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## Conseil des droits de l'homme

### Vingtième session

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

### **Rapport de la Rapporteuse spéciale sur la traite des êtres humains, en particulier les femmes et les enfants, Joy Ngozi Ezeilo**

Additif

### **Mission en Australie\***

#### *Résumé*

La Rapporteuse spéciale sur la traite des êtres humains, en particulier les femmes et les enfants, Joy Ngozi Ezeilo, s'est rendue en Australie du 17 au 30 novembre 2011. La Rapporteuse spéciale souligne que le pays s'est fermement engagé à combattre la traite des êtres humains, comme l'attestent le niveau d'engagement élevé du Gouvernement et le partenariat efficace avec les organisations de la société civile. Elle reconnaît toutefois que les statistiques relatives à la traite ne semblent pas refléter la vraie nature du problème, ni son ampleur réelle. Prenant acte de l'important programme d'aide destiné aux victimes de la traite, elle se dit préoccupée par le fait que certains services offerts présentent des lacunes. La Rapporteuse spéciale accueille avec intérêt un projet de loi qui vise, de façon très ambitieuse, à pallier de nombreuses insuffisances du cadre législatif actuel, et se félicite de son adoption imminente en tant que loi. Elle adresse un certain nombre de recommandations au Gouvernement, s'agissant notamment d'élaborer un nouveau cadre pour la collecte de données relatives aux victimes de la traite, d'étoffer les activités de renforcement des capacités à l'intention des fonctionnaires, de remédier aux principales lacunes du programme de soutien, ainsi que de veiller à la pérennité de l'engagement régional afin de renforcer les actions au niveau national et de s'attaquer aux racines du problème de la traite dans les pays pourvoyeurs, notamment en créant davantage de possibilités pour une migration de main-d'œuvre dans des conditions sûres.

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe et il est distribué dans la langue originale seulement.

## Annexe

*[English only]*

**Report of the Special Rapporteur on trafficking in persons,  
especially women and children, on her mission to Australia  
(17–30 November 2011)**

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## I. Introduction

1. From 17 to 30 November 2011, the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, conducted an official visit to Australia at the invitation of the Government.

2. During her mission, the Special Rapporteur visited Sydney, Canberra and Melbourne. At the Commonwealth level, she met with representatives of the following: Attorney General's Department, Department of Foreign Affairs and Trade, Department of Immigration and Citizenship (DIAC), Australian Federal Police (AFP), Australian Agency for International Development (AusAID), Office of the Commonwealth Director of Public Prosecutions (CDPP), Department of the Prime Minister and Cabinet, Department of Education, Employment and Workplace Relations, Office of the Fair Work Ombudsman, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Customs and Border Protection Services, Australian Crime Commission and Australian Institute of Criminology (AIC). She also met with the Governor General. She further attended two important national events on trafficking: the National Roundtable on People Trafficking and the AIC Research Forum on Trafficking. She also conducted a briefing for foreign diplomats on trafficking in persons in Australia.

3. In Victoria she met with representatives of the Victoria Police and the Department of Justice, as well as with Members of Parliament. She also met with a range of legal professionals, including judges of the County Court and the Supreme Court of Victoria, and barristers and lawyers who have represented victims of trafficking. She also consulted with members of a local council. In New South Wales, she met with representatives of the Australian Human Rights Commission, the New South Wales Police Force and the New South Wales Victims Compensation Tribunal, as well as with the Mayor of Sydney. She also visited Villawood Immigration Detention Centre, where she met with detainees. In all states and territories visited she met with victims of trafficking, and liaised with a diverse range of civil society organizations (CSOs) and academics.

4. The Special Rapporteur expresses her sincere appreciation to the Government of Australia, and in particular the Attorney General's Department, for the indispensable support it provided in planning and coordinating the visit. She further thanks the CSOs and the United Nations Information Centre for their support and assistance.

## II. Main findings

### A. Forms and manifestations of trafficking in persons in Australia

5. Australia is a destination country for victims of trafficking. Available information indicates that identified victims of trafficking are mainly women from South-East Asia, in particular from Thailand, the Philippines, Malaysia and the Republic of Korea. Recent data indicates a growing number of victims from other parts of Asia, including India and China. Incidences of human trafficking have primarily been detected in Melbourne and Sydney, with a small number in Queensland, South Australia and the Australian Capital Territory. Since Australia began its anti-trafficking programme (January 2004–March 2012), the AFP has undertaken 325 investigations and assessments of allegations of trafficking-related offences. In the large majority of cases, victims were found to be working in the sex industry. However, a growing number of cases of other forms of trafficking, including for forced and exploitative labour, are emerging.

6. Identified victims of trafficking in Australia appear to be controlled less through direct force than through more subtle means, such as illegal debt, fear of violence, psychological coercion and threats to themselves or their family members. The means by which persons become victims of trafficking appear varied: some are actively recruited abroad, whereas others are recruited once in Australia. Many victims seek the assistance of an agent to find them work in Australia, but are deceived as to the nature and conditions of that work.

#### **1. Trafficking for sexual exploitation**

7. In 2010 approximately 70 per cent of the investigations undertaken by the AFP were related to trafficking for sexual exploitation. In the majority of cases, victims were women from South-East Asia, who reportedly knew that they would be working in the sex industry, but were deceived as to their conditions of work, namely, the existence of physical and sexual violence and intimidation in the workplace, being forced to engage in unsafe sexual practices, being unable to refuse clients or certain services or being grossly underpaid. Control is typically exercised through intimidation and threats, as well as through contracts obliging trafficked women to work off their “debt”, which is invariably a grossly inflated sum purportedly representing the cost of arranging travel to Australia and related expenses.

8. The Special Rapporteur also observed a very strong focus, particularly by the media, on trafficking for the purposes of sexual exploitation. This focus is understandable given the profile of persons in Australia typically identified as having been trafficked. Yet she notes that there are dangers in associating trafficking in persons exclusively with sex trafficking, not least of these being the stereotyping of victims of trafficking as only women forced into prostitution or working in the sex industry. She learned of an increasing number of cases of trafficking for reasons other than sexual exploitation, which remain largely overlooked to date. She notes however that since 2009 the Government of Australia has put in place a significant range of measures to detect and investigate other forms of trafficking, in particular labour exploitation.

#### **2. Labour exploitation**

9. Australian authorities are becoming increasingly aware of trafficking for the purposes of labour exploitation. In particular, concern has been raised regarding the agriculture, construction, hospitality, manufacturing and domestic service industries. In 2011, approximately 30 per cent of the 45 investigations carried out by the AFP related to trafficking for labour exploitation. The cases reported indicate that foreign workers can be exposed to instances of poor work conditions, substandard accommodations, overwork and low or no pay. While these circumstances alone do not conclusively point to the existence of labour trafficking, they are examples of conduct that may indicate trafficking-related exploitation. In 2010 the first comprehensive research into labour trafficking was undertaken by the AIC.

