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**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

Summary

In the present report, the Special Rapporteur provides an overview of her activities from 1 August 2012 to 28 February 2013.

The report comprises a thematic analysis by the Special Rapporteur of the integration of a human rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and which leads to human trafficking. It examines the role of such demand in fostering exploitation and trafficking in persons, and provides an overview of various international and regional legal and policy frameworks and initiatives as well as different approaches and measures undertaken by States and other stakeholders. In addition, the Special Rapporteur draws attention to some of the remaining challenges in integrating human rights-based approach, and provides a set of recommendations for addressing them.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 17/1. It briefly outlines the activities of the Special Rapporteur on trafficking in persons, especially women and children, from 1 August 2012 to 28 February 2013, and contains a thematic analysis of the integration of a human rights-based approach in measures to discourage demand that fosters all forms of exploitation of persons, especially women and children, and which leads to human trafficking.

II. Activities carried out by the Special Rapporteur

2. With regard to the activities carried out from 1 March 2012 to 31 July 2012, the Special Rapporteur refers to her most recent report submitted to the General Assembly (A/67/261). Her activities from 1 August 2012 to 28 February 2013 are briefly outlined below.

A. Participation in conferences and consultations

3. On 28 February 2013, during the twenty-second session of the Human Rights Council, the Special Rapporteur participated in the side event on the topic “Women’s Access to Justice: Models, Strategies and Practices from the Field”, held by the International Development Law Organization.

4. On 12–13 November, 2012, the Special Rapporteur convened a two-day expert meeting in Ankara on issues relating to human trafficking and supply chains, in particular to deepen the discussion on the standards applicable to businesses in addressing trafficking in the context of global supply chains. During the consultation, international experts from different stakeholder groups shared information on current trends, good practices and lessons learned in addressing trafficking in global supply chains and discussed elements of possible standards and indicators for achieving a trafficking-free supply chain. The summary report of the expert meeting is presented as an addendum to the present report.

5. On 26 October 2012, she participated as a panellist on the topic of trafficking in persons and the smuggling of migrants in international law in the Seminar on the Trafficking of Persons and Smuggling of Migrants, held in Santiago by the National Institute of Human Rights of Chile.

6. On 18 October 2012, the Special Rapporteur attended as a panellist the conference “Working together towards the Eradication of Trafficking in Human Beings: The Way Forward”, organized in Brussels by the Cyprus Presidency of the Council of the European Union and the European Commission on the occasion of the Sixth European Union Anti-Trafficking Day.

7. On 16 October 2012, she participated in the sixth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in Vienna. At this event, she made a statement highlighting the role of multilateral and regional cooperation in alleviating factors that make persons vulnerable to trafficking; developing and effectively implementing strategies to prevent trafficking in persons and in setting relevant standards; as well as a potential role of the private sector in the fight against trafficking in persons.

8. On 28–30 September 2012, the Special Rapporteur participated as a speaker in the Atlantic Dialogues, an annual gathering of public- and private-sector leaders from around

the Atlantic basin for a discussion on cross-regional issues ranging from security to economics and migration.

B. Country visits

9. The Special Rapporteur visited the United Arab Emirates from 11 to 17 April 2012, Gabon from 14 to 18 May 2012 and the Philippines from 5 to 9 November 2012 at the invitation of the respective Governments. The full reports of these visits are presented as addenda to this report.

III. Integration of a human rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and which leads to human trafficking

A. Introduction

10. In her first report to the Human Rights Council (A/HRC/10/16), the Special Rapporteur stressed the continued existence of huge demand and supply of trafficking, and the need for an in-depth study into the demand. The Special Rapporteur has noted that different United Nations experts have drawn different conclusions about what measures are appropriate to discourage demand, particularly in the case of demand for sexual services.¹

11. Over the past decade, anti-trafficking practitioners have debated what actions are required to discourage demand and what measures have proved effective. Progress in answering these questions has been notably slow. One reason is that the term “demand” is still subject to different interpretations, with some States and organizations putting the emphasis on measures to discourage exploitation associated with services, particularly sexual services and the exploitation of the prostitution of others, considering it appropriate to discourage men and boys from paying for commercial sexual services in any circumstances, whether the women, girls or men and boys with whom they pay for sex have been trafficked or not.² Another reason is that addressing the demand side requires giving priority to measures in the places where trafficked persons are exploited,³ rather than in the locations (and States) where adults and children are recruited to be trafficked and exploited elsewhere. This has been a challenge for States that have either made no estimate of the scale of trafficking and exploitation of persons occurring in their territory or which refuse to acknowledge the scale of such abuse (with the result that they have not given priority to measures to prevent human trafficking). It also calls for an analysis and understanding of the factors that allow demand to be met by the exploitation of trafficked persons, including economic, social and cultural factors.

¹ Interim report of the Special Rapporteur to the General Assembly, A/65/288, paras. 32–34.

² See addendum to the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, A/55/383/Add.1, para. 64.

³ See *Recommended principles and guidelines on human rights and human trafficking: Commentary*, (United Nations publication, Sales No. E.10.XIV.1), p. 101.

B. The role of demand as a factor in fostering exploitation and trafficking of persons, especially women and children

12. As noted in the earlier report of the Special Rapporteur (A/HRC/10/16, paras. 51–52):

“The definition of demand, which is an economic term, can be adapted to the context of trafficking to describe it as the desire ‘for labour that is exploitative or services which breach the human rights of the person delivering those services’. It includes demand for sexual exploitation; for cheap labour and domestic workers; for organ removal and sale; for illicit adoption and forced marriages; for criminal activities or begging or for exploitation within the army ... ‘The demand side of trafficking generally refers to the nature and extent of the exploitation of the trafficked persons after their arrival at the point of destination, as well as the social, cultural, political, economic, legal and developmental factors that shape the demand and facilitate the trafficking process’. As such, it does not have to be ‘properly understood as the demand for a trafficking victim’s prostitution, labour or services. Rather, demand must be understood expansively, as any act that fosters any form of exploitation that, in turn, leads to trafficking’.”

