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**Thematic discussion on trafficking in human beings,
especially women and children**

Trafficking in human beings, especially women and children

Note by the Secretary-General***

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*** The footnote required in accordance with paragraph 8 of General Assembly resolution 53/208 B, in which the Assembly decided that, if a report was submitted late to the conference services, the reason for this should be included in a footnote to the document, was not included in the original submission.



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I. Introduction

1. The present note has been prepared in response to Economic and Social Council decision 2002/238 of 24 July 2002, entitled “Provisional agenda and documentation for the twelfth session of the Commission on Crime Prevention and Criminal Justice”, as well as to the recommendation of the Commission at its eleventh session concerning the thematic discussion to be held at its twelfth session. According to decision 2002/238, the following sub-themes have been established for the thematic discussion on trafficking in human beings, especially women and children:

- (a) Trends in trafficking in human beings;
- (b) Investigating and prosecuting cases on trafficking in human beings: national and international law enforcement cooperation and assistance;
- (c) Awareness-raising and social intervention: victim support and the role of civil society;

2. The present note provides an outline of the topics that the Commission may wish to address under the respective sub-themes, following consultations during the intersessional meetings.

3. In its resolution 55/25 of 15 November 2000, the General Assembly adopted 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 in Persons Protocol”). As at 15 March 2003, the Protocol had been signed by 117 Member States and ratified by 24. The three main purposes of the Protocol are to prevent and combat trafficking in persons, to protect and assist the victims of such trafficking, with full respect for their human rights, and to promote cooperation among States Parties. The thematic debate will address issues that States will face when implementing the Protocol once it has entered into force.

4. Additional background information concerning trafficking in persons will be provided in conference room papers and other relevant documents before the Commission at its twelfth session. These will include:

- (a) General Assembly resolution 55/67 of 4 December 2000 on trafficking in women and girls;
- (b) Report of the Secretary-General of 2 July 2002 on trafficking in women and girls (A/57/170);
- (c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (resolution 54/263, annex II);
- (d) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 of the International Labour Office (ILO);
- (e) Recommended Principles and Guidelines on Human Rights and Human Trafficking contained in the report of the United Nations High Commissioner for Human Rights of 20 May 2002 (E/2002/68/Add.1);

(f) Report of the expert group meeting on trafficking in women and girls (see E/CN.6/2003/7).

II. Trends in trafficking in human beings

5. The United Nations Office on Drugs and Crime (formerly known as the Office for Drug Control and Crime Prevention) will present a preliminary review of the database on trafficking trends set up by its Centre for International Crime Prevention. The Commission on Crime Prevention and Criminal Justice may wish to address the following topics:

- (a) Global trafficking situation: countries of origin, transit and destination;
- (b) Major trafficking routes;
- (c) Information about victims: sex, age and nationality;
- (d) Information about traffickers: sex, age and nationality;
- (e) Criminal justice responses: investigations, prosecutions and convictions in different countries.

III. Investigating and prosecuting cases on trafficking in human beings: national and international law enforcement cooperation and assistance

A. Measures to strengthen national and international cooperation between authorities and other relevant bodies

6. At the national level, cooperation mechanisms between the criminal justice system, border control authorities, social and welfare bodies, health authorities and non-governmental and other relevant organizations have been established in order to promote coordinated action against trafficking, as well as to protect and support victims. The Commission may wish to review experience in that area.

7. When dealing with trafficking by a transnational organized criminal group, all the provisions of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I) (the "Organized Crime Convention") can be applied. The offences of participation in an organized criminal group (art. 5), laundering of proceeds of crime (art. 6), corruption (art. 8) and obstruction of justice (art. 23) or any other "serious crime" committed by such a group can form the basis for investigation, prosecution, punishment and confiscation of proceeds.