10. Australia, as a highly developed country, relies strongly on migrant labour, with approximately 600,000 migrant workers at any one time. Considerable concern has been raised about labour exploitation in relation to subclass 457 visas, designed for employers wishing to employ overseas workers to fill nominated positions in Australia. Migrants on such visas (particularly low- or semi-skilled migrants) are reportedly especially vulnerable to exploitation due to their dependence on their sponsor for continued migration status, their typically low English language skills, lack of knowledge about their rights, and fear of losing the employment on which they rely to service debts or financial obligations. A recent review of this system resulted in a number of important reforms, including the introduction of a market-based minimum salary, and the removal of lower-skilled occupations within the construction and hospitality industry sectors. Nonetheless, 457 visa holders still need a

sponsor, and the visa remains a pathway to permanent residency, contributing to the ongoing dependence of this class of visa holders on employers, thereby making them potentially more vulnerable to exploitation and trafficking.

### 3. Marriage

11. The use of marriage as a mechanism to traffic young women both into and out of Australia is of growing concern.<sup>1</sup> In 2010 the AFP received three separate reports of cases of forced and servile marriage. Preliminary research indicates that victims are often trafficked through marriage for the purposes of domestic servitude. They are at a heightened risk of sexual abuse, and are often first identified as victims of domestic violence, with welfare officers not always aware that these women are victims of the specific crime of trafficking.

12. The Special Rapporteur notes the Government's swift reaction to the issue of forced and servile marriage; it commissioned a public discussion paper on the phenomenon in November 2010. Submissions received from a wide range of stakeholders suggested that forced marriage is likely to be more prevalent than the small number of reported cases, which may be attributed to the familial nature of forced or servile marriages, or because victims may not actually identify their marriage to have been forced.

### 4. Child trafficking

13. The Special Rapporteur notes that there is a lack of data on child trafficking within Australia. Strict immigration and other controls certainly mean it is difficult for children to be brought into the country without their parents or legal guardian. However, two high-profile cases suggest that child trafficking has indeed taken place within Australia and may be a potential issue of concern.<sup>2</sup> Trafficking of children via marriage also occur if brides are under 18 years old.

### 5. Domestic workers

14. There are few migrant domestic workers in Australia, due to the lack of a culture of domestic service and a narrow visa class (Subclass 426 Domestic Worker Visa) open only to specific categories of foreign domestic workers (for example, those attached to diplomatic households). Nevertheless, cases of persons trafficked for domestic work have been documented, and the Special Rapporteur herself met with persons who experienced trafficking as domestic workers in Australia, indicating that this class of persons continues to be at risk. The protection of domestic workers working for diplomats is further complicated by rules relating to privileges and immunities. Domestic workers also appear to be under the impression that there is a live-in requirement attached to the visa, which adds to their vulnerability. The Government however insists there is no such requirement. The Special Rapporteur thus urges the Government to make this manifestly clear both to those arriving on such a visa and employers.

<sup>1</sup> New South Wales District Court, *R. v Fas* [2007] NSWDC 257; Queensland Court of Appeal, *R v Kovacs* [2008] QCA 417, *R v Kovacs* [2007] QCA 143, *R v KO* [2006] QCA 34.

<sup>2</sup> See Leonie Lamont, "Sold at 12: nightmare ends in death", *Sydney Morning Herald*, 13 March 2003 (reporting the case of Puanthong Simpalee). See also Frances Simmons and Jennifer Burn, "Evaluating Australia's response to all forms of trafficking: towards rights-centred reform", *Australian Law Journal* vol. 84, No. 10 (October 2010), 712–713; Natalie Craig, "Sex slave victim wins abuse claim", *The Age* (Melbourne), 29 May 2007.

## 6. Emerging forms of human trafficking

15. The Special Rapporteur learned that in 2011, the first alleged case of trafficking for the purposes of removal of organs was referred to the CDPP. In this instance, established medical transplant integrity procedures ensured that the situation was discovered before the removal of the organ was carried out. The resulting referral to a social worker revealed the true situation of the potential donor as a victim of trafficking. While this appears to be an isolated incident, the Special Rapporteur urges the Government to remain alert to such practices, and to establish adequate safeguards to protect victims.

16. She has also observed that certain visas appear to increase vulnerability to trafficking-related exploitation. Specifically, the large number of foreign student visas issued (approximately 310,000 at any given time) has been highlighted as presenting a potential avenue for trafficking. The Government noted that the student visa system has a low risk of being exploited due to the safeguards in place to ensure that visa holders are genuine students, including an 80 per cent mandatory class attendance rate and a limit of 20 hours of employment per week. Yet reports from CSOs and the media indicate that individuals on student visas, typically from Asia, have been victims of forced labour and forced prostitution in Australia. It is also noteworthy that in 2010/11, 18 foreign students were participating in the Support for Trafficked People programme, confirming that some persons holding student visas are indeed trafficked. Moreover, genuine foreign students can become vulnerable to trafficking once in Australia, particularly for labour exploitation, due to high costs of studying and living. In October 2011 the Minister for Immigration and Citizenship announced a targeted analysis of the student visa programme. The Special Rapporteur looks forward to the results of this review, and reminds the Government of the need to adopt a human rights framework in any appraisal of the student visa system.

## B. Criminalization of irregular migration and the impact on trafficked persons

17. Australian legislation distinguishes between the crimes of people smuggling and trafficking in persons.<sup>3</sup> However, the Special Rapporteur observed that the focused political and public attention directed towards all issues pertaining to migration has led to an all-encompassing discourse of criminalization that, when not carefully articulated, has failed to distinguish trafficking from other forms of migration. This contributes to confusion in public understanding between the broader class of irregular migrants and those who have been trafficked.

18. Furthermore, the strong political commitment to criminalizing and prosecuting people smuggling may have unintended negative consequences for victims of trafficking. In the past three years, new laws against people smuggling, with mandatory minimum sentences, resulted in the arrests of over 493 persons.<sup>4</sup> However, of those charged, only six persons were actual organizers or facilitators of the smuggling operations. Many of those arrested are reportedly deceptively recruited to work on ships as crew members, with false promises about the nature of their work and their payment, and thus may themselves have been victims of trafficking. Nonetheless, they are treated as accused criminals and placed in

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<sup>3</sup> Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 (Cth); cf. Deterring People Smuggling Act 2011.

<sup>4</sup> 233C of the Migration Act 1958. Also note that the Deterring People Smuggling Act 2011, passed on 25 November 2011, retrospectively defines “no lawful right to come to Australia” to mean no lawful right under domestic law, notwithstanding that a person may have a clear and lawful right under international law (for example, a right to seek and claim asylum from prosecution) to seek to enter Australia.

jail. This is a clear violation of the international legal obligation of Australia to correctly identify victims of trafficking, to provide immediate protection and support to such persons, and to ensure that they are not criminalized for offences relating to the fact of their having been trafficked.<sup>5</sup> The situation is particularly worrying given that some crew members of vessels involved in migrant smuggling appear to be children. The processes used to determine their age are such that, to date, all are nonetheless held in adult prisons.<sup>6</sup>

19. Finally, for those migrants arriving without any visa, including by boat, the detention scheme in Australia requires their detention for processing. It has been signalled that there are some detainees who may in fact be victims of trafficking. There are also concerns that some child detainees, lacking proper documentation to ascertain their age, are not being identified as children.

