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**Introductory statement for Workshop 2 on “Trafficking in persons and smuggling of migrants: successes and challenges in criminalization, mutual legal assistance and in the effective protection of witnesses and trafficking victims”**

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Distinguished delegates,

Ladies and gentlemen,

It is my great pleasure to open and address today the session on trafficking of workshop 2 on trafficking in persons and smuggling of migrants.

Trafficking in persons being a crime but also a serious violation of human rights, I will focus my intervention on the human rights based approach particularly to prosecution and assistance to victims of trafficking. I will also touch upon the issue of identification of trafficked persons which is so crucial to ensure both the protection of the rights of trafficked persons and successful prosecution of the traffickers.

According to the mandate entrusted to me by the Human Rights Council I seek to promote a human rights-based approach to trafficking in persons and to guide Member States in ensuring that all aspects of national, regional and international responses to trafficking are anchored in the rights and obligations established by international human rights law. While progress has been recorded in the criminalization of trafficking and the prosecution and punishment of traffickers, the human rights of trafficked persons have often not been given priority consideration as part of effective criminal justice responses to trafficking. Trafficked persons are often treated as instruments of criminal investigation, rather than as victims of human rights violations entitled to appropriate protection and remedies.

At the outset, it is important to underline what a rights-based approach (HRBA) is to trafficking and why it is so important for not only protection and assistance but also for prosecution. In that respect, international human rights law and standards, including the Recommended Principles and Guidelines on Human Rights and Human Trafficking, offers authoritative guidance to States. A human rights-based approach to trafficking is a conceptual framework that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. Such an approach requires an analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of States' obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distributions of resources (wealth) and power that underlie trafficking, maintain impunity for traffickers and deny justice to victims of trafficking. A human rights-based approach identifies rights-holders and their entitlements (for example, trafficked persons, individuals at risk of being trafficked, or

individuals who are presumably victims of trafficking, and the corresponding duty-bearers (usually States) and their obligations. This approach strengthens the capacity of rights-holders to secure their rights and of duty-bearers to meet their obligations. Core principles and standards derived from international human rights law should guide all aspects of all the trafficking responses at all stages.

While it is fair to acknowledge that many States have made important progress in the development of effective and rights-based criminal justice responses to trafficking that are consistent with these principles and standards, many challenges remain in terms of commitment and capacity in implementing a rights-based approach to prosecuting the crime of trafficking. Let me further elaborate on these challenges.

Criminalization of trafficking is one of the key elements of a HRBA to trafficking. For trafficking legislation to comply with a HRBA, it must be clear, enforceable and comprehensive enough to ensure effective protection of the victim. It must cover a range of end purposes, including forced and exploitative labour; it must recognize the possibility of women, men and children being victims of trafficking; and that the trafficking in children must be defined differently to trafficking in adults, being their eventual consent always irrelevant. For example, a trafficking law that covers only one of these aspects would fall short of this standard. In this respect, I would like to refer to the excellent guidance provided by UNODC, and highlight a particular aspect, which requires further work: national legislation must ensure that criminal (and civil) liability be extended to legal persons. This obligation is all the more important to ensure the legal accountability of corporations and businesses engaging in trafficking, such as labour contractors and sub-contractors, recruitment agencies, entertainment venues and massage parlours.

But as we know, criminalization is not an end in itself. It must be accompanied by the effective enforcement of the law and the imposition of appropriate punishments for trafficking and related offences. In this regard, low prosecution and conviction rates around the world confirm that even those States with advanced criminal justice systems and sophisticated anti-trafficking strategies must look to improve their performance.

Another key element of a HRBA to trafficking response is the non-criminalization of trafficked persons. Evidence shows that trafficked persons are often arrested, detained, charged and even prosecuted for such unlawful activities as entering illegally, working illegally or engaging in prostitution. The vulnerability of trafficked persons to such treatment is often directly linked to their situation: their identity documents may be forged or have been taken away from them, and the exploitative activities in which they are or have been engaged, such as prostitution, soliciting or begging, may be illegal in the State of destination. Criminalization is also possible in countries of origin, where returned victims of trafficking may be penalized for unlawful or unauthorized departure. International legal standards establish that trafficked persons should not be prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons. Good practices in this area include the adoption of specific legislation which exempts from prosecution trafficked persons who have committed unlawful acts as a direct result of being trafficked.

