



General Assembly

Distr.: General
16 March 2012

Original: English

Human Rights Council

Twentieth session

Agenda item 3

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

Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo

Addendum

Expert meeting on the prosecution of trafficking in persons cases: integrating a human rights-based approach in the administration of criminal justice*

Summary

On 4 July 2011, the Special Rapporteur on trafficking in persons, especially women and children, convened an expert meeting on the prosecution of trafficking in persons cases in Geneva, Switzerland. The present report contains background information, a summary of the discussions and conclusions of the meeting and recommendations generated by the participants.

The expert meeting was organized to solicit the views of leading criminal justice practitioners from various States engaged in investigating, prosecuting and adjudicating trafficking cases, as well as those of representatives from international and regional organizations, in order to inform the Special Rapporteur's annual thematic report for submission to the Human Rights Council at its twentieth session. The participants discussed international legal standards and elements applicable to criminal justice responses to trafficking; observable progress and remaining challenges for States in adopting a rights-based approach to prosecuting trafficking cases; and good practices and lessons learned.

* The summary of the present report is being circulated in all official languages. The report itself is contained in the annex to the summary and is being circulated in the language of submission only.

The participants concluded that a rights-based approach to the administration of criminal justice respects the rights of victims and the accused and takes into account the interests of society in effectively prosecuting and punishing perpetrators within the framework of international human rights law. It was agreed that there is a strong need for States to adopt comprehensive domestic legislation to criminalize trafficking and to protect victims using guidance found in normative international legal frameworks. The importance of adopting measures that respect rights and, at the very least, do no harm was stressed with respect to avoiding the criminalization of trafficked persons for status-related offenses and ensuring that policies for protection do not infringe on basic rights. In addition, specialization, proactive investigations and international cooperation were recognized as important elements of the requirement that States exercise due diligence in the investigation, prosecution and adjudication of cases of trafficking in persons.

Annex

Report of the Special Rapporteur on trafficking in persons, Joy Ngozi Ezeilo, on the expert meeting on prosecution of trafficking in persons cases: integrating a human rights- based approach in the administration of criminal justice

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–2	4
II. Context	3–5	4
III. Overview of discussions.....	6–57	4
A. Session 1: Human rights, administration of justice systems and prosecution of cases of trafficking in persons	9–25	5
B. Session 2: Progress and challenges.....	26–40	8
C. Session 3: Good practices and lessons learned	41–57	11
IV. Conclusions and recommendations	58–76	16

Appendix

Agenda of the expert meeting on the prosecution of trafficking in persons cases: integrating a human rights-based approach in the administration of criminal justice	19
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I. Introduction

1. On 4 July 2011, the Special Rapporteur convened an expert meeting in Geneva, Switzerland to explore the status of efforts to integrate a human rights-based approach into the administration of criminal justice in cases of trafficking in persons, to inform her annual report for submission to the Human Rights Council at its twentieth session.

2. The meeting brought together 15 anti-trafficking experts from law enforcement, the judiciary, international and regional organizations and United Nations agencies¹ to work towards developing a shared understanding on how to effectively prosecute cases while ensuring that processes and procedures are grounded in human rights principles and contribute to the protection of victims, as well as to discuss good practices and ideas for future progress.

II. Context

3. In the exercise of her mandate, the Special Rapporteur has observed that the human rights of trafficked persons often receive marginal attention in the investigation and prosecution of trafficking crimes, with greater emphasis placed on law enforcement objectives and outcomes. While recognizing that the prosecution and punishment of traffickers are integral components of any strategy to combat trafficking in persons,² the Special Rapporteur has consistently stressed the vital importance of adopting a victim-centred, human rights-based approach in any effort to combat trafficking in persons, including criminal justice responses.

4. Taking the foregoing into account, the Special Rapporteur intends to focus her 2012 annual report to the Human Rights Council on the integration of a human rights-based approach in criminal justice responses to trafficking in order to provide recommendations to States. It is also intended that the present report will provide guidance to practitioners working to prosecute and punish traffickers.

5. In order to solicit diverse viewpoints and to facilitate the formation of widely applicable practical recommendations, experts were invited from a range of professional backgrounds and geographic locations. A background paper³ for participants was circulated in advance of the meeting to provide an overview and analysis of applicable international law and standards relating to the prosecution of trafficking cases and the punishment of traffickers. The background paper also contained preliminary conclusions and recommendations to generate discussion.

III. Overview of discussions

6. The Special Rapporteur on trafficking in persons, especially women and children, provided opening remarks on the background and objectives of the meeting.

¹ See <http://www2.ohchr.org/english/issues/trafficking/docs/ListofparticipantsProsecutionTraffickingPersonsCases.pdf>.

² See the 2009 report of the Special Rapporteur (A/HRC/10/16), pp. 25-26.

³ The background paper was prepared as a contribution to the meeting by Anne T. Gallagher and Nicole Karlebach, and is available from http://www2.ohchr.org/english/issues/trafficking/docs/BP_GallagherAndKarlebach.pdf.

7. The agenda of the meeting was formulated to include discussion on issues that are vital to consider in developing a rights-based criminal justice response to combating trafficking and to elicit specific examples of good practices and lessons learned.

8. The sessions addressed: relevant legal standards and elements necessary to achieve a human rights-based approach in the administration of criminal justice in cases of trafficking in persons; areas of progress and remaining challenges in prosecuting trafficking cases and in achieving a human rights-based approach; good practices and lessons learned; and recommendations for States and other actors.

A. Session 1: Human rights, administration of justice systems and prosecution of cases of trafficking in persons

9. During this session, the presenters provided an overview of important components of a rights-based approach to the prosecution of trafficking cases, examined key elements of an effective criminal justice response to trafficking and reviewed international standards and State practice relating to the protection of victims and witnesses during prosecutions.

10. The presentations in this session stressed that the prosecution and punishment of traffickers represent integral parts of a comprehensive approach to combating trafficking. Strict law enforcement approaches to trafficking tend to treat the rights of victims as tangential to other objectives. By contrast, a human rights-based approach places the rights of victims at the core of all efforts to combat trafficking. It was repeatedly expressed that respect for the rights of victims strengthens criminal justice responses to trafficking.