## C. The legal and policy framework for combating trafficking in persons

### 1. Federal legal framework

20. Australia is a constitutional democracy with a parliamentary system of government. Its Constitution established a federal system in which legislative, executive and judicial powers are shared or distributed between federal institutions, six states and three self-governing territories. Under the Constitution, the Commonwealth does not have a general power to make criminal laws, meaning responsibility for criminal laws and enforcement action rests primarily with the states and territories. Despite this, the Commonwealth has the power to legislate with respect to trafficking in persons by virtue of its constitutional power to ratify international treaties.

21. Since 2004 Australia is party to the United Nations Convention against Transnational Organized Crime and, since 2005, to its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol). Moreover, Australia has ratified seven out of the nine core human rights instruments, a number of which have particular relevance to combatting trafficking, including the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. Australia acceded to the 1951 Convention relating to the Status of Refugees in 1954, and to its 1967 Protocol on 13 December 1973. It has also ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and has developed a protocol for responding to allegations of child trafficking in intercountry adoption.

22. Australian law requires treaty obligations to be incorporated into federal law to make them directly justiciable. Thus, the country's first people-trafficking offences were created in 2005 as amendments to the Commonwealth Criminal Code. Division 270 of the Criminal Code includes offences and maximum sentences for slavery, sexual servitude and deceptive recruitment for sexual servitude. Division 271 includes offences and maximum sentences for trafficking in persons, trafficking in children, domestic trafficking in persons and debt bondage, with higher penalties for aggravated offences, such as when children are involved.

<sup>5</sup> See Anne T. Gallagher, *The International law of Human Trafficking* (Cambridge University Press, 2010), chap. 5.

<sup>6</sup> Australian Human Rights Commission, "Inquiry into the treatment of suspected people smugglers who say that they are children", available from [www.hreoc.gov.au/about/media/news/2011/116\\_11.html](http://www.hreoc.gov.au/about/media/news/2011/116_11.html).

23. Although the Government insists that these laws discharge the obligations of Australia under the Trafficking Protocol, a number of shortcomings should be mentioned, most notably that the trafficking in persons offence (sect. 271.2) cannot be used against a person who recruited or maintained another person in a situation of forced labour or non-sexual servitude but was not involved in his or her transportation. Moreover, servitude and exploitation offences are restricted to instances of purely sexual servitude. Additionally, under the current laws, there is a lack of a separate federal offence which criminalizes forced labour. While the Government has noted that cases of labour exploitation could technically be prosecuted under slavery offences, only the most extreme forms of labour exploitation would fall into that category. Moreover, slavery offences set a high threshold under which the exercise of “any or all of the powers attaching to the right of ownership” must be made out.<sup>7</sup> This difficulty is highlighted by the fact that, to date, only two cases of labour trafficking have been prosecuted, despite indications that labour exploitation is a growing issue.

24. The Government has acknowledged legislative shortcomings and, in November 2010, commenced a public consultation that prompted the development of the Exposure Draft of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012. The Special Rapporteur welcomes the publication of the Bill, tabled during the course of her mission, and was pleased to learn that it was developed after wide consultation with CSOs and that it receives bipartisan support.

25. Importantly, the Bill amends the existing definitions applying to trafficking, slavery and slavery-like offences to ensure that a broad range of exploitative conduct is criminalized. It also creates new offences of forced labour and forced and servile marriage, which were difficult to prove under the former legislative framework. Other important changes include ensuring that the slavery offence applies to conduct which renders a person a slave, as well as to conduct involving a person who is already a slave; extending the application of the existing offences of deceptive recruiting and sexual servitude so they apply to non-sexual servitude and all forms of deceptive recruiting, and improving reparations to victims. The Bill further recognizes that servitude may exist whether or not escape is possible or an attempt at escape has been made.

26. The Special Rapporteur notes that while the Bill should be commended as remedying some of the major gaps in the former legislative framework, it does not fully address all of the concerns raised by stakeholders. In particular, she observes some ambiguity around the elements of the new offences, including the failure to address victim and witness protection, and the retention of the problematic requirement of some form of entry to or exit from Australia to constitute a trafficking in persons offence (although notably, now not required for trafficking-related offences such as slavery, servitude, forced labour, forced marriage and deceptive recruiting). She urges the Government to consider all submissions on the Bill in order to ensure that the new legislative framework around trafficking fully meets the international legal obligations of Australia and provides a strong and workable foundation for the country’s response.

27. Australia also has a number of other relevant legislative arrangements that can contribute to combating trafficking in persons. For example, under the Migration Act 1958 (Cth) it is an offence for an employer, labour-hire company, employment agency or other person to knowingly or recklessly allow a non-citizen without work rights to work, or to refer them for work. For aggravated offences—where such a person is exploited through forced labour, sexual servitude or slavery—maximum penalties rise. The Special Rapporteur notes, however, that only one case of knowingly or recklessly allowing a person to work in breach of their visa conditions was successfully prosecuted in 2010.

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<sup>7</sup> See High Court of Australia, *R v Wei Tang* (2008) HCA 39.



28. The Fair Work Act 2009 sets out 10 National Employment Standards, including minimum entitlements for all employees, such as leave, notice of termination and redundancy pay. Also, it is an offence in Australia for Australians to engage in child sex tourism offences overseas.<sup>8</sup> Other relevant laws include those that implement the country's non-discrimination obligations under the International Convention on the Elimination of All Forms of Racial Discrimination<sup>9</sup> and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>10</sup> Australia does not have a bill of rights, and human rights are not specifically protected in its Constitution.

## 2. State and territory criminal offences

29. Commonwealth legislation operates concurrently with state and territory laws unless otherwise specified or in the event of inconsistency, in which case Commonwealth laws prevail. Thus, although the key anti-trafficking legislation is contained in the Commonwealth Criminal Code, most states and territories have enacted legislation relating to sexual servitude and deceptive recruitment which would allow them to prosecute some cases of trafficking.<sup>11</sup>

30. The Special Rapporteur notes however that these laws focus exclusively on trafficking for sexual exploitation. All state and territory jurisdictions have a range of provisions for crimes commonly associated with incidences of trafficking, such as exploitative or forced prostitution, kidnapping, assault (against the victim or family members), rape, theft, intimidation, kidnapping and deprivation of liberty. However, it is increasingly common for state and territory law enforcement authorities to refer trafficking-related matters to the federal authorities.

31. Other state and territory laws further complement the anti-trafficking framework. For example, in the Australian Capital Territory, the Northern Territory and Victoria, a person who is convicted of trafficking in children under the Criminal Code becomes a registered sex offender or registered child sex offender,<sup>12</sup> and may be subject to further detention, supervision and/or monitoring orders.<sup>13</sup> Victoria also has a number of laws that refer back to the trafficking offences under the Criminal Code, relating to transport licensing,<sup>14</sup> working with children,<sup>15</sup> sentencing,<sup>16</sup> and sex workers<sup>17</sup>. Western Australia

<sup>8</sup> Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010.

<sup>9</sup> Racial Discrimination Act 1975 (Cth).

<sup>10</sup> Sex Discrimination Act 1984 (Cth).