Inextricably linked to the non-criminalization of trafficked persons is the issue of their identification since in many cases, criminalization is tied to a failure of the State to identify the victim correctly. The identification of trafficked persons is often complex and in practice, trafficked persons are often arrested, detained and charged as smuggled or undocumented workers. Let me stress that criminalization and/or detention of victims of trafficking is incompatible with a HRBA to trafficking because it inevitably compounds the harm already experienced by trafficked persons and denies them the rights to which they are entitled. Criminalizing victims bear as well further consequences, such as the development of a criminal record for victims which make their recovery and reintegration even more difficult. In addition, the criminalization of victims is counterproductive to prosecutions because it destroys trust, re-traumatizes victims and reinforces what traffickers may have told victims about law enforcement authorities. A good practice in the area of victim's identification include specialized training sessions to enhance the capacity of front-line officers, especially the police, immigration, border guards and labour inspectors and the development, in particular of national referral mechanisms, standard operating procedures or brochures, manuals, handbook and/or other tool kits to build capacity and raise awareness to facilitate rapid and accurate identification of victims. There is an acute need to continue building the capacity of front-line officials from all agencies that might encounter trafficking crimes or victims for quick and accurate identification of trafficked persons. In this regard, indicators,

including those developed by the International Labour Organization (ILO), the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) are very useful tools and are increasingly being used by law enforcement officials as a tool to identify trafficked persons in the identification processes.

The provision of protection and support to victims of trafficking is another key feature of a HRBA to trafficking. It plays a critical role in promoting the effective investigation and prosecution of traffickers, as it enables victims to participate safely and effectively in criminal justice processes and to provide evidence of exploitation. I would like to particularly underline this last aspect. National good practices show that presumed victims must be immediately assisted and protected, without further conditions or legal requirements, pending their final identification as victims. When this happens, and trafficked persons are reassured about their destiny, they are generally willing to act as witnesses in criminal proceedings.

In this regard, I regret that many States still link the provision of assistance and protection to cooperation with national criminal justice agencies. I would like to stress that protection and assistance should not be made conditional upon any of the following requirements: the capacity or willingness of victims to cooperate with law enforcement agencies; the initiation or not of legal proceedings and the pressing of charges against their traffickers and exploiters and the legal qualification or not of the crime as trafficking or as other or less serious crime. During my tenure as mandate holder, I plan to further explore the need for an unconditional access to a range of support services for victims of trafficking, including children who are frequently left without assistance or the necessary support to access remedies including compensation. In particular, I intend to analyze laws, policies and practices around the world and take stock of promising practices and lessons learned on the provision of unconditional assistance to victims and potential victims of trafficking. Ultimately, unconditional assistance not only contributes to a more effective prevention and prosecution of trafficking but also prevents the risk of further human rights violations for victims.

Last but not least, I would like to draw your attention to an issue that has been overlooked or underestimated so far: further violations of victims' human rights can derive from anti-trafficking action itself. For example, the practice of so called "closed shelters"

implies that victims are kept in a situation similar to administrative detention. Even though such a situation could include some assistance measures, deprivation of liberty cannot be allowed or condoned for any reasons, being trafficked persons victims, not perpetrators of crimes. Such gross violations of victims' rights can also contribute to failures in prosecution of traffickers, as victims are not encouraged to trust national authorities in charge of their recovery and social integration, and authorities in charge of prosecution of traffickers as well. On the contrary, the identification process and the assistance phase should fully comply with human rights standard, and thus favour a confidence building process, which can be more easily developed in close cooperation with civil society organizations.

I thank you for your attention. I look forward to listening to the presentations by the other panelists and to taking part the discussion that will follow.