13. The Global Initiative to Fight Human Trafficking (UNGIFT) has identified three levels of demand related to human trafficking: employer demand (employers, owners, managers or subcontractors); consumer demand clients or prostitute-users (in the sex industry), corporate buyers (in manufacturing), household members (in domestic work); and third parties involved in the process.⁴

14. In the context of demand that fosters exploitation of persons and leads to trafficking in persons, one can differentiate direct and derived demands. Direct demand is for a service which is specifically provided by a person who has been subjected to one of the forms of exploitation listed in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol). Demand is also direct when it is for goods produced by a person who has been trafficked and subjected to one of these forms of exploitation. Examples of direct demand are: for domestic workers or care workers who have no alternative but to obey. Such demand is routinely for either migrants or children, in conditions where the workers concerned are unable (or unauthorized) to leave their employer – conditions which are sometimes due directly to legislation in force in the State concerned and sometimes a lack of protection measures, particularly child protection measures – for particular commercial sexual services which are not available from someone who has not been trafficked. “Derived demand” is not directly for the services of a trafficked or exploited person or for a commodity which they have helped produce, but for something else, usually for products or services that are particularly cheap. However, in some circumstances it is apparent that the service or commodity in question is highly unlikely to be available unless provided by trafficked persons. Examples of derived demand are: employer demand for cheap and docile workers; demand from businesses or institutions for the products or services of others (i.e., with what is called a “supply chain”), sometimes in other countries; consumer demand for cheap goods or particular services.⁵

15. On the basis of commissioned research in five Asian countries (in six sectors of income-generating activity), an International Labour Organization (ILO) report concluded that “the trafficking phenomenon is to a very high extent a result of employers’

⁴ *Toolkit to Combat Trafficking in Persons* (United Nations publication, Sales No. E.08.V.14), p. 457.

⁵ See *Recommended principles and guidelines: Commentary*, p. 97.

unchallenged ability to create their own – often exploitative – working conditions for women and children in informal ‘hidden’ sectors where they easily can take advantage of the legislative weaknesses.⁶ The same report notes that “demand and supply factors are closely intertwined ... Poverty and expectations of better earning opportunities induce thousands ... to migrate and seek employment in unregulated and informal sectors where they are extremely vulnerable to exploitation. This abundant labour supply ... fuels a level of demand that would not otherwise be there”.⁷

16. Businesses that take advantage of trafficked persons aim to minimize production costs and maximize profits by not paying wages, requiring excessive overtime or otherwise failing to meet basic health and safety standards in environments that are inherently dirty, difficult or dangerous. Legitimate businesses may also maximize profit by subcontracting the recruitment of workers to a labour provider who uses methods associated with trafficking in persons, such as debt bondage or intimidation.

17. In the case of services provided by trafficked persons, the person who purchases or uses such services as sexual, care for the elderly or infirm, or domestic work generally comes into direct contact with the person being exploited. In contrast, consumers seeking cheap products generally have no personal contact and are often situated in a different country altogether. However, in both cases it is conceivable that the users of the services provided are unaware that those involved in producing goods or providing services for them have been trafficked or subjected to illegal force or coercion.

18. In some regions there is a specific demand for children to work in circumstances which are inconsistent with internationally recognized standards and frequently violate national law. For example, some children who are recruited to work in private homes as domestic workers are sought by employers because they are too young to resist their authority or pose a threat. While not all such cases involve trafficking or forced labour, some do. In various regions of the world, including industrialized countries, children are also deliberately sought by beggar masters.⁸

19. On a number of occasions over the past decade, concern has been voiced that large-scale sporting events create a demand for the services of people who are trafficked and therefore require preventive action specifically to discourage demand. This concern led various agencies to inform the media before sporting events that large numbers of women or children were about to be trafficked. Some recent campaigns to discourage demand associated with sporting events have taken a wider perspective, pointing out that the organizers of sporting events have a responsibility to prevent not only people being trafficked to provide sexual services to fans, but also trafficking in the context of construction and the production of merchandise for sale at the events.

C. Existing international and regional legal frameworks and initiatives on addressing demand

1. International legal and policy frameworks and initiatives

20. The fundamental international instrument containing specific provisions on demand is the Trafficking in Persons Protocol. Its article 9, paragraph 5, states that States parties shall adopt or strengthen legislative or other measures, such as educational, social or

⁶ *Demand Side of Human Trafficking in Asia: Empirical Findings* (Bangkok, 2006), p. 3.

⁷ *Ibid.*, pp. 2–3.

⁸ See Terre des Hommes and United Nations Children’s Fund (UNICEF), *Action to prevent child trafficking in South Eastern Europe: A preliminary analysis* (2006).

cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. The Protocol refers to the generic categories of measures that should be taken to discourage demand,⁹ but is not more precise. The guide published to advise States on what steps to take to implement the Protocol points out that “demand reduction ... could be achieved in part through legislative or other measures targeting those who knowingly use or take advantage of the services of victims of exploitation”.¹⁰

21. The role of individual consumers in fuelling the exploitation of children, including cases when children are trafficked, is recognized in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In this Protocol, the need is expressed for raising public awareness to reduce consumer demand for the sale of children, child prostitution and child pornography. In addition to requiring them to punish specified acts and activities by criminal or penal law, the Optional Protocol requires States parties to “promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol” and “take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol” (art. 9, paras. 2 and 5).