<sup>11</sup> Australian Capital Territory: Crimes Act 1900, sects. 79, 80, 81; Prostitution Act 1992, sects. 17, 20 and 21. New South Wales: Crimes Act 1900, sects. 80D, 80E (aggravated under 18 years of age), 91A, 91B, 91D (promoting or engaging in acts of child prostitution), 91E (obtaining benefit from child prostitution) and 91F (premises not to be used for child prostitution); Summary Offences Act 1988, sect. 15A. Northern Territory: Criminal Code Act sects. 202B, 202C, 202D; Prostitution Regulation Act, sects. 11 to 17. Queensland: Criminal Code Act 1899, sects. 218 and 229FA. South Australia: Criminal Law Consolidation Act 1935, sects. 66 to 68. Tasmania: Sex Industry Offences Act 2005, sect. 9. Victoria: Crimes Act 1958, sects. 60AB, 60AC (aggravated under 18 years of age), 60AD and 60AE. Western Australia: Criminal Code Act Compilation 1913, sects. 331B, 331C and 331D; Prostitution Act 2000, sects. 7 (excludes children), 14 (covers child prostitution as an offence), 16, 17 and 18.

<sup>12</sup> Crimes (Child Sex Offenders) Act 2005 (Australian Capital Territory); Child Protection (Offender Reporting and Registration) Act 2004 (Northern Territory); Sex Offenders Registration Act 2004 (Victoria).

<sup>13</sup> For example, under the Serious Sex Offenders (Detention and Supervision) Act 2009 (Victoria); Serious Sex Offenders (Supervision) Act 2005 (Victoria).

<sup>14</sup> Bus Safety Act 2009; Sex Work Act 1994.

<sup>15</sup> Working with Children Act 2005; Transport (Compliance and Miscellaneous) Act 1983.

<sup>16</sup> Sentencing Act 1991.

also has laws on working with children that refer back to child trafficking offences in the Criminal Code.<sup>18</sup>

### 3. Local laws

32. The Special Rapporteur also learned of local laws that provide further protection for trafficked persons. For example, the cities of Yarra and Maribyrnong, both in Victoria, require signs in multiple languages to be hung inside each room of a brothel to alert sex workers to their rights, provide them with information about trafficking and inform them about support services available. She encourages local and State authorities to learn from such local initiatives, which are a practical response to specific knowledge on the ground and can be valuable tools in empowering victims.

## D. Institutional framework

33. In 2003 the Government established its first National Action Plan to Eradicate Trafficking in Persons. In 2009 the plan was transformed into the Anti-People Trafficking Strategy, which is based on four pillars: prevention; detection and investigation; criminal prosecution; and victim support and rehabilitation. While this is a commendable overarching framework and the Government does report annually to the Australian Parliament on measures taken to combat trafficking, the Special Rapporteur notes that the strategy is very general and lacks clear, measurable indicators for assessing outcomes and impact.

34. The Government should be highly commended for establishing the Anti-People Trafficking Interdepartmental Committee, which is a forum where federal agencies come together to develop a “whole of government” approach to tackle people trafficking. The Attorney General’s Department is the lead government agency coordinating the national response; it chairs the Committee, facilitates and reports on the National Roundtable on People Trafficking, and administers federal legislation on trafficking, including the current draft trafficking bill.

35. As trafficking is a federal crime, the AFP has primary responsibility for investigating trafficking cases and maintains dedicated Human Trafficking Teams (HTTs) that focus on the investigation of trafficking cases. The HTT National Coordinator is based in Canberra, with HTTs in Sydney, Melbourne and Brisbane. The Special Rapporteur has learned that, in accordance with the Australian Policing Strategy to Combat Trafficking in Persons 2011-2013, HTTs are increasingly focusing their attention on states and territories where they do not have a presence, and with a renewed focus on labour trafficking. While all AFP officers are alerted to the crime of trafficking during their basic training, those who work in HTTs are provided with specific training on trafficking in persons, conducted with the assistance of international legal experts and non-governmental organizations (NGOs).

36. DIAC also has a human trafficking contact officer in every state and territory and compliance officers specifically trained to identify specific indicators of trafficking. DIAC maintains three offshore specialized trafficking integrity officers in Manila, Bangkok and Guangzhou, China, who examine visa applications for evidence of fraud that may indicate potential trafficking and analyse trends in visa processing. These officers work in close collaboration with the AFP and share intelligence.

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<sup>17</sup> Sex Work Act 1994.

<sup>18</sup> Working with Children (Criminal Record Checking) Regulations 2005.

37. Specific anti-trafficking initiatives have also been established at the state level. For example, in Victoria, the Parliamentary Drugs and Crime Prevention Committee requested an official inquiry into the trafficking of people for sex work. The report of the inquiry, including detailed recommendations, was published in 2010.<sup>19</sup>

## **E. Identification of trafficked persons**

38. Between 2004 and March 2012, 191 victims of trafficking were identified. In the previous year alone, 45 suspected victims of trafficking were identified. To date, victims have been predominately identified in Sydney and Melbourne, with the AFP reporting that victims tend to be moved between mainland capitals.

39. The majority of trafficked persons are first identified by DIAC. Identification by DIAC usually takes place during compliance visits (immigration raids of workplaces and homes), which the Government submits are planned field operations to locate identified persons of interest who may have overstayed their visa or are reported to be working in breach of visa conditions. Interviews are conducted by compliance officers who are trained in identifying indicators of trafficking. Any suspect case is referred to the AFP for further assessment, regardless of the immigration status of the concerned individual. DIAC noted that another comprehensive screening process is conducted for persons who are detained, and any indication of trafficking results in a referral to the AFP and the release of the individual from detention. DIAC stated that no identified victim of trafficking has ever been placed in immigration detention.

40. State and territory police, which are also often the front-line officers encountering victims, collaborate with AFP on trafficking cases. In Australian airports, this function is carried out by Customs and Border Protection officers, who, upon any suspicion, refer cases directly to the DIAC airport migration officer. To date, no victims of trafficking have been identified at an airport; however, this may be attributed to the fact that persons often only become aware of their exploitation and trafficking once within the country.

41. The Office of the Fair Work Ombudsman is a new federal agency mandated to protect the rights of workers, irrespective of their migration status, and thus may potentially play an important role in identifying trafficking for the purposes of labour exploitation. The Ombudsman, with 416 labour inspectors nationwide, has the power to enter workplaces, make inspections, seize documents and carry out auditing in suspect cases and can make referrals to the AFP in situations of concern. A further 182 Fair Work Inspectors have been engaged through state partner agencies in Queensland, New South Wales, Victoria and South Australia, to carry out compliance activities. Very few cases investigated by the Ombudsman involve exploitation that would amount to forced labour, and the Ombudsman reported difficulties in being able to identify trafficked persons through the inspections. The Special Rapporteur is pleased to note however, that the Office of the Ombudsman did indicate its awareness of trafficking as an issue of growing concern, and is forging closer relationships with the AFP and DIAC on this point, including trafficking-specific trainings for labour inspectors, and is working closely with migrant communities to improve the identification of trafficking in workplaces.