11. The presenters devoted considerable attention to exploring the elements of an effective, victim-centred criminal justice response to trafficking. The obligation of States to criminalize trafficking was considered to be of crucial importance. It was agreed that States should harmonize domestic legislation with the definition set forth in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking Protocol) in order to account for all forms of trafficking in persons. It was explained that the Trafficking Protocol has had a significant impact on the number of States that have adopted anti-trafficking laws. Of the 155 countries and territories surveyed by the United Nations Office on Drugs and Crime (UNODC) in 2008, 80 per cent had adopted trafficking laws. However, definitional problems remain a concern, as evidenced by the Special Rapporteur's findings during her mission to Argentina in 2010, where she observed that the present law allows consent to alter criminal liability (A/HRC/17/35/Add.4, para. 72). Finally, the participants recognized the value of creating national legal frameworks that address all elements and obligations of the Trafficking Protocol and translate them into actionable steps for practitioners.

12. The presenters also discussed the requirement that States exercise due diligence in the investigation, prosecution and adjudication of trafficking crimes. The value of developing a common understanding of the obligations of the due diligence standard was raised. A number of initiatives were discussed as ways that States could meet such a standard. For instance, States should facilitate proper identification of trafficking victims by developing standard operating procedures and by promoting both formal and informal cooperation between government agencies and victim service agencies. Certain other steps to strengthen capacity for identifications, such as the cultivation of knowledgeable front-line responders and the establishment of specialist law enforcement units that are sufficiently equipped, funded and trained to conduct proactive investigations, were considered to be important components of an effective criminal justice response. In addition, international cooperation characterized by bilateral or multilateral agreements,

extradition or mutual legal assistance treaties, and cross-border coordination between specialized units was seen as highly important.

13. The presenters reviewed the need to provide immediate support and protection for trafficking victims. The value of developing clear mechanisms and processes to deliver such assistance was stressed. In addition, the importance of providing assistance regardless of whether victims choose to participate in judicial proceedings was reiterated throughout the presentations in this session. Reflection and recovery periods were praised as one way to provide services to victims that are not conditioned on cooperation with law enforcement investigations. It was observed that while some States have adopted reflection periods of three to six months, practice differs considerably.

14. The issue of protection for victim-witnesses was given significant attention by the presenters during this session. International standards on the rights of victims of crime and of serious human rights violations exist, but they must continue to be translated into domestic legislation and tailored to meet the needs of trafficking victims. Operationalizing these standards enables victims to be heard and to submit petitions before a competent tribunal, which can facilitate the healing process. There was consensus on the importance of providing protections to victim-witnesses prior to, during and following legal proceedings. It was noted that this sentiment is reflected in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (European Trafficking Convention) as well as in the 2011 Directive of the European Parliament and the Council of the European Union on preventing and combating trafficking in human beings and protecting its victims, which represent progress in terms of articulating necessary measures to assist and support trafficking victims. It was recalled that non-member States of the Council of Europe can accede to the Convention. This is significant in that the Convention imposes on State parties obligations which reflect elements of the 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), issued by the United Nations High Commissioner for Human Rights.

15. With regard to protections for victim-witnesses during trials, it was recognized that practice is still in the nascent stage in many States; however, certain measures were highlighted as important. These included training for prosecutors and judges on the special needs of trafficking victims, the provision of interpretation services, in-court assistants, psychological assessments and counselling, legal assistance, physical protection and steps to protect confidentiality, such as the use of screens, video-conferencing and limits on the number of people present in the courtroom when victims testify. It was noted that victim-witness protection schemes used to protect victims of other crimes should also be employed for trafficking victims where they exist.

16. The presenters further acknowledged that a rights-based approach to the administration of criminal justice requires balancing respect for the rights of victims with respect for the rights of the accused, and takes into account the interests of society in effectively prosecuting and punishing traffickers within the framework of international human rights law.

17. In particular, the accused has a right to due process that must not be impeded by the adoption of measures to protect the rights of victims. Presenters also commented that punishments for trafficking crimes should be effective, proportionate and dissuasive in order to protect the interests of society as a whole.

18. The presenters also raised important gaps in and challenges to realizing a rights-based approach in criminal justice responses to trafficking, including: the heavy reliance on evidence from victims to convict traffickers; insufficient resources and capacity to confront trafficking; lack of specialization among professionals; inadequate domestic and international cooperation and coordination; and the continued prosecution of trafficked

persons for status-related offenses. In addition, traffickers continue to be prosecuted for related crimes such as rape, sexual or physical assault, debt bondage, slavery or money laundering instead of for the crime of trafficking. While convictions for trafficking have slowly increased, UNODC has found that most convictions continue to be concentrated in only a few States and that impunity remains an immense problem.

19. Following the presentations, the participants were asked to share their views on a rights-based approach and the elements necessary to build effective criminal justice responses to trafficking. Many of the participants agreed on the importance of integrating the rights set forth in the Charter of the United Nations, the Trafficking Protocol, and other major human rights instruments relevant to the rights of victims of crime or serious human rights violations, into domestic legislation. The Trafficking Protocol was seen as especially useful in providing States with a definition for trafficking crimes, but it was noted that lessons learned from practice over the past decade or so should also be incorporated.

20. Extradition was also explored during the discussions, with respect to whether the requirement of dual criminality may present issues since some States have not adopted legislation proscribing trafficking as a criminal offense. While dual criminality may present some difficulties, the participants explained that the real issue seems to be that extradition requests are often not made even when it does exist. It was asserted that it is important to inform countries about the means to request assistance from another jurisdiction even in the absence of a formal agreement.

21. The participants focused heavily on the resource-intensive nature of investigating, prosecuting and adjudicating trafficking cases with due diligence. It was acknowledged that in nearly all States increased devotion of resources to anti-trafficking efforts often means shifting important resources away from other criminal justice priorities. In order to address the resource issue, it was suggested that measures taken by States to protect victims of crime generally might also be applied to benefit trafficking victims. It was proposed that an inexpensive, although time-consuming, way to strengthen prosecutions could include encouraging law enforcement officials and prosecutors to spend time with victims while they are waiting for trial, including by visiting them and providing them with updates on the status of the case. Relatedly, an example from Nigeria revealed that the National Agency for Prohibition of Traffic in Persons (NAPTIP) collaborates with non-governmental support agencies, international partners and United Nations bodies to empower victims through the provision of psychological counselling and vocational training so that they will not need to rely on assistance from the government indefinitely.