22. In the Recommended Principles and Guidelines on Human Rights and Human Trafficking, the United Nations High Commissioner for Human Rights recommended a set of principles and guidelines to put the human rights of trafficked persons at the centre of all efforts to prevent and combat trafficking and protect, assist and provide redress to victims. The document provides specific recommendations on addressing demand as part of prevention strategies. It highlights the importance of addressing demand as a root cause of trafficking and raising the effectiveness of law enforcement to discourage demand, and recommends analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues. Principle 2 provides that States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

23. In 2010 the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, which provided further details about the human rights approach to preventing trafficking in persons, including measures to discourage demand.

24. The United Nations Global Plan of Action to Combat Trafficking in Persons includes several provisions suggesting that action be taken to discourage demand, including one referring to the need for “specific measures at national level to combat trafficking for labour exploitation and strive to educate consumers on those measures” (art. 22).

25. In 2011 the General Assembly in resolution 66/141 repeated a call to States “to combat the existence of a market that encourages such criminal practices [all forms of the sale of children, including for the purposes of the transfer of organs of the child for profit, child slavery, commercial sexual exploitation of children, child prostitution and child pornography] and take measures to eliminate the demand that fosters them”.

⁹ United Nations Office on Drugs and Crime (UNODC), *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2004), part two, para. 74.

¹⁰ *Ibid.*

26. The main international standard on employment agencies, ILO Convention No. 181 (1997) concerning Private Employment Agencies specifies that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers” (art. 7.1). If respected, this provision should stop workers being put into debt bondage by recruitment agents; however, the Convention has not yet been widely ratified.¹¹ The Convention also requires States to “adopt all necessary and appropriate measures ... to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies” (art. 8). The measures specified include penalties for private employment agencies which engage in fraudulent practices and abuses, including their prohibition.

27. The responsibilities of States with respect to the activities of businesses operating in their territory and/or jurisdiction were summarized in 2011 in the Guiding Principles on Business and Human Rights (A/HRC/17/31), developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. They point out what States are required to do the necessary to ensure that what is called a “foundational principle” is respected: this requires that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” (principle 2). It also stipulates that States should, *inter alia*, “provide effective guidance to business enterprises on how to respect human rights throughout their operations” and “encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts” (operational principle 3 (c) and (d)).

2. Regional legal frameworks and initiatives

28. A number of regional legal instruments include provisions on discouraging demand. Article 5 of the Charter of Fundamental Rights of the European Union specifically prohibits trafficking in human beings. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims includes specific provisions on discouraging demand. Furthermore, article 18, paragraph 1, of the Directive provides that “Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings”, and article 18, paragraph 4, says that “in order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.”

29. The European Union Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 contains specific provisions on addressing demand. It is planned that a European business coalition against trafficking in human beings will be established in 2014 to improve cooperation with businesses and other stakeholders, respond to emerging challenges and discuss measures to prevent trafficking in human beings, in particular in high-risk areas. In 2016, the European Commission intends to work together with the coalition to develop models and guidelines on reducing the demand for services provided by victims of trafficking in human beings, in particular in high-risk areas, including the sex industry, agriculture, construction and tourism.

30. Several provisions are also included in the Council of Europe Convention on Action against Trafficking in Human Beings. For instance, its article 6 provides that:

¹¹ As of July 2012, ILO Convention No. 181 had been ratified by 23 States.

“To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a research on best practices, methods and strategies;
- b raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.”

31. The 2003 Organization for Security and Co-operation in Europe Action Plan to Combat Trafficking in Human Beings recommended “adopting or strengthening legislative, educational, social, cultural or other measures, and, where applicable, penal legislation, including through bilateral and multilateral co-operation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking”. Furthermore, in its decision No. 8/07 on combating trafficking in human beings for labour exploitation, the Organization’s Ministerial Council urged participating States to “develop programmes to curb the fraudulent recruitment used by some employment agencies that can make persons more vulnerable to being trafficked” (para. 16).

32. The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) adopted in 2004 a Memorandum of Understanding in which Member States recognize the “link between the demand for trafficking and the growing demand for exploitative labour and exploitative sexual services”. It also lays emphasis on the importance of bilateral arrangements in “promoting safe, orderly and well-regulated migration as this serves to reduce the demand for illegal migration services which provide opportunities for traffickers” and “encouraging destination countries, including those from outside the Greater Mekong Sub-region to effectively enforce relevant national laws in order to reduce the acceptance of exploitation of persons that fuels the demand for the labour of trafficked persons”.

33. The Association of Southeast Asian Nations (ASEAN) Inter-Parliamentary Organization’s resolution on the role of Parliament in combating trafficking in women and children in the ASEAN region, adopted in 2004, appeals to the Governments of ASEAN countries to “strengthen existing legislation and enforcement mechanisms to punish particularly those who create demand for illicit sex or who use force or fraud to traffic women or minors into the international sex trade, while protecting the rights of the trafficking victims”.

34. The Economic Community of West African States (ECOWAS) Initial Plan of Action against Trafficking in Persons (2002–2003) provided that member States, in partnership with NGOs, other civil society groups, and public and private media, shall develop and disseminate public awareness materials focusing on raising public understanding that trafficking in persons is a crime, and discouraging the demand that leads to trafficking, particularly by addressing those who might exploit victims of trafficking, for example as child domestics or farm labourers.

D. Overview of existing approaches and measures undertaken by States and other stakeholders

35. While there is wide consensus that addressing demand for labour and services provided by trafficked persons plays a critical role in preventing trafficking in persons, the term “demand” is not defined in sufficient detail in existing legal instruments and the interpretation of the term has been the subject of much debate.

36. Although States reporting on the measures taken to discourage demand have reported on a wide range of methods, including some intended to address supply,¹² the Special Rapporteur recognizes that not all prevention measures, even those specifically affecting the places where trafficked persons are exploited, should be regarded as measures to discourage demand. Further, in the debate about what to do to discourage demand, many stakeholders have focused exclusively on demand for commercial sexual exploitation, particularly of women and girls, and neglected other forms of demand, such as demand for exploitative labour and organs.