8. The relevant provisions of the Organized Crime Convention, the Trafficking in Persons Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex III) (the "Migrants Protocol"), could be reviewed to assess the opportunities and requirements for law enforcement and judiciary cooperation. In that connection, a first draft of legislative guides to the Organized Crime Convention and its Protocols will be made available to the Commission.

B. Special measures for investigating and prosecuting cases involving child victims

9. Law reform relating to the status of victims and witnesses should be in accordance with international instruments focusing on child protection, including the Trafficking in Persons Protocol, the Convention on the Rights of the Child (resolution 44/25, annex) and its Optional Protocol on the sale of children, child prostitution and child pornography, as well as the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and should include special provisions related to children.

10. The guidelines on the protection of child victims of trafficking, presented in the Recommended Principles and Guidelines on Human Rights and Human Trafficking contained in the report of the United Nations High Commissioner for Human Rights of 20 May 2002 (E/2002/68/Add.1), should be complemented with specific instructions for law enforcement personnel when dealing with children under the age of 18. They should provide orientation on which authority will be responsible for the protection of the child in the country of destination, which steps must be taken by the respective authority to determine the age of a person and the ways in which and circumstances under which a child can be questioned by a law enforcement officer. There is a need to train police specifically on children's rights and needs, in accordance also with the Convention on the Rights of the Child.

11. Special interviewing methods are also required when children serve as witnesses in investigation processes and court trials. It should be ensured that, during such processes, children are protected from their traffickers and that their testimony is taken in a considerate way.

12. The discussion could focus on the need to define specific measures for the provision of assistance to child victims, including legal aid, social work, legal counselling, health care, psychological aid and so on. Furthermore, training of all staff involved seems essential.

13. In destination countries, there is a need to set up specific repatriation procedures for children, taking into consideration their particular needs, addressing the prospects of the child for reintegration into his or her family and safety upon return to his or her home country. The repatriation process should be monitored by the relevant government authorities and non-governmental organizations, including after the return of the child to his or her home country.

C. The role of the victim in the criminal justice process

14. In order to be able to participate in the criminal justice process, the victim should have the right to stay in the receiving country. Some States have given victims of trafficking the right of temporary residence, usually conditional on their willingness to testify against the traffickers in court. Elsewhere such a condition does not apply. Some States offer victims a period to reflect on their possible participation in a trial.

15. Witness protection can be difficult and expensive to organize, especially when the family of the victim in the home country is also threatened. Investigation

methods that do not require the involvement of victims as witnesses, such as investigations focusing on financial assets of traffickers, may be the preferred option. However, that option should not result in reduced protection of or support for victims.

D. Inclusion of gender and human rights perspectives in criminal justice responses

16. In the Platform for Action adopted by the Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995,¹ trafficking was described as a form of violence against women. According to the global database on trafficking of the Centre for International Crime Prevention, 85 per cent of trafficking cases involve women or girls as victims. Trafficking should be analysed and addressed as a major manifestation of gender inequality in the current era of globalization. The expert group meeting on trafficking in women and girls, organized by the Division for the Advancement of Women of the Secretariat and the United Nations Office on Drugs and Crime in New York from 18 to 22 November 2002, concluded that the prevailing criminal justice approach to trafficking had been inadequate: a clear gender and human rights perspective should be included in all anti-trafficking strategies of Governments and intergovernmental and non-governmental organizations.

17. In the Recommended Principles and Guidelines on Human Rights and Human Trafficking (see para. 10 above), trafficking is approached from a human rights perspective. The guidelines cover prevention, protection and assistance as well as criminalization, punishment and redress. Appropriate mechanisms for implementing the guidelines should be developed.

18. Reporting of trafficking to the police is sometimes hindered by gender prejudices and corruption among law enforcement and customs officers in both source, transit and destination countries. Law enforcement action against trafficking at the national and international levels should include elements addressing gender bias and corrupt practices in relevant professions.