42. The number of victim identifications referred to the AFP by CSOs had been increasing, reaching 13 per cent in 2009/10. However, the Special Rapporteur notes that that number has decreased of late, with only 5.7 per cent of referrals from CSOs in 2010/11. Identifications have also been made by members of the community, and anyone with

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<sup>19</sup> Available from: [www.parliament.vic.gov.au/images/stories/committees/dpcp/Trafficking\\_Final\\_full\\_report\\_with\\_cover.pdf](http://www.parliament.vic.gov.au/images/stories/committees/dpcp/Trafficking_Final_full_report_with_cover.pdf).

information on a potential case of trafficking is encouraged to report it to the police. For example, the Attorney General's Department published up to 95 advertisements in newspapers to alert potential clients of sex workers of the possibility of encountering victims of trafficking. A number of victims have also contacted their home embassy in Australia. The Government asserts that foreign diplomats and consuls are trained to identify victims of trafficking.

43. Despite these diverse methods, the Special Rapporteur notes that only a relatively low number of victims of trafficking have been identified. The Government asserts that this reflects the low level of trafficking into Australia, citing its remote location, the absence of any shared land borders, and robust immigration and visa requirements as dissuasive factors. However, the Special Rapporteur observes that the official numbers of identified victims may not be indicative of the true extent of the problem of trafficking. For a variety of valid reasons, victims of trafficking may not make their cases known to the authorities, as highlighted by the trafficked persons with whom the Special Rapporteur met. This may explain why official government statistics regarding the numbers of identified trafficked persons within Australia often diverge considerably from the case loads reported by CSOs. Furthermore, the hidden nature of the crime means that not all cases of trafficking are identified. Therefore, the Special Rapporteur concludes that official figures of identified victims may underrepresent the true number of trafficked persons in Australia.

44. The Special Rapporteur has noted some shortcomings with the specific methods of identification. While it is commendable that DIAC has established a specialized anti-trafficking capacity, she remains concerned about the use of immigration raids to identify victims of trafficking. In particular, raids are carried out with the specific purpose of locating and detaining foreign nationals who have breached their visa conditions or are otherwise unlawfully in Australia. Raids that may involve trafficked persons also appear to have focused primarily on brothels (although other industries where immigration laws are regularly breached are also targeted). This focus may contribute to a failure to identify trafficking in other sectors and may also lead to a stigmatization of those sex workers who do have the legal right to work. Moreover, while specially trained agents use checklists of indicators during these raids, the Special Rapporteur expresses concern regarding the interviewing process: suspected victims are interviewed solely by DIAC officials and no social worker or psychologist is present. Given the understandable fear of deportation or detention, she questions whether these raids are truly effective in identifying victims of trafficking.

45. Furthermore, CSOs report that some persons who arrive without a visa, and who are mandatorily detained as a result, may be victims of trafficking. The Special Rapporteur reminds the Government that persons interviewed in detention centres, and in particular trafficked persons, may be very fearful about speaking with authorities. Only after building relationships of trust will victims be willing to disclose their true situation. DIAC should therefore work in collaboration with CSOs that are skilled in this area and/or that have established such relationships. Any indicator of trafficking noted by these CSOs should be referred immediately to the AFP, and the individual concerned should be treated as a victim of trafficking while the situation is being clarified.

46. The Special Rapporteur further noted that many state and territory police do not receive trafficking-specific training, including on the identification or treatment of trafficked persons. In Victoria, for example, anti-trafficking work still falls to the sex-crimes squad, which has limited knowledge of trafficking-specific indicators, particularly outside the sex industry. State police forces themselves have noted the need for increased training of front-line officers in the detection of trafficking. While the annual training course run by the AFP generally includes a small number of state police, this is clearly insufficient to establish a critical mass of trained officers.

47. Furthermore, jurisdictional issues in states continue to present a problem in the identification of trafficked persons, particularly in the area of sexual exploitation. For example, in states where prostitution is not illegal, police do not actively regulate sex work; they only interact with the industry in the case of a complaint or the commission of an offence. Other arms of government, including local councils, manage the regulatory and licensing aspects of the sex industry. This fragmentation of responsibility has led to a gap in the proper regulation of legal sex work, resulting in agencies with little or no experience in trafficking overseeing the sex industry, with state and territory police limiting their role to the investigations of crimes. This has contributed to a potentially harmful vacuum in terms of responsibility for the proper identification of trafficking victims in the sex industry.

48. Identification of trafficking for the purposes of labour exploitation also appears to be less than satisfactory. While the Fair Work Ombudsman does have 53 offices across Australia, including 43 offices located outside of metropolitan areas, CSOs working with victims of labour trafficking report that one of the main shortcomings is the lack of an effective nationwide labour inspections policy, particularly in remote rural areas. The Special Rapporteur appreciates that the limited number of labour inspectors from the Office of the Ombudsman cannot be expected to comprehensively monitor all Australian workplaces. She further notes the steps the Government of Australia has made in this regard, in particular the National Overseas Workers initiative, which is aimed at monitoring, promoting and ensuring compliance with labour laws in industries identified as employing high numbers of migrant workers.

## **F. Protection of trafficked persons**

49. In 2011/12 the Government provided 1,055,000 Australian dollars for the Support for Trafficked People programme. The programme is administered by the Office for Women within the Department of Families, Housing, Community Services and Indigenous Affairs and is delivered by the Australian Red Cross. A total of 191 persons have received support through the programme as of 15 March 2012.

50. In order to be eligible to access any trafficking-specific support services, a person must first be identified by the AFP as a suspected victim of trafficking. A Bridging Visa F may be granted to that person for period of up to 45 days, which provides an initial reflection period. It is notable that any person identified as a suspected victim of trafficking is entitled to this visa and support, regardless of their immigration status. Services include access to emergency accommodation; support funds, including a basic living allowance; access to medical services, including counselling; case manager contact; and access to legal assistance. As most persons on the programme require housing during this phase, most are accommodated in hotels or serviced apartments. A second Bridging Visa F may be granted in cases where the person is willing but unable to assist police, which allows an additional 45 days of intense casework and access to financial and social support services.

51. In order to be eligible for the next stages of support, the AFP must be satisfied that the person concerned is willing and able to contribute to an investigation or prosecution of people-trafficking offences. Determinations of contribution are assessed on a case-by-case basis by the AFP, and are reportedly not set at a high threshold. Where a contribution to an investigation appears possible, victims will be granted a Criminal Justice Stay Visa. Support provided at this phase is less intensive than in the initial phase, and includes assistance finding long-term accommodation, rent assistance, access to certain medical benefits, court support and legal assistance, employment and vocational training, and English classes.

52. Finally, victims who have contributed to an investigation may be granted a Witness Protection (Trafficking) (Permanent) Visa, which allows the holder permanent residence in

Australia. The new visa scheme also entitles immediate family members both inside and outside Australia to apply for permanent residency.

53. While commending the programme for providing some fundamental services to victims of trafficking, the Special Rapporteur notes a number of shortcomings. First, to enter the programme and access any of the support services available, persons must be formally identified by the AFP as a suspected victim of trafficking: any person who does not engage with AFP will automatically be excluded from the programme. Moreover, beyond the initial assistance provided under the Bridging Visa F, all ongoing support services are dependent on a contribution to criminal justice process or investigation. The linking of ongoing support services to contribution to criminal processes should be removed, as it imposes an additional burden on victims of trafficking and does not represent an adequate acknowledgment of their status as victims.