22. The importance of quick and accurate victim identifications was also raised by many of the participants, who suggested that checklists may be helpful. It was countered that even with this tool, identifications are difficult when victims have been deceived or are unaware of their status. While it may be possible to build cases without the involvement of victims in the civil system, this was recognized as very difficult in common law jurisdictions. The inability to successfully identify victims was also discussed as contributing to the criminalization of such persons for status-related offenses. The United Kingdom of Great Britain and Northern Ireland was cited as an example of a jurisdiction where prosecutors can exercise discretion in charging individuals identified as trafficking victims.

23. The issue of how to provide an effective remedy for victims in the form of adequate compensation based on damages or harm suffered via such circumstances as forced pregnancy or lost wages was also explored. Asset confiscation and the development of victim trust funds were raised as possibilities, although it was recognized that success rates for such programmes have been very low. In addition, it was noted that few source countries have domestic legislation sufficient to ensure that confiscated assets are used to help future prosecutions.

24. In developing criminal justice responses to trafficking, the importance of confronting common stereotypes was discussed. It was noted that while the majority of traffickers are women, many men are victims. The Special Rapporteur previously commented on disparities in the provision of assistance to trafficking victims based on gender during her missions to Belarus (A/HRC/14/32/Add.2, para. 63) and Poland (A/HRC/14/32/Add.3, para. 61).

25. Finally, a lack of reliable data was cited as a hurdle to assessing the adequacies of criminal justice responses to trafficking. It was noted that the majority of countries do not have the ability to collect information. In addition, while statistics on the number of prosecutions and convictions worldwide are available, they do not reveal whether due process guarantees were respected or whether victim-witnesses were adequately protected. UNODC is working to compile a public database of trafficking prosecutions to provide comprehensive information on the functioning of criminal justice systems during trafficking cases.

B. Session 2: Progress and challenges

26. At this session, participants discussed general challenges for States in achieving successful prosecutions of trafficking cases. They also provided examples of progress and challenges in integrating a rights-based approach in the Netherlands, the United Kingdom and Belarus.

27. A presentation on challenges to prosecuting trafficking cases expanded on reasons for the lack of available data referenced in the first session to assess the number and quality of cases. The limited technological capacity of courts in some States to store and transmit data, as well as the lack of centralized docketing systems to allow cases to be tracked, were cited as contributing factors. The unwillingness of some courts to release information for fear of jeopardizing independence and inviting public critique were put forth as further complications. With respect to the low number of prosecutions reported worldwide, definitional confusion between smuggling and trafficking and difficulties identifying victims were said to play a role. Finally, it was observed that front-line responders have incentives to avoid identifying trafficking cases because they tend to be complicated, time consuming and expensive.

28. In the same presentation, the quality of prosecutions were also discussed, and it was noted that trafficking laws are very new in many States, which means that precedent is scarce and practice is still evolving. In addition, some laws do not yet properly protect the rights of victims. The difficulty of engaging victims who distrust law enforcement or who are vulnerable to intimidation and influence from traffickers was also discussed. In addition, victims continue to be prosecuted for status-related offenses, and guidelines for providing compensation to victims remain unclear. Credibility concerns for victims who give multiple statements during the course of an investigation were cited as a challenge to securing convictions, as was the complicated task of gathering alternative or supporting evidence, such as financial information on trafficking operations. The latter often requires extensive resources and high levels of collaboration among government agencies that may not be possible in many States. Finally, it was noted that formal international cooperation efforts are lacking. Language issues, insufficient legal tools, a lack of awareness among professionals of protocols and responsibilities, and insufficient resources for such things as long-distance phone calls, were presented as hindrances to transborder collaboration.

29. It was suggested that, in the future, greater attention should be directed towards infiltrating large-scale trafficking operations and targeting those most responsible. It was acknowledged that corruption complicates this type of endeavour and may insulate certain traffickers from being apprehended, but that proactive investigative techniques similar to

those used to detect drug trafficking crimes can prove fruitful. In addition, the use of plea bargaining, particularly in common law countries, was put forth as a helpful way to identify those most responsible for trafficking operations.

30. In a presentation on practice in the United Kingdom, the critical importance of victims to the success of prosecutions was reiterated. The importance of understanding that the way a victim experiences being trafficked may be different depending on age, immigration status, cultural background and safety concerns, was emphasized. In order to properly address the needs of each victim, case-by-case assessments should be undertaken. Prosecutors should also be aware of ways to direct victims to appropriate services. In order to assist victims and facilitate participation in legal proceedings, the United Kingdom has developed a new DVD programme for trafficking victims that explains the stages of recovery and enables victims to make informed decisions about cooperating with law enforcement. Once victims do cooperate, one way that the United Kingdom provides protections is through confidentiality measures, such as allowing victims to testify via video-link or to pre-record statements. The United Kingdom has seen success with such measures, including in a case where three foreign victims provided testimony via video from three separate locations. However, challenges have arisen, as evidenced by the experience of a victim-witness from Slovakia whose identity was protected by the United Kingdom court, but whose case was highly publicized in her home country. It was noted that when countries do not recognize the special orders of the United Kingdom courts, it becomes very difficult to provide protections. Another special measure available for victim-witnesses in the United Kingdom is the possibility of admitting hearsay evidence in cases where it can be proven that a victim is in extreme fear.

31. Since trafficking victims are offered a 45-day reflection period in the United Kingdom, some do not give statements right away. As a result, the need for proactive investigations to acquire sufficient alternative evidence to help prove the elements of a case was noted as being highly important. Such evidence might include reference material from suspects, photographs, forensic evidence, financial information and scenes from closed-circuit television. The United Kingdom has faced challenges in collecting evidence from foreign countries, because in some cases treaties or agreements may conflict with domestic legislation. As an example of efforts taken to overcome this problem, the United Kingdom has cooperated with prosecutors in Viet Nam, a source country for many of the child victims found in the United Kingdom, to alter domestic law to allow the United Kingdom to collect evidence.