E. International cooperation to prevent and combat trafficking in persons during post-conflict situations

19. Trafficking in women often surges in conflict and post-conflict situations, with women being trafficked into conflict areas for exploitation in the sex industry as well as exported from conflict areas to foreign destinations. Organized criminal groups take advantage of the weakness of state control mechanisms and engage in large-scale trafficking in persons. Putting in place effective mechanisms against trafficking in persons as part of overall efforts to re-establish the rule of law and a functioning criminal justice system is therefore one of the challenges for peacekeeping operations. Two priority areas need to be addressed: (a) the control of trafficking in persons from or through the country or subregion concerned; and (b) the potential creation of a demand for trafficked persons through the peacekeeping interventions (primarily trafficking in women and girls for sexual exploitation), most often the use of women for forced prostitution for (male)

peacekeepers (the military, police and other staff of United Nations or international, regional or non-governmental organizations).

IV. Awareness-raising and social intervention: victim support and the role of civil society

A. Addressing root causes

20. Lack of economic prospects in countries of origin and demand in the labour and sex markets in countries of destination create the most common root causes for trafficking in persons. Job discrimination, gender-biased cultural practices and low status make women and girls particularly vulnerable to victimization by traffickers. In order to be effective, strategies to combat such trafficking should strike a balance between law enforcement operations against traffickers and positive action: (a) to improve economic and social situations for persons at risk, especially women and children; and (b) to reduce demand in destination countries.

B. Victim assistance geared towards empowerment

21. In order to qualify for benefits and protection, trafficked persons must be certified by police or other authorities in countries of destination as “victims of trafficking”. Such victim status should also be recognized in countries of origin upon their return. Member States have put in place different procedural models for the purpose that often leave room for improvement.

22. Many experts working with victims of trafficking indicate that support for and protection of victims should be geared towards their empowerment so that they can take control of their own lives and prevent further victimization. This requires the support to be tailored to the needs of individual victims in the countries of destination as well as in the countries of origin after the repatriation of victims. An important element of support should be the provision of vocational training leading to regular employment.

C. Involving civil society

23. In many countries civil society participates in national commissions, committees, task forces and working groups on trafficking in human beings. Non-governmental organizations also took an active part in the negotiation of the Trafficking in Persons Protocol. The possible contribution of non-governmental organizations to the work of the Conference of the States Parties to the Organized Crime Convention might be a topic of discussion.

24. Civil society has also contributed to awareness-raising campaigns in support of government goals and programmes. These have included activities such as joint communications, public announcements and similar initiatives. In addition, specific events to combat trafficking in human beings have been supported by the private sector. The possibilities of public and/or private partnerships in different awareness-raising activities could be discussed.

25. Private organizations, including from the business sector, should be encouraged to contribute to victim support activities. This could include establishment and/or sponsorship of victim support systems providing counselling, education, vocational training and so on by networks of public and private sector organizations. One example is the project recently launched by the United Nations Office on Drugs and Crime to promote support for victims of crime, in particular victims of trafficking (see www.unodc.org/odccp/trafficking_modules.html).

26. Examples of cooperative efforts between the United Nations and the private sector for joint mobilization of public and private funds for development initiatives include the contribution of the United Nations Foundation to the United Nations Inter-Agency Project on Trafficking in Women and Children in the Mekong Subregion. Such joint initiatives could be expanded to include different types of activity, from information-sharing and dissemination of international best practices to specific projects of victim assistance.

V. Research workshop on trafficking in human beings, especially women and children: lessons learned and policy implications

27. A research workshop on trafficking in human beings, especially women and children: lessons learned and policy implications will be organized by the United Nations Crime Prevention and Criminal Justice Programme network, under the overall coordination of the United Nations Interregional Crime and Justice Research Institute, during the twelfth session of the Commission on Crime Prevention and Criminal Justice. Following past practice, the workshop will be conducted as part of the proceedings of the Committee of the Whole. The institutes of the network will contribute to the workshop by presentations and substantive papers focusing on research and lessons learned.

Notes

¹ *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.