/293 (Annex, para 16)

¹² OSCE SR Report 2007, p. 23.

The main challenges observed are the lack of financial capacities but also “topical challenge, mainly with knowledge and research, institutional capacity building and development as well as monitoring and evaluation”¹³. Therefore, it is all the more important to keep encouraging the establishment and/or strengthening of local monitoring and reporting mechanisms. Regional and international coordination of such national mechanisms is also crucial, as it enables sharing expertise, lessons learned and helps ensuring that national responses to trafficking in persons do not result in the migration of the problem elsewhere.

Regional Mechanisms and Cooperation

The OHCHR Recommended Principles state the following:

*Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level: a strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is particularly critical between countries involved in different stages of the trafficking cycle*¹⁴

The Special Rapporteur has long maintained that in order to effectively address the serious challenge to humanity posed by the phenomenon of trafficking in persons, better cooperation among countries of origin, transit and destination is required. In this regard, she has notably stressed her conviction that regional and sub-regional mechanisms “play a key role in providing a response that is both multilateral and sufficiently close to countries’ realities and the specificities within a certain region”¹⁵. In her 2011 report to the Human Rights Council, she noted an extraordinary number of encouraging and innovative anti-trafficking initiatives taken by regional mechanisms, as well as a number of areas of concern requiring attention. She has equally stressed the vital importance of adopting a victim-centred, human rights-based approach in any effort aimed at tackling trafficking in persons, and has repeatedly highlighted the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the Office of the United Nations High Commissioner for Human Rights as providing a reference point in this regard for States and other actors.

The Special Rapporteur convened a consultation on regional mechanisms in recognition of the unique position of such mechanisms at the interface of international action and local realities. The consultation yielded a number of lessons learned and shared experiences among the participants. In the field of monitoring and reporting, gathering, collecting, analysing and sharing data was believed to be crucial at the national level and have impacts on regional efforts as they are determinant to designing and implementing adapted policies to fighting human trafficking. There is a necessity to identify in each region the structure best placed to coordinate and/or conduct research needed to inform policies and interventions within the region, and follow up to ensure that findings are translated into actions at the national levels.

The European Parliament and the European Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, provides that “Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions,

¹³ UNODC-Global Report on Trafficking in Persons 2012, page. 88

¹⁴ E/2002/68/Add.1, p. 15

¹⁵ A/HRC/14/32, para. 2

including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.” This directive clearly defines the scope and mandate of national rapporteurs. At the European level a clear distinction has been made between coordinating mechanisms and national rapporteurs which are defined as monitoring mechanisms.

National Rapporteurs or equivalent mechanism have been identified as a key means to improve the effectiveness of anti-trafficking policy and practices. Article 29 of the Council of Europe Convention provides that “Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements”. In the spirit of the Council of Europe Convention the “National Rapporteur” mechanism is an independent, autonomous body with a similar role and competences as an Ombudsperson specialised in the field of trafficking in persons. Its duties include monitoring the implementation of national legislation and policies. Overseeing the action of state agencies in the field of trafficking in human beings; preparing an annual report and usually report to national parliaments in an annual debate; carrying out population surveys and collecting data however this latter competence can never substitute or be to the detriment of the state obligation to collect administrative data from different state bodies dealing with trafficking in human beings (police, health system, judiciary, etc.).

Provided the mobile and volatile nature of trafficking in person; national, regional and international coordination is crucial in combatting this plague. There is interdependence between the efficiency of national mechanisms and the capacity of regional mechanisms to have significant impacts on countering trafficking. Implementation of existing policies at the national level often requires the establishment of institutions mandated with monitoring and reporting duties so as to understand the specificities of the phenomenon in any given national territory as well as evaluating the efficiency and degree of implementation of policies developed within the framework of National Plans of Actions to Combatting Trafficking. Therefore, it is important to exchange on current good practices and share lessons learned in order to strengthen and enhance national rapporteurs and equivalent mechanisms as key institutions to combatting trafficking in persons.

Suggested Discussion Points:

- How can existing National Rapporteurs and equivalent mechanisms be strengthened to become efficient key institutions in fighting Trafficking in person at the national and regional level?
- What lessons can be drawn in terms of concrete impact and results of national rapporteurs on the effective implementation of national plans of action in combatting trafficking?
- How to foster increased and substantial coordination among national mechanisms so as to augment regional and international efforts?