37. The Working Group on Trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime has reviewed some of the measures which States have taken to discourage demand. Details about the measures implemented by 33 States were reported to the sixth session of the Conference of the Parties to the Convention (15–19 October 2012). In addition to mentioning general measures to combat trafficking in persons, several States provided information on their labour laws and codes, which they felt reduced trafficking in persons for forced labour. Some pointed out that they had adopted specific legislation regulating working conditions, especially for foreign workers. Some made reference to specific legislation to address the issue of demand by establishing the responsibility of employers for the management of their supply chains. A few States reported that they had addressed the issue of demand by adopting legislation prohibiting the advertisement of sexual services and criminalizing the purchase of sexual services. Those States commented that such legislation was aimed at eliminating the main pull factors in trafficking persons for sexual exploitation. Some States reported establishing monitoring mechanisms with a specific focus on: the conditions of employment of women, youth and foreign workers hired on a temporary basis; assessing the authenticity of job offers, especially job offers for foreign workers, whether temporary or not; and ensuring the mandatory compliance of employers with the established rules and regulations of employment.¹³

38. Following its second meeting in 2010, the Chair of the Working Group on Trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime noted the range of measures for States parties to take:

“States parties should adopt and strengthen practices aimed at discouraging demand for exploitative services, including considering measures to regulate, register and license private recruitment agencies; raising the awareness of employers to ensure their supply chains are free of trafficking in persons; enforcing labour standards through labour inspections and other relevant means; enforcing labour regulations;

¹² See report of the Secretariat Conference of the Parties to the United Nations Convention against Transnational Organized Crime on best practices for addressing the demand for labour, services or goods that foster the exploitation of others, CTOC/COP/2012/4.

¹³ *Ibid.*, paras. 9–11 and 16.

increasing the protection of the rights of migrant workers; and/or adopting measures to discourage the use of the services of victims of trafficking.”¹⁴

39. United Nations agencies have also summarized the measures they perceived to be needed to discourage demand, noting that:

“Examples of measures to address the demand side are measures to broaden awareness; attention and gender-sensitive research into all forms of exploitation and forced labour and the factors that underpin its demand; to raise public awareness on products and services that are produced by exploitative and forced labour; to regulate, license and monitor private recruitment agencies; to sensitize employers not to engage victims of trafficking or forced labour in their supply chain, whether through subcontracting or directly in their production; to enforce labour standards through labour inspections and other relevant means; to support the organisation of workers; to increase the protection of the rights of migrant workers; and/or to criminalize the use of services of victims of trafficking or forced labour.”¹⁵

40. In the course of her country visits and from other sources, the Special Rapporteur has heard about a variety of other measures taken by States to discourage demand. She has learned that the measures needed to address direct and derived demand are usually different. In the case of direct demand (which inherently seeks the services of individuals who have been trafficked), legislative or other measures that have a direct influence on purchasers’ decisions are appropriate. However, when only some of the identical services or products available to purchasers have involved the exploitation of persons, a different approach is appropriate: one which moves the focus from final purchasers onto whoever makes key purchasing decisions earlier in the supply chain and is in a position to discern which services or products involve human trafficking and which do not. This approach, which seeks to influence the purchasing decisions of such intermediaries by legislation or other measures, often introduces an element of regulation into the supply of services or products. Other States have adopted legislation or policy to regulate recruitment and employment in sectors where, in the absence of such regulation, trafficking is deemed likely to occur.

1. Prevention

41. As stated in the Trafficking in Persons Protocol, factors that make people vulnerable to trafficking and demand must be addressed in the strategies to prevent trafficking. This is further reinforced by the Recommended Principles and Guidelines on Human Rights and Human Trafficking. Principles 4 and 5 and guideline 7 provide that strategies to prevent trafficking shall address demand as a root cause and States shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination. States may be held legally responsible for their failure to take adequate measures to prevent trafficking in persons, including measures to discourage demand.¹⁶ States in which exploitation of persons occurs or is alleged to occur have a particular responsibility to take action to discourage demand.

42. Educational measures involve providing information to students in schools or higher education, about trafficking in persons and about equality between women and men. States have also supported awareness-raising initiatives to inform the general public or particular

¹⁴ Report submitted by the Chair of the Working Group on its activities, CTOC/COP/2010/6, para. 66.

¹⁵ OHCHR, Office of the United Nations High Commissioner for Refugees (UNHCR), UNICEF, UNODC, UN-Women and ILO, *Prevent, Combat, Protect – Human Trafficking: Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, (2011) p. 97.

¹⁶ *Recommended principles and guidelines: Commentary*. pp. 77–81.

audiences. Some public information is about trafficking in persons in general, while some focuses more specifically on the risk that the purchase of certain services (particularly sexual services) or products will contribute to the exploitation of people who have been trafficked, so the intention of providing information is to influence the spending decisions of those who receive information. For information to be effective in discouraging demand, it needs to be provided to specific audiences which have been identified as constituting a demand factor or being able to influence demand, with the content of the information being tailored to have the intended influence. During the Special Rapporteur's country visits, she has heard of examples in which information has not been well-designed or targeted (and has therefore not had the desired effect). She has concluded that people who have been trafficked should routinely be consulted in the design, monitoring and evaluation of such efforts.¹⁷

43. A variety of social and child protection measures are aimed at alleviating harsh social or economic conditions which might otherwise encourage demand. States in various parts of the world have reported implementing measures that specifically concern migrant domestic workers employed in private households, especially in the context of employers who enjoy privileges, immunities and facilities. In such cases, States have generally concluded that the migrant domestic worker should have a formal contract establishing a minimum wage and stipulating the maximum number of working hours per week, as well as other conditions.¹⁸

44. Some measures reported explicitly address cultural practices which generate demand that fosters exploitation. For instance, for several decades children were reportedly trafficked to Gulf States from other countries to ride as jockeys in camel races. From 2005, some countries in the region banned the use of children as camel jockeys.