32. A presentation on efforts to investigate and prosecute trafficking cases in Belarus revealed success and remaining challenges. It was noted that the Ministry of the Interior has made anti-trafficking efforts a priority. The number of convictions for trafficking crimes rose steadily beginning in 2002, following the passage of domestic legislation, but after 2005 the numbers declined. To date, 1,707 persons have been convicted for trafficking offenses and 665 have been sentenced to imprisonment. In 2010, 220 traffickers were convicted and 362 victims were identified, 26 of whom were minors.

33. A common trend observed by investigators in Belarus has been that traffickers attempt to shield themselves from prosecution by receiving the proceeds of their illegal activity in destination countries, rather than in Belarus. A March 2007 case was referenced in which the head of a tourist company responsible for trafficking women to Switzerland for sexual exploitation was convicted in Belarus. It was discovered that he had made arrangements to procure women from a base in Poland and also had the proceeds of the illegal activity transferred to a Polish account. Belarusian authorities have also encountered difficulties prosecuting cases because traffickers will often pay victims to change their stories. In such instances, the lack of an identifiable victim makes it impossible to bring a

case. In addition, problems have arisen from individuals fraudulently claiming victim status in order to receive assistance from international organizations.

34. A presentation was delivered on the efforts by the Netherlands to adopt a comprehensive approach to trafficking. The Netherlands views the fight against trafficking as a task for all government organizations and private partners. The two main components comprising its approach are the “barrier model” and the national taskforce. The barrier model identifies all stages at which a trafficked person might come into contact with authorities and attempts to develop means for detection and response. This involves coordinating with, among others, border police, embassy staff, municipality officials, fire departments, labour and tax inspectors, lawyers, housing authorities and even real estate agents. The national task force has drawn representatives from government and non-governmental organizations (NGOs) to develop a plan of action to fight trafficking. It has also developed tools for practitioners, such as a digital toolkit to assist in information exchange across borders and interview protocols to solicit information on the financial aspects of trafficking schemes. In addition, the task force has supported field studies to examine and assess the implementation of the Dutch approach and has helped develop prevention programmes.

35. As part of its approach, the Government of the Netherlands has developed innovative tactics to combat trafficking, including by engaging with private partners who operate chat rooms, websites, catering businesses and agricultural operations to help raise awareness of trafficking crimes. The Government has also used technology to gather evidence and investigate potential offences. An example was presented of a case involving an escort service in which officials were able to obtain the phone numbers of 1,300 clients. Officials sent text messages to the suspected clients informing them that the escort service uses trafficking victims and asking for their assistance. The websites of the service were also seized and similar messages were posted.

36. Two cases were presented to show challenges and signs of progress in prosecuting trafficking cases in the Netherlands. In the Dartmoor case, labourers from Portugal, Romania and Poland were forced to work on an asparagus farm in Someren, Netherlands. An initial investigation of the farm by labour inspectors cited the farmer for violating labour laws, but failed to identify a labour trafficking situation. As a result, victims were sent back to their home countries at their own expense and were not provided with assistance or the right to be heard. Five years later, local police responded to reports of inadequate fire regulations at the same farm and recognized forced labour conditions. At this point, assets were seized and victims were provided with assistance and given the right to be heard. The Sneep case involved forced prostitution in licensed areas. During the course of the investigation, law enforcement officials were able to raise awareness about the problem of forced prostitution among government agencies and municipality officials. They also engaged in effective international cooperation to ultimately prosecute the traffickers involved.

37. The Sneep case led to a new law on prostitution in the Netherlands that is designed to prevent exploitation and that criminalizes the use of unregistered prostitutes. Some of the participants asked whether it is difficult to confront trafficking in a country where prostitution is legal. It was stated that legal prostitution does not prevent trafficking and instead results in four scenarios: legal prostitution, illegal prostitution, legal prostitution resulting from trafficking and illegal prostitution fed by trafficking. It is estimated that 60 to 70 per cent of women working in the licensed prostitution areas in the Netherlands are forced. Legalizing gives a clearer view of the problem, but is not an effective preventative measure. It was noted that certain approaches to legalizing prostitution might help in avoiding the prosecution of victims, as evidenced by the Swedish model that criminalizes clients but not prostitutes.

38. Following the presentations on State practice, the participants discussed the issue of the definition that States have adopted to criminalize trafficking. It was noted that in some countries, such as France, a similar definition to that set forth in the Trafficking Protocol and the European Trafficking Convention has been adopted. However, the French definition does not require proof of coercion, thereby making it easier to prove a trafficking crime. In France, the existence of coercion is considered to be an aggravating circumstance that, if proven, results in a higher sentence. It was suggested that this approach reduces pressure on investigations.

39. The issue of compensation for victims was also explored in the discussions. The difficulty for foreign victims to obtain compensation in their home country, particularly if a prosecution has occurred in the destination country, was highlighted as an issue for further consideration. The participants also noted that it is important for criminal justice professionals to work with lawyers in the civil field to obtain compensation and other remedies for victims.

40. Finally, the participants discussed whether a distinction exists between non-criminalization and non-punishment of victims, noting that it is unclear whether it is acceptable to prosecute victims for status-related offenses and rely on courts to recognize the situation and avoid punishing the victim, or whether it is important to avoid prosecuting victims at all. Article 26 of the European Trafficking Convention contains a non-punishment clause, but it was suggested that this might be more effective if it was a non-prosecution clause so as to avoid re-victimizing trafficked persons. Examples from the Netherlands, France and the United Kingdom illustrated the importance of providing prosecutors with discretion to determine whether to bring a prosecution and highlighted the complexities involved in identifying victims and determining whether force, fraud or coercion are present to compel the commission of an offense.

C. Session 3: Good practices and lessons learned

41. The third session featured presentations on good practices and remaining challenges in prosecuting trafficking cases in France, Nigeria and India and invited general discussion from the participants. Finally, presentations were made on lessons learned on capacity-building, interviewing victims and addressing gender dynamics in trafficking prosecutions.

42. A presentation on cooperation between law enforcement agencies (i.e. National Gendarmerie units and National Police services) and victim support agencies in France highlighted good practices and the value of such collaborations, particularly with respect to the role that NGOs can play by providing important intelligence to law enforcement. A 2010 case involving a woman who brought girls from Nigeria to Paris for the purpose of prostitution highlighted the value of cooperation between NGOs and government. In that case, NGOs introduced victims to authorities and stayed in continued contact with victims throughout the investigation. Separately, a network of NGOs in France has been given the responsibility to relocate victims, and NGOs serve an important role in bringing civil actions on behalf of victims. The presentation stressed how it is crucial that NGOs may be party to the criminal trial ("*Partie civile*") as provided for in the French legal system, especially when the victims do not appear to ask for compensation.