54. Second, the Special Rapporteur observes that the initial reflection period of 45 days is very short. Although an extended period of reflection is possible, in reality it was reported that a second Bridging Visa F will only be granted in situations where victims can evidence extreme trauma. A 45-day reflection period may not be an adequate time period for persons who have been trafficked to reflect and make critical decisions. An initial automatic reflection period of 90 days for all persons would be more appropriate and in accordance with article 6 of the Trafficking Protocol.

55. Third, accessing appropriate accommodation is reportedly very difficult for trafficked persons. Most victims on the programme are initially placed in hotels, which reportedly is isolating and inappropriate for the needs of newly identified victims of trafficking. There are no dedicated government shelters for trafficked persons, and although some other supported accommodation is available, the possibility for this to be accessed is reportedly extremely limited. CSO-supported housing services are also in short supply. The Special Rapporteur notes that more funding should be designated to dedicated accommodation for victims of trafficking, including funds to assist CSOs to expand their housing and accommodation services for victims as envisaged in article 6 of the Trafficking Protocol and affirmed by other key international legal agreements, including article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings.

56. Furthermore, it has also been reported that victims of trafficking on Criminal Justice Stay Visas are not entitled to certain government services, such as public housing or higher education. The Special Rapporteur notes that because of the long process of investigations, this can leave victims in a state of limbo, where, due to limited access to services, they are not able to move forward with their lives.

57. Fourth, the Special Rapporteur commends the improvement to the visa framework that enables dependents of victims of trafficking who have been granted permanent residency to migrate to Australia. Yet although visa costs are provided for, there is no financial support for relocation and travel costs to Australia or settlement support upon arrival, as provided under other humanitarian visas. The result is that many persons who are entitled to bring family members to Australia, and who often have already been separated from their family for an extended period, are compelled to postpone the reunification process for financial reasons. The Special Rapporteur urges Government to bridge this gap and ensure that funding be made available to facilitate this important family reunification initiative.

58. Finally, the Special Rapporteur observed that visa titles, which specify the trafficked status of the holder, potentially stigmatize victims by affecting their ability to find employment and integrate into an Australian community. A human rights-based approach requires placing the needs of all victims at the core of any response, and visa titles should be adjusted accordingly so as not to inhibit victims' recovery and rehabilitation.

## G. Prosecution and punishment

59. In appropriate cases, the AFP refers matters to the CDPP, which evaluates and decides whether to pursue the case in court. Australian courts have seen a number of successful prosecutions for trafficking-related offences, including a landmark decision in the High Court, which affirmed that exploitative prostitution can, under certain circumstances, constitute slavery.<sup>20</sup> To date, in the 39 cases referred to the CDPP for prosecution, 35 people have been charged with trafficking-related offences, resulting in 14 convictions: nine were convicted for slavery offences, three for sexual-servitude offences, one for a trafficking in persons offence, and one for a labour trafficking offence. As of 15 March 2012 there were seven defendants before Australian courts, three of whom were appellants.

60. Although prosecutions are widely publicized as a deterrent mechanism, the low numbers of prosecutions and convictions confirm what judges and other members of the legal profession reported: that the current legal framework makes it difficult to secure successful convictions of traffickers. Furthermore, there have been only three prosecutions for slavery outside the sex industry to date, indicating additional difficulties in using the current law to prosecute trafficking for purposes of forced and exploitative labour. Many of the problems with the current legal framework have been addressed in the Bill introduced during the Special Rapporteur's visit (see paras. 25-26 above). It is hoped that, once passed, the new legislation will provide a clearer and more workable framework for the effective prosecution of trafficking and related exploitation.

## H. Redress for victims of trafficking

61. Under Commonwealth law, victims of trafficking whose cases have been successfully prosecuted may be entitled to a special payment, known as a reparation order, which requires the offender, in addition to the penalty for the offence, to make reparation to the victim "in respect of any loss suffered by the person as a direct result of the offence".<sup>21</sup> The Special Rapporteur observes that the provision requires a very high degree of proximity, which is not always possible for victims of trafficking to prove.

62. The Bill proposes to remedy this by amending section 21B(1)(d) so that the offender can be ordered "to make reparation to any person in respect of any loss suffered, or any expense incurred, by the person by reason of the offence".<sup>22</sup> While the Special Rapporteur supports this proposed amendment, she would further recommend that the provision make explicit that it includes non-economic loss such as pain and suffering, which are very significant for trafficking victims.

63. Even with such an improvement in place, the Special Rapporteur notes that reparation orders do not provide a significant remedy for many victims of trafficking, as very few cases result in successful convictions. Furthermore, the grant of a reparation order is discretionary, and defendants may not have assets. Significantly, no reparations orders have ever been made in relation to the trafficking in persons offences contained in Divisions 270 or 271 of the Criminal Code, further signalling their limited relevance for trafficking victims.

<sup>20</sup> *R v Wei Tang* (2008) HCA 39.

<sup>21</sup> Crimes Act, sect. 21B(1)(d).

<sup>22</sup> Exposure Draft of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012.

64. The Special Rapporteur notes that international law obligates Australia to provide victims of trafficking with access to effective remedies.<sup>23</sup> The Special Rapporteur notes, however, that there is no comprehensive national framework for victim compensation. Although victims of crimes are able to access compensation under state and territory schemes, remedies vary from state to state, with different eligibility requirements, different time frames, different caps on the maximum compensation and different access to compensation for pain and suffering. Furthermore, some schemes require a psychological assessment to prove damage and loss, which many victims are reluctant to undergo given their fear of re-traumatization. The Special Rapporteur notes that the establishment of a comprehensive federal compensation scheme was an overarching recommendation of the public consultation, one that was echoed at the National Roundtable on People Trafficking. If implemented, this recommendation would be in accordance with the obligations of Australia with respect to remedies under the Trafficking Protocol and international human rights law.

65. Another important means of redress, specifically for victims of labour trafficking, is the recovery of unpaid wages under the Fair Work Act. Under this Act, civil penalties can be imposed on top of orders for the reimbursement of unpaid wages. The Fair Work Ombudsman has undertaken more than 585 investigations involving migrant workers to date, recovering more than \$510,000 in unpaid entitlements.<sup>24</sup> The Ombudsman noted that not all cases necessarily involve exploitation that would constitute forced labour. However, there have been a number of notable cases where the victims were trafficked and/or subject to forced labour. For example, Kentwood Industries was penalized \$123,000 for the underpayment of \$242,000 in unpaid wages to five Chinese construction workers who were recruited and brought to Australia under subclass 457 visas. The victims were paid as little as \$3 per hour and worked up to 21 hours a day, six to seven days a week, with no entitlements.<sup>25</sup>

## **I. Repatriation and reintegration**

66. When victims of trafficking on the support programme wish to return home, Red Cross caseworkers make contact with the International Office for Migration (IOM). While IOM Australia does not have a formal programme in place to assist the return and reintegration of victims of trafficking, it does have the capacity to assist the safe return of victims of trafficking if requested to do so by a donor, the United Nations or a CSO on an ad hoc, cost-recovery basis. Clients so assisted are referred to IOM offices in the country of return which, in turn, facilitate the provision of assistance from NGOs or community-based organizations.