45. Giving charity to beggars is intrinsic to the culture and religious beliefs of people in many regions. When traffickers take advantage of this (for example, supplying children to beggar masters or maiming children or adults so they inspire more pity and earn more money for the beggar masters who take their earnings), a response is required which respects the values and beliefs of donors, but nevertheless intervenes to protect beggars who have been trafficked and discourages donations which go partly or largely to traffickers or to beggar masters.

46. The Special Rapporteur has analysed the question of trafficking in persons in business supply chains, including corporate responsibilities to prevent and combat human trafficking in their supply chains, in her 2012 report to the General Assembly (A/67/261). In the report, she noted that in today's globalized world, the risks of human trafficking in supply chains are significant throughout economic sectors, and have not been adequately dealt with, either by States or by businesses themselves (*ibid.*, para. 48).

47. Some businesses are reported to have taken a series of measures to discourage child labour in general and the commercial sexual exploitation of children in particular. Businesses and other organizations which buy services or products from others can take a wide range of measures to discourage demand for the exploitation of persons, both in terms of discouraging any demand that they potentially create themselves (for example, when seeking to lower their production costs by cutting wages) and discouraging demand by others with whom they do business. Many of these are voluntary commitments (including some which involve a business entering into legally binding commitments with other businesses in its supply or product chain). Commitments routinely take the form of codes of

¹⁷ Report of the Special Rapporteur on her mission to Thailand, A/HRC/20/18/Add.2, para. 77 (c).

¹⁸ CTOC/COP/2012/4, para. 28.

conduct (with which businesses require their suppliers to comply) or procurement policies. A few of them focus on stopping human trafficking, but many more mention specific forms of exploitation, such as forced labour or child labour, alongside other corporate social responsibility commitments. Some are accompanied by compliance or verification procedures designed to check that commitments are being respected by all involved, but the independence and quality of such checks varies, raising questions about the effectiveness of such commitments.

48. Consumers and investors play an important role in pressing businesses to take appropriate action. However, they depend on accurate information being provided by others. In this context, journalists and NGOs that investigate supply and product chains have played an important role and organizations representing exploited workers or providing assistance to them are well-placed to provide accurate information.

49. Evidence suggests that when businesses work together to stop human trafficking, they can have a significant impact. For example, 10 food corporations in the United States of America involved in selling fast food, food services and groceries signed what were called “fair food agreements” in 2010 with an organization representing migrant farmworkers.¹⁹ Retailers purchasing large quantities of tomatoes accepted a legal obligation “to cut off purchases in the event slavery is discovered in their supply chain”. The agreement came after a consumer boycott of one retailer, organized as a result of a campaign by the migrant farmworkers’ organization. The consumer boycott was started after it became known that labourers subjected to forced labour had worked on several farms that were supplying tomatoes to major retailers.

50. Another example, as highlighted by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, is the experience of Brazil, where to address the pattern of exploitation known as “slave labour” in farming industry the Government initiated a series of measures, including the launching of 2005 National Pact for the Eradication of Slave Labour, which businesses were encouraged to join. The Pact was supplemented by a code of conduct that all signatories of the Pact are required to respect. That Special Rapporteur has recommended that the National Pact be extended to cover the textile industry of Brazil, as cases of forced labour have also been found there (A/HRC/15/20/Add.4, para. 123). By 2011, the Pact’s website reported that it had been backed by more than 220 businesses, business organizations or civil society organizations, with a collective turnover worth more than 20 per cent of country’s gross domestic product. Nevertheless, despite evidence that numerous companies have stopped doing business with suppliers on the basis of their commitments under the Pact, there has been a notable lack of engagement by companies whose business focuses on some of the commodities linked most closely with slave labour, such as cattle-ranching and the production of beef, soya and cotton.

51. In the case of any Government-run organizations which function or carry out transactions outside the national territory, this responsibility requires taking measures to discourage demand while individuals employed by the Government are based in another country. In this case, it is not only the procurement policies of the institutions involved which the State must check; it must also influence the personal behaviour of civil servants who might themselves employ or pay for the services of someone who has been trafficked.

¹⁹ More details on the fair food agreements available from www.ciw-online.org/FFP_FAQ.html.

2. Protection

52. States have a duty to protect against human rights abuses (including trafficking in persons and exploitation of persons) by third parties, including business enterprises and criminal associations, through appropriate policies, regulation and adjudication. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction will respect human rights throughout their operations, both at home and abroad, and take appropriate action to stop trafficking in persons or the exploitation of persons from occurring, regardless of the size, sector, operational context, ownership and structure of the business enterprise.²⁰

53. The Special Rapporteur has noted that leaving the labour market to regulate itself in circumstances where substantial numbers of people are exposed to exploitation, in informal, unprotected and low-status income-generating activities, creates a vacuum in the rule of law, which is likely to be filled by unprincipled employers and criminals. Evidence to support this hypothesis is available from several regions where trafficking in persons and the exploitation of persons have been reported as disproportionately high in the sectors of the economy that have been established relatively recently, where there is a lack of established procedures for collective bargaining, or that, for various reasons, have escaped the scrutiny of labour inspectors or other law enforcement officials. Recent examples of emerging sectors in which trafficking in persons and exploitation of persons have been reported include the garment industry, mushroom and other agricultural production in various parts of Europe, and the picking of wild berries for the cosmetic industry.

54. The fact that certain income-generating activities are not regarded by States as legitimate or acceptable, such as prostitution or begging, is not a justification for States to ignore the abuse being experienced by individuals involved, nor for States to allocate inadequate resources to protect the adults or children who are trafficked into these activities. Similarly, the fact that certain States cannot afford to finance all the law enforcement activities required to enforce labour laws is not a justification for them to ignore violations of such laws (and of human rights).