43. During the general discussion, the participants noted that cultural differences and disparate priorities between law enforcement agencies and victim service providers present challenges to effective cooperation. Some of the participants commented that the role of the prosecutor is not to be the victim's lawyer but to enforce the law and seek justice in court on behalf of the State. This may create tension with NGOs during the course of a prosecution over the best course of action. Enhanced coordination mechanisms and the adoption of memorandums of understanding may be useful to clarify roles and

responsibilities and foster mutual understanding. Such agreements may also help to mainstream certain activities of NGOs, such as assistance during victim interviews, which currently occur on an ad hoc basis.

44. A presentation on the development of NAPTIP in Nigeria illustrated how specialized units can enhance anti-trafficking activities. NAPTIP, created in 2003, is the focal point for anti-trafficking efforts in Nigeria and is responsible for preventing trafficking, protecting and rehabilitating victims and prosecuting traffickers, which it accomplishes through collaboration with other government agencies, international organizations, regional bodies and foreign governments. NAPTIP works to raise awareness through electronic and print media campaigns; provides vocational training; administers a trust fund to deliver the seized assets of traffickers to victims; and works to provide privacy for victims during trials. The unit has rescued more than 5,000 trafficking victims, prosecuted 113 traffickers and delivered sentences ranging from two months to 36 years. Despite these successes, inadequate funding; limited cooperation from the public to report crimes; cultural traditions (for example juju)⁴ that scare victims into secrecy; widening trafficking routes from Nigeria to destinations in Europe; porous borders; inter-agency competition among government offices; and the lack of a centralized data system to store fingerprints, phone numbers or other identifying information, present significant hurdles to conducting effective prosecutions.

45. A presentation on the prosecution of traffickers in India highlighted efforts to bring trafficking cases and to rehabilitate and reintegrate victims. A public interest litigation before the High Court of Delhi involving approximately 300 minor trafficking victims rescued from prostitution resulted in the victims being placed in protective homes, despite the fact that many chose not to provide evidence in court. In addition, courts in New Delhi have begun to prosecute clients of prostitutes. The Government of India recently devoted funding to NGOs to provide victims with vocational training, education, rehabilitation services and reintegration assistance. Despite these efforts, India continues to face significant challenges to implementing an effective, victim-centred criminal justice response to trafficking. While the Supreme Court of India has pronounced that victims of trafficking should not be punished, provisions in the Immoral Trafficking Prevention Act, the State's law on prostitution, continue to be used to prosecute trafficking victims for status-related offenses. In addition, the laws of India do not provide protections for victim-witnesses at trial or for the seizure of assets of traffickers. Other challenges include: high levels of distrust between law enforcement and NGOs; difficulties in identifying perpetrators because victims may be supplied, transported and exploited in different countries throughout the course of their ordeal; cultural and religious traditions that sanction prostitution⁵; high incidences of poverty and stigma for victims that contribute to

⁴ Juju is a West African tradition that consists of rituals and belief in spirits and the magical properties of objects. (See Jenny Kleeman, "The curse of 'juju' that drives sex slaves to Europe", *Independent*, 7 April 2011, available from www.independent.co.uk/news/world/europe/the-curse-of-juju-that-drives-sex-slaves-to-europe-2264337.html). It has become common in Nigeria for young women or girls to take "juju oaths" before a priest in advance of being trafficked. Such oaths are accompanied by rituals to take spiritual control of the victim and to solicit promises from the victim to repay her debt, not to escape and never to speak to authorities. (See Siddharth Kara, "'Juju oaths' ensnare trafficking victims mind, body and soul", *CNN*, available from <http://thecnnfreedomproject.blogs.cnn.com/2011/04/01/juju-oaths-ensnare-trafficking-victims-mind-body-and-soul/>).

⁵ The devadasi system is a Hindu tradition dating back to the tenth century that is still practiced in certain areas of India. Today the practice has been referred to as "religiously sanctioned prostitution", since young girls are ritually married to the Hindu goddess Yellamma after which point they can no longer marry men and instead become sex workers. See William Brangham, "God's prostitutes",

high rates of re-trafficking; and the shift to a new system of “street trafficking” where girls are supplied at beauty or massage parlours or in hotels, rather than only in the red light districts. Finally, since much attention has been devoted to rooting out trafficking in cities, rural areas have now become some of the worst affected parts of the country.

46. The participants provided ideas for the development of good practices during the general discussion of this session. Examples related to the consideration of consent with respect to the culpability of victims and traffickers; the value of international cooperation; compensation and remedies for victims; punishment for benefits derived from the assets of trafficking; and programmes to empower trafficking victims.

47. The participants discussed the fact that issues of consent can be very complex in trafficking cases owing to high levels of deception. In Nigeria, it is common for victims to have raised money to pay their traffickers to take them abroad, only to later find themselves in a situation of forced work. Similarly, in India some victims consent to enter prostitution under the assumption that they will earn their own income, but in reality, many become indebted to traffickers who then control their finances. Training for legal professionals on the nuances of consent and the need to update laws to avoid punishing victims or inappropriately reducing liability for traffickers were stressed.

48. The participants raised the importance of recognizing that cultural differences may impact the experience of victims and affect how they interact with authorities. International cooperation in efforts to solicit information from foreign victims can be useful. An example of collaboration between Dutch and Nigerian police in responding to a trafficking incident involving a Nigerian victim apprehended at an airport in the Netherlands illustrated how collaboration can be productive. The victim in this case refused to speak until the Nigerian delegation arrived. Within a half hour the Nigerian police were able to solicit the victim’s story and the trafficker was arrested and later convicted.

49. The participants also devoted attention to challenges that arise when different States afford varying degrees of rights to victims in their domestic legislation. To underscore this point, the example of a woman trafficked from Bulgaria to the Netherlands for prostitution was offered. The victim in this case gave evidence in Dutch courts but planned to return to Bulgaria. Because the traffickers were being prosecuted in the Netherlands, it was difficult for her to obtain assistance in Bulgaria. It was noted that this problem implicates complicated international confiscation and asset seizure schemes, and raises questions as to whether victims may be compensated directly or whether such compensation must first be disbursed to the State. By contrast, an example from the United Kingdom revealed that a Hungarian victim trafficked to the United Kingdom by a Hungarian citizen was able to claim money from his own Government because the crime was determined to have been committed in Hungary.