## **J. Prevention**

67. Community awareness of trafficking is widely recognized as a key prevention strategy. Trafficking in persons is generally a new issue for the Australian public, and the Australian media has played an important role in raising awareness about it. Yet despite increased attention to the issue, accurate reporting on the phenomenon of trafficking

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<sup>23</sup> See the Trafficking Protocol, art. 6.6. See also the Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 9.

<sup>24</sup> Australia, "Trafficking in persons: the Australian Government response, 1 June 2010–30 June 2011", third report of the Anti-People Trafficking Interdepartmental Committee, p. 37.

<sup>25</sup> Federal Court of Australia, *Fair Work Ombudsman v Kentwood Industries Pty Ltd (No 2)* (2010) FCA 1156; *Fair Work Ombudsman v Kentwood Industries Pty Ltd (No 3)* (2011) FCA 579.



remains a challenge, with the focus predominately on trafficking in the sex industry. Moreover, it continues to be difficult to reach out to those most at risk of trafficking, including the migrant population.

68. With the financial support of the Government, a number of NGOs have been developing important initiatives to overcome these obstacles. In particular, in 2011, the Anti-Slavery Australia, a local NGO, produced three community service announcements, which were translated into seven languages and screened in cinemas and on television, that address trafficking into domestic servitude, agricultural work and the commercial hospitality industry.

69. The Government of Australia has also funded a number of important projects to raise awareness about labour exploitation, and to provide advocacy and outreach for vulnerable industries and groups, including migrant workers and sectors that rely heavily on migrant labour.<sup>26</sup> It has also developed factsheets for employers and employees on trafficking; and provided funds to raise community awareness. AIC issued an important report on labour trafficking (2010), and is undertaking research into trafficking and the sex industry. Future research will focus on the construction industry and trafficking in marriage, as well as the development of a framework for monitoring trafficking in persons in Australia and a related guide for collecting information and data on trafficking in persons. The Special Rapporteur notes that given the focus of the AIC on criminal law and practice, its research perspective may be restricted, and thus encourages the Government to also liaise with independent research institutions, including universities that are undertaking relevant research in this regard.

#### **Creating safe migration pathways**

70. Australia operates a total visa system, which the Government claims prevents trafficking to Australia. Measures such as offshore intelligence gathering, including visa pre-screening, allegedly ensure that potential victims are not granted visas, thus preventing their victimization. Through the use of data processing programmes, a decision to deny entry can occur with limited assessment of the evidence of individual cases. The Special Rapporteur notes that such prevention measures may disproportionately impact on certain groups, including women and individuals from specific countries, ethnicities or geographic regions. Implementation of the State's international legal obligation to take steps to prevent trafficking cannot be at the expense of its obligations under international human rights law, including the prohibition on racial and sex-based discrimination.

71. The Special Rapporteur has observed that the country's restrictive migration policy severely limits the possibilities for unskilled migrants to enter Australia legally and safely, thereby creating a lucrative market for migrant smugglers and exacerbating the vulnerability that feeds trafficking and related exploitation. In this regard, she is encouraged by the Pacific Seasonal Worker Pilot Scheme, which enables unskilled or low-skilled Pacific Islanders to work in the Australian horticultural industry for up to 7 months in any 12-month period. To date, the numbers of actual workers under the scheme have been low, with only 1,100 visas issued between 1 February 2009 and 16 March 2012. Currently, only 375 workers are onshore. However, the Special Rapporteur is pleased that the Government is planning to expand the programme to additional Pacific Islands and to the hospitality, aquaculture and broadacre farming industries, and that it hopes to issue 10,000–12,000 visas over the next four years. A small-scale trial is also planned with tourism employers in

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<sup>26</sup> Grantees include the Australian Council of Trade Unions, for a campaign to combat trafficking in the hospitality, agriculture, manufacturing, construction, domestic work and mining industries, and the Australian Hotels Association, for a labour exploitation-awareness project regarding the legal employment of overseas workers in the hotel industry.

Broome and Western Australia for workers from East Timor. The Government assured the Special Rapporteur that the programme is tightly controlled, with integrity checks for employers, and minimum wage requirements enforced with payments made directly to workers. Where accommodation for workers is included in the package, inspectors approve the conditions, and ensure that any amount deducted from workers' pay for accommodation is reasonable.

72. The Special Rapporteur commends the Government for this initiative, which, if successfully implemented and monitored, deserves to be recognized as a good practice that provides safe migration options for unskilled workers, while ensuring that labour demands are met. She also observed that the programme could be extended to other industries, including construction, manufacturing, domestic work and home health care. However, she reminds the Government that any expansion of the programme must include regular inspection and monitoring, to ensure that the risk of exploitation is fully recognized and appropriately managed.

## **K. Cooperation and partnership**

### **1. Cooperation with civil society**

73. In the fight to combat trafficking, the Government has developed strong partnerships with CSOs, and has committed significant resources to CSOs working to combat trafficking. The Special Rapporteur commends these initiatives, and encourages the Government to expand this work, particularly to CSOs in rural regions, where awareness of trafficking may be limited and where exploitation may remain hidden.

74. In particular, since 2008 the Government has convened the annual National Roundtable on People Trafficking, which provides a forum for frank discussion of issues relating to trafficking in persons between government agencies and CSOs. The Special Rapporteur attended the 2011 Roundtable and notes that the Roundtable has helped cultivate a robust working relationship between the Government and civil society, where issues can be discussed, commitments made, and results achieved. The recent addition of the Building and Construction Commission and the Australian Hotels Association to the Roundtable will strengthen it as an inclusive and participatory forum. As of 2011, an annual meeting of the Senior Officials' Meeting of the Roundtable has been instituted, and the Government of Australia is also developing an online platform for Roundtable members.

### **2. International, regional and bilateral cooperation**

75. Australia is a co-founder and co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, which is aimed at combating people smuggling, trafficking in persons and related transnational crimes in the Asia-Pacific region. While many of the core objectives of the Bali Process reference trafficking in persons as well as migrant smuggling, the Special Rapporteur notes that in practice, the overwhelming focus of the initiative is on migrant smuggling. She considers that it is important that the Bali Process pay greater attention to the issue of trafficking, and is encouraged that in 2012 a technical experts meeting will consider practical measures to combat trafficking. Australia is also actively engaged in anti-trafficking initiatives through the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and its Working Groups, and through the United Nations Office on Drugs and Crime.

76. AusAID also facilitates several programmes relating to trafficking in persons. The Asia Regional Trafficking in Persons (ARTIP) Project (2006-2011) supported criminal justice systems of participating governments in the Asia region by strengthening national

law enforcement and judicial and prosecutorial functions, encouraging bilateral and regional cooperation and enhancing regional and national legal, policy and research capacity. ARTIP has been widely applauded for its innovative and professional approach, and is considered to have made a substantial contribution to regional anti-trafficking efforts as well as to global understanding of effective criminal justice responses to trafficking. The project is currently in a one-year transition phase; the Special Rapporteur was assured, however, that the important initiative will be continued in a new form. Another AusAID project, Project Childhood, was established in 2010 to prevent and respond to child sex tourism in the Mekong subregion. AusAID also funds the International Labour Organization to implement the TRIANGLE project (2010-2015) to promote safe labour migration and prevent labour exploitation. AusAID further partners with USAID to support the MTV End Exploitation and Trafficking (EXIT) campaign (2010-2012) to raise awareness of human trafficking in South-East Asian countries.