3. Prosecution and punishment

55. Law has been used in specific ways to try to affect demand, sometimes to prohibit demand for specific services or products and sometimes to introduce regulation or other administrative systems.

56. The Council of Europe Convention on Action against Trafficking in Human Beings covers “criminalisation of the use of services of a victim”. Without making it obligatory for States parties to make it an offence for someone to purchase services from a person who they know has been trafficked, it requires States parties to consider doing so (art. 19). According to the reports of Council of Europe Group of Experts on Action against Trafficking in Human Beings, some States of the Council of Europe have criminalized the known use of the services of trafficked persons.

57. Some States have preferred to encourage self-regulation among employment agencies. This was the approach in some European countries which later adopted tighter control and a system of licensing of agencies, for instance due to tragic incidents caused by trafficking in persons.²¹

²⁰ Guiding Principles on Business and Human Rights, principles 1, 11, 13–15, 17, 22 and 24.

²¹ See for example, Gangmasters (Licensing) Act 2004, the United Kingdom of Great Britain and Northern Ireland; for more information see *Gangmasters Licensing Authority Annual Report and Accounts: 1 April 2011 to 31 March 2012* (London, The Stationery Office, 2012).

4. Promotion of international cooperation

58. The importance of bilateral and international cooperation in discouraging the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking has been noted in article 9 of the Trafficking Protocol. As globalization has increased demand for cheap labour and services and for sex tourism, there is an increasing need for international cooperation on the part of both State and non-State actors.

59. Following the First World Congress against Commercial Sexual Exploitation of Children in Stockholm in 1996, the efforts in preventing children from being sexually exploited in holiday resorts focused on measures to be taken by hotels and travel businesses, rather than simply on public information intended to discourage tourists for paying for sexual services with children. A Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism was adopted in 2001 to protect children from sex tourism for tourism businesses. At the end of 2012, the Code was reportedly being implemented by over 1,030 companies in 42 countries.

60. The Third World Congress against Sexual Exploitation of Children and Adolescents, held in Brazil in November 2008, resulted in the Rio Declaration and Action Plan to Prevent and Stop the Sexual Exploitation of Child and Adolescents, setting the agenda for international efforts in that regard.

E. Lessons learnt and remaining challenges in integrating a human rights-based approach

1. Challenges on implementation of existing frameworks

61. At the global level, the mechanisms to enforce the Protocol obligations under article 9 on the prevention of human trafficking, including discouraging “the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”, need to be further strengthened. While comparable treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination, have their implementation overseen by a committee – which acts as the most powerful enforcement body ensuring that the obligations within the conventions are met – there is no such committee established to govern compliance with the Protocol.

62. It was highlighted by researchers and experts that migration policies that restrict access to legal channels of migration, trade policies liberalizing the movement of money, goods and services but not labour, and the “explosive growth” of the global sex industry are all contributing to the increase of incidents of trafficking in persons. Due diligence on the part of States should require action on these wider processes, all of which foster demand for, and vulnerability to, trafficking.

2. Labour rights

63. States are also responsible for implementing appropriate measures to guarantee internationally recognized labour rights in all categories of workplaces, particularly the “core labour rights”, which include the two ILO conventions on forced labour,²² as well as ILO conventions to guarantee the right to freedom of association and against child labour

²² ILO Conventions Nos. 29 (1930) concerning Forced or Compulsory Labour and 105 (1957) concerning the Abolition of Forced Labour.

and discrimination. Nevertheless, the Special Rapporteur and her predecessor have noted in the course of country visits that Government authorities make repeated exceptions, in law or in practice, creating spaces where employers can violate labour rights with impunity.

64. To guarantee labour rights, States are required to develop and resource a suitable body of professional labour-law enforcement officials, generally known as labour inspectors. States which fail to develop a labour inspectorate with appropriate expertise and adequate resources to carry out its mandate are in effect condoning abuses of labour rights. Nevertheless, even a well-resourced labour inspectorate is likely to face challenges in reaching the numerous places where exploitation of persons occurs.

65. Evidence collected over the past decade indicates that a substantial proportion of the workers who are trafficked and subjected to forced labour are contract workers who are not recruited or employed directly by the business for which they are working (on a work site, such as a farm or construction site). Instead, they are supplied by an agency or intermediary. In such circumstances, States should consider regulating the activities of recruitment agents and agencies. If they decide not to introduce a system of regulation, States still have a responsibility to ensure that recruitment agents and agencies are not contributing to human trafficking, both by checking on the effectiveness of any system of self-regulation practiced by the employment industry and ensuring that suitably trained law enforcement officials are available to investigate whenever abuses are reported.

3. Human rights impacts of business activities

66. According to the Guiding Principles on Business and Human Rights, “the responsibility to respect human rights requires that business enterprises: (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13).

67. Even businesses which invest significant amounts in checking their supply chains suffer from the fact that there is no internationally recognized standard for the process of checking whether minimum labour standards and human rights standards are respected in the workplace. It is challenging for other businesses and individual consumers to assess whether the cheap cost of a product was due to good business management or due to abuse in the production process. It is the responsibility of the State (in addition to being the responsibility of employers, business owners and investors) to ensure that keeping production costs and wage bills to a minimum is not achieved by illegal or abusive means.

4. Children’s rights

68. The principal responsibility of States in such cases is to protect the children concerned. When there is evidence that the majority of children to be found begging have been trafficked or are being subjected to either forced labour or a practice similar to slavery, the relevant Government authority with appropriate child protection expertise should consider what response is appropriate, notably whether it should involve discouraging children of a certain age from begging, making it a criminal offence to profit from a child’s begging or discouraging the public from donating money to child beggars in some or all circumstances. When trafficked children are reported to be moved from one State to a neighbouring State, it would be in the best interests of the children concerned for the various States involved to harmonize their responses, so that traffickers cannot simply move on, accompanied by the children they exploit, to take advantage of different laws and regulations in a neighbouring State.