50. Another developing good practice highlighted by the participants related to punishment for deriving benefits from the assets of traffickers. It was explained that France has created a criminal offense (“Non-justification of resources”) punishable by imprisonment of seven years and a fine of 200,000 euro (US\$ 276,000) if it can be proven that an individual was in a close relationship with someone who was committing the crime of trafficking or with a victim of trafficking and is unable to justify the origin of assets from which he or she derived benefit. The United Kingdom passed a similar law in 2006, but this has not yet come into force. The Netherlands also has provisions to punish crimes by association. The related need to eliminate loopholes in domestic legislation that hinder asset

Need to Know (PBS), available from www.pbs.org/wnet/need-to-know/video/video-gods-prostitutes/5289/

seizures was stressed. In some domestic laws on seizure, an exception exists prohibiting the government from seizing the principal place of residence of traffickers. As a result, criminals can keep money out of the reach of government by investing assets in their principle place of residence. The participants stressed that trafficking is perpetrated for the sole purpose of making money and insisted on the necessity to identify and seize the assets at the time of the investigations, so that they may be confiscated at the time of the trial. Training of law enforcement agencies and creation of bodies in charge of tracking illegal money is a key issue. One of the participants reported a good practice in France, as demonstrated by the Platform for the Identification of Criminal Assets (PIAC) managed by the Gendarmerie and the Police since 2005 and the recent creation of the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC) competent to manage sums of money seized or confiscated in the course of criminal proceedings.

51. Some of the participants noted that programmes to raise awareness among trafficking victims about the legal process, rights and available services can empower such persons to take an active role in proceedings and facilitate access to important assistance. A pilot project launched by the International Development Law Organization in West Bengal, India to promote greater awareness among victims was said to have been a success.⁶ It was further noted that this type of programme can be successful even with limited resources.

52. Following the discussion, presentations were given on lessons learned in efforts to prosecute trafficking cases with respect to capacity-building, interview techniques and gender dynamics. It was noted that criminal justice responses to trafficking are still maturing but that certain lessons can be distilled.

53. A presentation on ways to strengthen capacity to fight trafficking highlighted the importance of providing integrated trainings that bring together professionals from multiple disciplines in one session to share views and delineate roles and responsibilities. It was suggested that such trainings should educate professionals, including investigators, prosecutors and judges as well as front-line responders and victim service providers, on the elements of trafficking crimes and provide technical skills that can be used in practice. It was noted that trainings should include information on identification procedures, needs assessments, interview techniques, gender sensitivities, operating procedures to avoid unjustly detaining victims and ways to direct vulnerable victims to appropriate services. Trainings should also provide role-specific information. For instance, prosecutors should be taught how to prepare a victim for trial and protect a victim's privacy. Judges should also be educated on their role in providing protection for victims, including the importance of making interpretation services available in court and in limiting media coverage of courtroom proceedings. It was suggested that useful tools for such trainings have been developed by UNODC and the International Organization for Migration.

54. In a presentation on lessons learned with respect to interviewing trafficked persons, it was stressed that victims are of paramount importance to prosecutions. In relation to this presentation, the participants discussed the fact that trafficking in persons is a continuum crime with a beginning, middle and end. In many cases, victims are the best situated individuals to tell the full story and to establish the various elements of the offence, as well as to clarify difficult issues, such as the presence of subtle forms of coercion. In the presentation, it was stated that the goal in interviewing victims should always be to respect human rights and to do no harm. A step-by-step interview methodology characterized by the use of general questions to elicit a free narrative from victims was discussed as a way to

⁶ See International Development Law Organization, *Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies* (2011). Available from www.idlo.int/Publications/FinalReportGirlsPProject.pdf.

help collect sensitive information. To solicit difficult details, such as those found in sexual exploitation cases, it was suggested that interviewers focus on the first and last rapes and then ask if any other instances were different. In addition, diagrams are useful, particularly for developing information on topics that may be difficult to discuss. However, it was cautioned that suggestive photos, gestures or paraphrasing can be dangerous and should be avoided. It has been observed that some investigators or prosecutors do not feel prepared to conduct interviews with vulnerable victims, and the importance of training was raised as useful to increase comfort levels and confidence.

55. The importance of obtaining informed consent from victims prior to participation in investigations was also addressed in the presentation. It was noted that professional evaluations are important to determine whether a victim fully understands the limits of available protection. In addition, providing victims with ongoing care might help to reveal doubts or concerns about participation in legal proceedings. Even when consent exists, legal professionals must select the best witnesses to participate in trials based on availability and a full examination of a victim profile. It is important that investigators and prosecutors spend time with victims to learn about their families, communities and circumstances, including whether they have access to police, mobile phones, or other practical resources to minimize the risk involved in serving as a witness. Sound decisions in this regard are important for victims and also help to strengthen cases. An example was given of a case involving two minor victims rescued from sexual slavery. One victim was rejected by her family and stigmatized, while the other was reintegrated into her community and was able to return to school. It was determined that it would be best to have the victim who was struggling to reintegrate testify, rather than disrupt a successful reintegration process. In the end, the victim who had originally been stigmatized benefited from a witness protection programme and vocational training and was able to provide strong testimony in the case. It was noted that States often lack the resources or ability to provide witness protection. In the absence of a formal programme, practical steps such as partnering with NGOs, ensuring confidentiality for victims during trial, and empowering victims can help. Such empowerment can include developing escape plans by helping victims to be prepared with necessary documents and setting up lines of communication.

56. A final presentation on gender in the context of trafficking prosecutions cautioned that while important, the relevance of gender should not be overstated. Both male and female victims need basic support and protection such as shelter, counselling, medical attention, access to employment, legal status and privacy. However, it was explained that gender impacts on both who is trafficked and the treatment of victims. Gender stereotypes may also influence protection schemes. In some countries, for instance, restrictive detention policies impact foreign women and children disproportionately. In addition, the identification of the accused in court in jurisdictions that do not allow for the use of screens or remote testimony was cited as having the potential to more acutely impact certain victims based on gender and the type of exploitation suffered. The efforts of prosecutors to show victims the courtroom and to explain the trial process have been observed to be effective in mitigating some of these concerns.