77. The Government of Australia has also developed overseas legal projects to assist countries strengthen their legal frameworks to combat trafficking in persons. The Attorney General's Department and DIAC work together with other Australian agencies to facilitate capacity-building activities and provide a number of countries with technical assistance to support their efforts to address irregular migration, with a strong focus on trafficking. The Special Rapporteur encourages the development of stronger links between the various technical assistance initiatives undertaken by Australia as well as an explicit commitment to promoting international legal standards, including human rights standards in recipient countries.

78. Bilateral agreements made directly with source countries regarding the identification and repatriation of victims and perpetrators are also instrumental in providing a strong framework to deal with both victims of trafficking (for return and repatriation) and perpetrators (for prosecution and extradition) across borders. However, most of these agreements have been concluded with countries in the Asia-Pacific region; there are very few such agreements with countries in other important source regions for migrants, including Africa. The Special Rapporteur encourages the Government to expand its bilateral engagement on the issue of trafficking.

### **III. Conclusions and recommendations**

#### **A. Conclusions**

79. **Australia has demonstrated strong leadership in combating trafficking in persons regionally and domestically, as well as a willingness to learn from experience and adapt its approach accordingly. However, there are some weaknesses that prevent Australia from realizing a genuinely human rights- and victim-based response.**

#### **B. Recommendations to the Government**

##### **1. At the national level**

80. **Legal and policy framework:**

**(a) Ensure that proposed legislative revisions result in a legal framework around trafficking that fully meets the international legal obligations of Australia and that provides a strong and workable foundation for the country's response;**

(b) Develop a comprehensive national plan of action, together with stakeholders, delineating responsibilities and including benchmarks and indicators that will measure both progress and impact;

(c) Appoint a national coordinator or rapporteur to oversee and monitor the national response to multi-agency work on trafficking;

(d) Consider convening the National Roundtable on People Trafficking more frequently; identify new ways of working that will ensure it is able to reach its goals of information sharing, coordination and policy development, and to measure and document its impact;

(e) Monitor the implementation of anti-trafficking legislation at the federal and state/territory levels in order to ensure that different laws do not create gaps or weaken investigatory or prosecutorial capacity.

**81. Identification:**

(a) Support further collaborative research, with independent research institutions and civil society organizations in particular, to strengthen the collection of reliable, relevant data and to ascertain alternative methods for timely and accurate identification of victims;

(b) Ensure that in all cases of mandatory detention, including those involving persons arriving by boat, and in all cases of migrant smuggling, adequate safeguards are put in place to ensure that victims of trafficking are promptly identified and protected;

(c) Improve procedures and practices for the identification of victims of trafficking, including through ongoing training within front-line law enforcement agencies, especially the Department of Immigration and Citizenship, the Australian Federal Police and state/territory police, and the Office of the Fair Work Ombudsman.

**82. Support for victims of trafficking:**

(a) Consider extending the reflection and recovery period to 90 days for all persons identified or provisionally identified as having been trafficked; delink government support for victims from participation in criminal justice processes;

(b) Reconsider visa titles to avoid stigmatization and to ensure confidentiality and respect for the privacy and dignity of victims of trafficking;

(c) Improve support services for victims of trafficking and persons vulnerable to trafficking-related exploitation;

(d) Reduce the length of time for the processing of permanent residence visas for trafficked persons;

(e) Provide support services for dependents and relatives of victims of trafficking who migrate to Australia;

(f) Increase funding assistance for service providers and civil society organizations to provide support services, especially housing, for victims of trafficking, including those who do not immediately wish their matter to come before the authorities;

(g) Establish, at the federal level, a comprehensive compensation scheme for victims of trafficking;

(h) Strengthen criminal justice capacity to identify and confiscate assets and proceeds of trafficking-related crimes, and develop mechanisms and procedures to enable assets and proceeds to be used for continuing support to victims of trafficking.

83. Training and capacity-building:

(a) Expand the provision of training for criminal justice agencies, paying particular attention to the needs of front-line law enforcement officials, as well as prosecutors and judges, and drawing on the wealth of excellent resources and approaches that have been developed in other parts of the world;

(b) Work to bridge the capacity gap between the Australian Federal Police and state/territory police, including by establishing specialist units in all states and territories;

(c) Support the development of a stronger investigation and enforcement capacity with respect to forced and exploitative labour, targeting particularly the Office of the Fair Work Ombudsman.

84. Children:

(a) Ensure that specialist services are available for any child identified as, or suspected of, having been trafficked. Further ensure that all such services, as well as decisions taken in respect of trafficked children, fully reflect and advance the principle of the best interests of the child;

(b) Appoint an independent guardian for any child identified as, or suspected of, having been trafficked in order to promote the best interests principle and to safeguard the rights of that child;

(c) Ensure, in respect of any trafficked person who may be a child, that that person is presumed to be a child and is accorded the rights of a child unless and until another determination is formally made.

85. Prevention:

(a) Take steps to raise community awareness of all forms of trafficking in persons, including trafficking for labour exploitation; particularly, targeting migrant communities, with information translated into their languages, including information about the rights of migrant workers and avenues for protection and redress;

(b) Continue and expand initiatives aimed at alerting potential clients of sex workers to the existence of trafficking and exploitation, including their responsibilities in this regard to ensure that authorities are made aware of suspected cases of trafficking;

(c) Increase options for safe and legal migration by expanding initiatives such as the Pacific Seasonal Workers Pilot Scheme; carefully monitor migration programmes such as those administered via the 457 visa and the Pacific Worker Seasonal Workers Pilot Scheme to ensure they do not become vehicles for trafficking and related exploitation;

(d) Monitor and evaluate prevention programmes to ensure they are effective and do not stigmatize or stereotype victims and their communities or infringe on the rights of any person, including potential migrants or visitors to Australia.

2. At the international level

86. The Special Rapporteur recommends that the State:

(a) Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers;

(b) Continue to support stronger criminal justice responses to trafficking in South-East Asia and globally through a strong successor to the Asia Regional Trafficking in Persons Project that builds on that project's achievements and relationships;

(c) Increase development assistance aimed at supporting less developed economies in tackling the root causes of human trafficking. These efforts will help Australia towards the realization of the Millennium Development Goal target for development assistance of 0.7 per cent of its gross national product;

(d) Leverage the leadership role of Australia in the Bali Process to ensure that trafficking in persons is fully integrated into all aspects of the Process while taking care to guard against confusion between trafficking and migrant smuggling;

(e) Consider appointing an ambassador for human trafficking to further strengthen the country's already high and positive international profile on this issue and to complement the work of the Ambassador for People Smuggling Issues within the Pacific region, South-East Asia and globally.

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