69. In particular, as highlighted by both the Committee on the Rights of the Child²³ and the Special Rapporteur on the sale of children, child prostitution and child pornography,²⁴ States have a responsibility to listen to and take into account the views of children who may be affected by policy measures that are planned, in particular paying attention to ensuring that marginalized and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes.

70. Measures to boycott or ban goods made by child labourers were reported to have had a negative impact on some of the children who were intended to benefit, because most often employers reacted by laying off underage workers, en masse, without warning and without compensation.²⁵

71. The campaign alleging forced child labour in the cultivation of cocoa in one or more West African countries deserves particular mention, as several publications have reported that children have been trafficked for the purpose of subjecting them to forced labour working on cocoa farms. Following publicity in the media at the end of 2000 and again in April 2001 that children from within the region were being trafficked into slave labour or forced labour on cocoa farms, the Chocolate Manufacturers Association convened a meeting of those it considered to be key stakeholders. In September 2001 these stakeholders signed the Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products in a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Nevertheless, in 2012 the news agency CNN widely documented and reported cases of trafficked children still working in cocoa farms in the West African region as part of its year-long campaign, the Freedom Project on ending human trafficking and modern-day slavery.

5. Unintended negative consequences of measures for addressing demand

72. Principle 3 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking highlights the potential for negative interaction between established rights and new measures to address trafficking. The commentary on the Recommended Principles and Guidelines stresses, in relation to the responses of States to human trafficking, that “human rights law also confirms that States cannot violate non-discrimination principles or norms protecting economic, social and cultural rights when developing or implementing their response to trafficking”.²⁶ Principle 3 also mentions particularly the rights of those in potentially vulnerable situations due to immigration status, stating: “Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.” It makes explicit a responsibility to extend the principle of proportionality to all people, regardless of citizenship or immigration status.

73. In its general comment No. 27 (1999) on freedom of movement, the Human Rights Committee emphasized the importance of the principle of proportionality, in the context of principles which were applicable when determining what restrictions it is legitimate for States to impose on freedom of movement. It reads: “Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective

²³ In its general comment No. 12 (2009) on the right of the child to be heard, para. 118.

²⁴ A/67/291, para. 11.

²⁵ For example, Alec Fyfe, *The worldwide movement against child labour – Progress and future directions* (Geneva, ILO, 2007), p. 53.

²⁶ *Recommended principles and guidelines: Commentary*, p. 38.

function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”

74. The Special Rapporteur does not wish to contribute to a rise in protectionism in world trade, but is aware that, by allowing the importation of goods which are known to have been produced wholly or partially by trafficked persons, States are failing to use this opportunity to discourage demand. There are important distinctions to make between exploitation of persons (associated with trafficking in persons) and the exploitation of child labour, with ILO estimating that the latter involves well over two hundred million children.²⁷ It might be relatively easy for organizations with protectionist motives to claim that particular products are tainted by exploitation, in the absence of credible evidence. The Special Rapporteur consequently reaffirms the importance of States, as well as businesses, promoting the collection and publication of evidence by independent monitors.

75. Demand-oriented measures taken by the authorities in importing States, in combination with or separate from measures by retailers or businesses that import a commodity suspected of being produced by people subjected to exploitation of persons, may not generate the intended results unless accompanied by appropriate measures in the countries where exploitation (and possibly trafficking in persons) occurs. It also shows the importance of taking practical conditions on the ground into account, including the nature of the product and the production process.

6. Consultation as integral to a human rights-based approach

76. Commitment to consulting those who will be or would have been affected by potential measures is essential to a human rights-based approach to human trafficking. States should aim to set a high standard for consultation, which may counteract a discourse in which trafficked persons are seen only as victims with little agency, and thus excluded from negotiations. It may also act as a further precedent for such groups to be involved as active subjects in any proposals which would affect their futures.

77. A report by the Global Alliance against Traffic in Women states that “a human rights approach to trafficking is empty and meaningless if it does not place at the very core the voice and agency of trafficked and migrant women”.²⁸ Whilst measures to address demand must evidently also include consultation with men and children, a human rights-based approach to human trafficking must foreground the rights and wellbeing of those who have been trafficked, placing them and their views at the centre of discussions around measures to discourage demand. Genuine inclusion of the views and voices of those who have been trafficked assists in developing a proportionate response and reflecting the rights and desires of victims, as well as the inherent complexity of the issue. A consultative approach encourages the implementation of strategies focusing on the potential impact on such individuals, in keeping with international human rights principles around human trafficking. As the High Commissioner for Human Rights noted, a human rights-based approach “requires us to consider, at each and every stage, the impact that a law, policy, practice or measure may have on persons who have been trafficked and persons who are vulnerable to being trafficked”.²⁹

78. An increased focus on consultation of the key groups affected by measures to reduce demand may reduce the possibility of unanticipated negative impacts of such strategies

²⁷ ILO, *Accelerating action against child labour: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2010), p. 5.

²⁸ *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok, 2007), p. viii.

²⁹ *Recommended principles and guidelines: Commentary*, p. 3.

arising, or of the implementation of measures which are not wanted by those they will primarily impact upon. A range of human rights are violated in human trafficking cases, covering a broad area in the social sphere and linked to different kinds of activities. Responses, therefore, require a multidisciplinary approach. Consultation with those affected by measures to reduce demand can highlight the complexity of the issues, as well as suggesting further courses of action and research.