57. Lessons learned for effectively confronting gender dynamics in trafficking cases were distilled from the presentation of two case studies. The first case, involving male labour trafficking victims brought from Mexico to the United States of America, illustrated that interview techniques must sometimes pay particular attention to gender. In this case, a psychologist who observed early interviews in which the male victims denied that they had been intimidated by the traffickers explained to investigators and prosecutors that the victims were from a culture of machismo and would be unlikely to admit fear. As a result, questions were adjusted to be less direct and to ask not whether the victims were intimidated, but instead what would have happened to victims if they had refused to work or pay the debt imposed on them. This more indirect approach resulted in useful

information about how the traffickers used violence. The second case involved a female victim from Guatemala who was raped repeatedly and trafficked to the United States for domestic servitude. The chief prosecutor in the case was a female, which was an important component in the ability of officials to develop a strong rapport with the victim. In recognition that female victims of sexual exploitation may have difficulties asserting themselves during cross-examination due to a desire to avoid controversy, prosecutors in this case took time to prepare the victim for her testimony, including using role-playing and mock questioning exercises.

IV. Conclusions and recommendations

58. A number of conclusions were developed throughout the course of the expert meeting to guide States in adopting an effective, rights-based criminal justice response to trafficking.

59. A rights-based approach to the administration of criminal justice in cases of trafficking in persons incorporates protections for victims and the accused and takes into account the interests of society in effectively prosecuting and punishing perpetrators within the framework of international human rights law. Laws that do not incorporate protections for victims or that impose overly invasive protective measures may deny victims their rights. Further, laws designed to protect victims may infringe the rights of the accused if not carefully balanced to incorporate respect for due process. Such failures can be counterproductive to encouraging the participation of victims in prosecutions and may diminish the validity of the justice process.

60. It is important that criminal justice responses to trafficking in persons respect rights and, at the very least, do no harm. The practice of prosecuting or punishing trafficking victims serves to re-traumatize and re-victimize individuals who have already suffered a great deal. In addition, it may not be sufficient to avoid punishing trafficking victims; rather, legislation that prohibits prosecuting victims for status-related offenses is more comprehensive and desirable.

61. States have a duty to investigate, prosecute and adjudicate trafficking crimes with due diligence. There is a need to identify the requirements of this obligation and to elucidate standards to evaluate whether such requirements are being met. The development of proactive investigative techniques to collect corroborative evidence was viewed by the participants as a way for States to exercise due diligence in investigating trafficking cases and to reduce reliance on victims during trials. An important pre-requisite for States to be able to act with due diligence is the existence of a well-developed criminal justice system. The creation of specialized units and courts is an important component of building capacity to prosecute cases of trafficking in persons. Cooperation between government agencies and victim services agencies can also strengthen criminal justice efforts and protections for victims. Finally, both formal and informal international legal cooperation can facilitate investigations and prosecutions of cases.

62. Victims are of paramount importance to the prosecution of cases of trafficking in persons, because such persons are often the sole witness to the breadth of the crime and can provide valuable intelligence and testimony at trial to convict traffickers. It is therefore critically important that trafficked persons are identified quickly and accurately by law enforcement or victim service providers. There is a recognized need to provide immediate access to assistance and services for victims of trafficking, irrespective of cooperation with authorities. The provision of reflection and recovery periods in some States is a promising practice in this regard. For those victims who do

participate in the judicial process, protections for privacy and security are necessary before, during and after trial.

63. It is of concern that some States do not provide adequate levels of protection and services to both male and female victims of trafficking. In many States, male victims are in need of increased access to protection and shelter facilities and women and children suffer human rights violations when subjected to restrictive protection policies.

64. Efforts to empower victims can strengthen prosecutions. Programmes that educate victims on their basic rights, including the right to be heard in court and to participate in proceedings, as well as ways to obtain legal status and access to protections are valuable. Another useful way to disseminate information is to have counsellors, police and lawyers visit shelters to speak with victims directly. Technology is also becoming increasingly important to spread information about rights and available services. Tools such as the DVD informing victims of their rights, used in the United Kingdom, were cited as important to replicate and disseminate.

65. The prosecution of trafficking cases is resource intensive. Many law enforcement agencies have limited budgets and the devotion of resources to anti-trafficking activities may take funds away from other criminal justice objectives. As a result, it is necessary to focus on inexpensive measures designed to protect and empower victims of all crimes.

66. Based on these conclusions, the participants offered the following recommendations.

67. States should adopt clear, enforceable and comprehensive legislative provisions to criminalize trafficking in persons in accordance with international legal frameworks. The definition of trafficking in persons put forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime should be instructive in this regard. In addition, lessons from practice in working to implement that Protocol, as well as aspects of definitions found in other international instruments, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography or conventions of the International Labour Organization on forced labour, should provide guidance to ensure that all forms of trafficking are properly criminalized.

68. States should take proactive steps to avoid criminalizing victims for status-related offences by adopting non-prosecution clauses in domestic legislation and by monitoring prosecutions undertaken for activities commonly associated with exploitation, such as prostitution, begging, labour or immigration violations, to identify whether accused persons are victims of trafficking. In addition, it is important that States build capacity for the quick and accurate identification of victims by developing standard operating procedures to detect victims of trafficking and providing training to specialists and front-line responders on identification protocols.

69. Sanctions for trafficking offences should be proportionate, effective and dissuasive. In addition, aggravating circumstances should invite stronger punishment.

70. In order to build capacity to exercise due diligence in the investigation, prosecution and adjudication of trafficking in persons cases, States should facilitate integrated trainings that provide judges, prosecutors, government officials, front-line responders and victim service providers with technical skills. The development of specialized units and courts should be explored as a way to promote anti-trafficking

expertise within government agencies and to streamline criminal justice responses to trafficking. In addition, efforts should be made to facilitate early and frequent collaboration between government agencies working to investigate and prosecute cases.

71. Efforts should be made to inform States about ways to request assistance from other jurisdictions. States should develop formal international cooperation tools, such as mutual legal assistance and extradition treaties. In addition, States should allocate resources to facilitate informal cooperation across borders. Finally, States should ensure that domestic legislation is consistent with obligations under treaties to which they are a party in order to minimize conflicts.