7. Freedom of movement

79. A human rights-based approach to human trafficking must ensure legislation and policy does not infringe upon other human rights. A key issue here concerns the freedom of movement and the risks involved with measures to reduce demand. Such measures have the potential to provide States with a rationalization for the intensification of efforts to prevent immigration. Furthermore, a recent UNESCO report notes that anti-trafficking measures often disproportionately focus on combating irregular migration, rather than on the conditions to which victims are subjected, and lack assistance and protection services for victims.³⁰ In many countries, assistance, protection and even temporary regularization of immigration status are dependent upon compliance with law enforcement authorities.

80. Indeed, issues relating to migration and freedom of movement are perhaps the most problematic of human rights concerns surrounding anti-trafficking measures. Measures which restrict legal migration channels risk exacerbating both human trafficking and human smuggling, as well as the human rights violations which surround them. Trafficking is an outcome of global political and economic realities, particularly massive disparities of wealth and standard of living. This must be taken into consideration in the formulation of any response to the demand for human trafficking.

81. A proportionate response to the demand problem must take into account the potential of anti-trafficking measures that restrict freedom of movement to increase the risk of human smuggling. Higher prices will be commanded from smugglers and those who cannot pay may become more vulnerable to exploitation.

82. In addition, a disproportionate focus on tighter migration controls also risks exacerbating the situation further along the trafficking cycle. Studies have noted that traffickers often exploit victims' fear of possible deportation, their illegal residence or labour status to prevent victims from escaping. Such observations provide further support for avoiding measures which focus disproportionately on human trafficking as a migration issue.

IV. Conclusions and recommendations

83. **Under the terms of article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, States parties are required to “adopt or strengthen legislative or other measures ... to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”.**

84. **In the context of trafficking in persons and the exploitation of persons, “demand” refers to the desire and preference for a particular commodity, labour or service, without respect for international human rights law, including fundamental**

³⁰ Kristina Touzenis, *Trafficking in Human Beings: Human Rights and trans-national criminal law, developments in law and practices*, UNESCO Migration Studies 3 (Paris, UNESCO, 2010). p. 149.

labour rights. This desire is usually expressed in the form of money which supplies income for traffickers and their associates. Discouraging such demand requires measures to address the nature and extent of the exploitation of trafficked victims (primarily in the places where they are exploited), as well as measures to address the social, cultural, political economic, legal and development factors that shape demand and influence or enable the trafficking process. This can be done by influencing the purchasing decisions of individuals and business entities, who contribute, wittingly or unwittingly, to the income of traffickers and their associates. States have a responsibility to act with due diligence to prevent trafficking in persons, including taking measures to discourage demand.

85. Taking in account States' obligations under international human rights law, the Special Rapporteur would like to offer a set of recommendations which may serve as a basis for human rights-based measures to discourage the demand that fosters or leads to trafficking in persons:

(a) States should identify and analyse factors that generate demand for exploitative sexual services and exploitative labour and take strong legislative, policy and other measures to address these issues. Measures to discourage demand should be based on existing experience and accurate information about patterns of trafficking in persons occurring in their jurisdiction (concerning people trafficked into, through or out of their territory);

(b) States have a responsibility to protect against human rights abuses (including trafficking in persons and exploitation of persons) by third parties, including business enterprises and criminal associations, through appropriate policies, regulation and adjudication. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction will respect human rights throughout their operations, both at home and abroad, and take appropriate action to stop trafficking in persons or the exploitation of persons from occurring, regardless of the size, sector, operational context, ownership and structure of the business enterprise;

(c) Discouraging demand routinely requires measures to stop discrimination, notably discriminatory practices which contribute to the exploitation of persons. These include discrimination based on gender, ethnicity, national origin and other criteria, such as discrimination against migrant workers in employment practices. States should eliminate acts or practices of discrimination on such grounds and should amend laws and policies that institutionalize discrimination and thereby also shape demand, particularly ones concerned with employment or migration, just as they must challenge discriminatory social attitudes, practices and beliefs, which also shape demand;

(d) It is necessary to put regulatory and supervisory mechanisms in place whenever they encourage or facilitate any forms of labour migration, as the absence of such mechanisms has had the effect of facilitating trafficking in persons. Legislation is required to protect anyone who, in the absence of appropriate protection, can be exploited with relative ease (such as migrant workers in general, child workers, particularly those below the minimum age for admission to employment) and anyone working outside a formal or regulated workplace (such as migrant domestic workers and other migrants, particularly women, who work in unregulated or informal workplaces). Legislation may also be required to ensure that any places where trafficked persons may be deployed to work or earn money, including informal workplaces or settings, are subject to the rule of law and can be checked by law enforcement officials, if necessary;

(e) Measures to discourage demand should conform with general principles associated with the rule of law, i.e., should not make it an offence to commit an act (including purchasing a particular service or produce) in circumstances in which the purchaser could not reasonably be expected to be aware that he or she was committing an offence, for example if a particular product or service is made or provided by someone who has been trafficked, unless there is evidence that the purchaser was negligent. This means that States should publicize any changes in the law that make it an offence to purchase certain types of services or products made or provided by people who have been trafficked, and provide unambiguous information to potential purchasers about such services or products;

(f) Measures to discourage demand which involve restricting the exercise of the human rights, including by individuals who are judged to be especially vulnerable to being trafficked, should conform with the principle of proportionality (i.e., they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected);

(g) It is necessary to ensure that anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum seekers. States should actively monitor the impact and possible side effects of measures to discourage demand and take appropriate action to address any unintended side effects which restrict the exercise of human rights;

(h) States should seek the views of representatives of any particular group of people who would potentially be affected by measures to prevent human trafficking in a significant way and take these views into account when designing measures to discourage demand. Seeking the views of such people means collecting relevant information from people who, on account of their experience, are likely to be well-informed about the shortcomings, gaps or unintended consequences of existing policies and practices. In particular, as highlighted by the Committee on the Rights of the Child, States have a responsibility to listen to and take into account the views of children who may be impacted by any measures to discourage demand.