72. States should prioritize and facilitate cooperation between government agencies and victim support agencies. It should be recognized that victim service agencies that have experience dealing with trafficking victims may be well suited to anticipate needs and to help victims navigate the judicial process. In order to promote strong cooperation, memorandums of understanding should be adopted to clarify the mandates, priorities and roles of various agencies involved in anti-trafficking efforts.

73. States should provide protections for victim-witnesses before, during and after legal proceedings, including during any appeals process that may take place. While providing protection to victim-witnesses can be resource-intensive, there are certain inexpensive measures that can and should be taken. Investigators and prosecutors should take time to meet with victims and to understand their concerns fully. Prosecutors should also prepare victims to provide testimony by conducting mock trial exercises and familiarizing victims with the judicial process and the layout of the courtroom. In addition, the use of protective measures such as screens, out-of-court testimony via video link, or the admission of victim statements should be promoted. Judges should be trained to understand their role in providing protections for victims by, *inter alia*, controlling media coverage, ruling on the need for confidentiality and ensuring that interpreters are present in the courtroom.

74. Protection schemes for victims of trafficking should account for the specific needs of victims based on gender and age and should be available to victims of both genders. The best interests of minors should guide protections provided to children, including for privacy and forms of recovery and reintegration, such as education.

75. States should adopt national legal frameworks that provide for asset recovery and for the ability to trace the proceeds of criminal activity in trafficking cases. Attention should be paid to eliminating loopholes that allow traffickers to store proceeds of their crimes outside the reach of government. Procedures should also be developed to distribute confiscated assets to victims. This might include the development of victim support funds. In addition, the possibility of allowing victims to obtain compensation in their home country even when trials take place elsewhere should be explored.

76. States must devote political will to combat trafficking in persons and begin to allocate additional resources to criminal justice responses. While States are responsible for prosecuting trafficking cases, the important role of international organizations and foreign government donors in providing technical and financial assistance to develop the capacity of criminal justice systems to prosecute cases should be recognized and encouraged.

Appendix

Agenda of the expert meeting on the prosecution of trafficking in persons cases: integrating a human rights-based approach in the administration of criminal justice

Monday, 4 July 2011

9.00–9.30 Opening remarks and meeting objectives

Chair

Joy Ngozi Ezeilo, Special Rapporteur on trafficking in persons, especially women and children

9.30–9.45 **Session 1: Human Rights, administration of justice system and prosecution of cases of trafficking in persons**

Facilitator

Shadrach Haruna, Legal Adviser, Legal & Constitutional Affairs Division, Commonwealth Secretariat

9.30–9.50 *Overview of the human rights-based approach to the prosecution of cases of trafficking in persons and the importance of prosecution as part of a comprehensive strategy to combat trafficking in persons* – Joy Ngozi Ezeilo, Special Rapporteur

9.50–10.10 *Key elements of effective criminal justice responses to trafficking in persons* – Martin Fowke, Officer-in-charge, Anti-Human Trafficking and Migrant Smuggling Unit, UNODC

10.10–10.30 *International standards and state practice on the protection of victims and witnesses in human trafficking criminal prosecutions* – Dr. Ilaria Bottiglieri, Senior Researcher, International Development Law Organization

10.30–10.45 *Discussion*

10.45–11.15 *Tea Break*

11.15–13.00 **Session 2: Progress and challenges in the prosecution of cases of trafficking in persons**

Facilitator

Uchenna Emelonye, Manager, Governance, Institutional & Justice Reform, International Development Law Organization

11.15–11.30 *Progress and challenges in prosecuting trafficking in persons cases* – Albert Moskowitz, Senior Prosecutorial Adviser, Asia Regional Trafficking in Persons Project

- 11.30–11.45** *Experiences from a prosecutor’s perspective* –Pam Bowen, Prosecutor, Crown Prosecution Service Directorate, United Kingdom
- 11.45–12.00** *Progress and challenges in investigation and prosecution of trafficking cases in Belarus* –Natalia Kovaliova, Chief Investigator, Ministry of Internal Affairs, Belarus
- 12.00–12.15** *Developing and implementing a human rights-based approach to the prosecution of cases of trafficking in persons* – Mr. Warner Ten Kate, Dutch National Public Prosecutor for trafficking in human beings and people smuggling
- 12.15–13.00** *Discussion*
- 13.00–14.00** *Lunch Break*
- 14.00–16.30** **Session 3: Good practices and lessons learned**
- Facilitator*
Mr. Martin Fowke, UNODC
- 14.00–14.15** *Cooperation between criminal justice and victim support agencies: lessons learned from the French experience* –Nicolas Le Coz, Senior Officer, Judicial Police Sub-Directorate (SDPJ), French National Gendarmerie’s General Directorate (DGGN), Ministry of Interior.
- 14.15–14.30** *Development of the Nigerian specialized unit, National Agency for Prohibition of Traffic in Persons (NAPTIP): experiences and lessons learned in prosecuting trafficking in persons cases* –Obiwulu Emmanuel Agusiobo, Senior Prosecutor, NAPTIP
- 14.30–14.45** *Indian efforts to prosecute traffickers* – Justice Usha Mehra
- 14.45–15.00** *Capacity-building for law enforcement, prosecutors, judges and victim service providers on the implementation of the human rights-based approach to the prosecution of cases of trafficking in persons* – Shadrach Haruna, Legal Adviser, Legal & Constitutional Affairs Division, Commonwealth Secretariat
- 15.00–15.30** *Tea Break*
- 15.30–15.45** *Lessons learned for the investigation and prosecution of human trafficking – best practices for vulnerable victims* –Aimée Comrie, Advisor to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
- 15.45–16.00** *Gender-related challenges in prosecuting cases of trafficking in persons: good practices and lessons learned* –Albert Moskowitz, ARTIP
- 16.00–16.30** *Discussion*
- 16.30–18.00** **Conclusions and Recommendations**
- Facilitator*
Joy Ngozi Ezeilo, Special Rapporteur
- 16.30–17.00** *Overview of main conclusions and key recommendations from the meeting* – Session facilitators

17.00–18.00 *Discussion on recommendations and way forward – Tour de table*

Closing remarks by Chair
