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Совет по правам человека

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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Доклад Специального докладчика по вопросу о торговле людьми, в особенности женщинами и детьми, Джой Нгози Эзейло

Добавление

Миссия в Аргентину* **

Резюме

С 6 по 11 сентября 2010 года Специальный докладчик по вопросу о торговле людьми, в особенности женщинами и детьми, совершила официальную поездку в Аргентину по приглашению правительства. Цель ее миссии заключалась в сборе информации о законодательных и институциональных рамках и стратегиях в Аргентине, касающихся борьбы с торговлей людьми, а также о сохраняющихся проблемах.

В настоящем докладе Специальный докладчик сообщает о достигнутом правительством прогрессе, включая принятие Закона о предупреждении торговли людьми и наказании за нее и создание в структуре органов исполнительной власти специальных бюро, занимающихся оказанием помощи жертвам торговли людьми и расследованием этих преступлений. Вместе с тем Специальный докладчик отметила ряд проблем, которые необходимо решить правительству для обеспечения эффективной борьбы с торговлей людьми и защиты прав человека жертв такой торговли. В число таких проблем входят, среди прочих, отсутствие всеобъемлющих данных о тенденции, касающейся практики торговли людьми; недостаточная координация усилий по борьбе с торговлей людьми;

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** Представлен с опозданием.

отсутствие идентификации жертв торговли людьми и механизмов по их информированию; и нехватка учреждений и услуг, непосредственно предназначенных для оказания прямой помощи жертвам торговли людьми. С учетом вышеизложенных замечаний Специальный докладчик представляет правительству ряд рекомендаций для дальнейшего рассмотрения.

Annex

Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Argentina

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction and methodology	1–5	4
II. Main findings	6–82	4
A. Forms and manifestations of trafficking in persons	6–24	4
B. Legislative, policy and institutional framework.....	25–45	7
C. Identification of trafficked persons	46–52	10
D. Protection of trafficked persons.....	53–67	12
E. Prosecution of perpetrators.....	68–75	14
F. Cooperation with civil society.....	76–78	16
G. International and regional cooperation	79–82	16
III. Conclusions and recommendations	83–96	18
A. Conclusions.....	83–93	18
B. Recommendations	94–96	19

I. Introduction and methodology

1. From 6 to 11 September 2010, the Special Rapporteur on human trafficking, especially women and children undertook an official visit to Argentina at the invitation of the Government. She conducted meetings and consultations with relevant stakeholders in Buenos Aires and in Posadas, in the province of Misiones.
2. The Special Rapporteur would like to thank the Government for its hospitality and collaboration in facilitating meetings with officials from its various branches as well as for its cooperation prior to, during and following the visit.
3. In Buenos Aires, the Special Rapporteur met with the Minister for Justice, Security and Human Rights and Government officials from the Ministries of Foreign Affairs, Labour, the Interior and Social Development. The Rapporteur also met with the office of the Public Prosecutor, representatives of police forces, parliamentarians, a minister of the Supreme Court of Justice and other members of the judiciary. Furthermore, she met with regional and local authorities in Posadas, and representatives of civil society, including non-governmental organizations, academics and lawyers in both Posadas and Buenos Aires.
4. The purpose of her mission was to learn about the legislative and institutional framework and policies in Argentina in the fight against human trafficking and their compliance with international human rights law.
5. The Special Rapporteur would also like to thank the United Nations Resident Coordinator and the staff from the United Nations country team for their strong support during the visit. The Special Rapporteur had the opportunity to receive valuable information from representatives of United Nations agencies, funds and programmes in the country, as well as from the International Organization for Migration (IOM). She also warmly thanks all activists and members of civil society organizations who met with her during the mission and provided her with relevant information.

II. Main findings

A. Forms and manifestations of trafficking in persons

6. The Argentine Republic, a federation comprised of 23 provinces and the autonomous city of Buenos Aires, is a country of origin, transit and destination for victims of trafficking in persons. Men, women and children are trafficked to, from and through Argentina for the purposes of both sexual and labour exploitation. Given the porosity of the borders with Paraguay and Brazil (zone also known as the tri-border area), this is a common transit region used by traffickers.
7. As a country of destination, women and children are trafficked to Argentina for sexual exploitation mainly from Brazil, the Dominican Republic Paraguay and Peru, while victims of labour exploitation usually come from Bolivia (Plurinational State of), Colombia, the Dominican Republic, Paraguay and Peru.¹
8. With regard to internal trafficking, victims usually move from rural areas and poor Northern provinces to wealthier cities and provinces such as Buenos Aires, Córdoba, Entre

¹ Informe Nacional sobre Trata de Personas, Segunda Reunión de Autoridades Nacionales en Materia de Trata de Personas, 26-27 March 2009. Buenos Aires, p. 2; and 2010 Trafficking in persons report, United States of America Department of State, p. 63, available from www.state.gov/documents/organization/142979.pdf.

Ríos, La Pampa, Chubut, Santa Cruz and Tierra del Fuego. Northern provinces such as Misiones (in the tri-border area), Corrientes, Chaco, Formosa, Santiago del Estero and Tucuman are typical recruitment areas for women victims of internal trafficking for sexual exploitation.²

9. Argentina is also a country of origin and of transit for women and girls destined for sexual exploitation in other Latin American countries and in Europe, mainly Italy and Spain.

10. In December 2001, Argentina experienced a grave political, social and economic crisis that produced high levels of unemployment and poverty. Although the country has been gradually recovering, a large segment of the country's population continues to suffer from social exclusion and an inability to fully enjoy their economic, social and cultural rights.³ This has profound effects on the vulnerability of potential victims, who are subject to falling prey of traffickers when searching for livelihood opportunities beyond their places of origin. At the same time, given the economic growth and recovery the country has experienced in recent years, and the overall situation of underdevelopment in the region, Argentina attracts economic migrants from neighbouring countries who might also become victims of trafficking, since they rarely enter the country via regular means.

1. Trafficking for sexual exploitation

11. Trafficking networks in Argentina range from complex organizations operating at every stage of the trafficking process (recruitment/abduction, transportation and exploitation of the victims) to brothel owners who recruit or abduct victims directly to exploit them in their own establishments or to sell them to others. As these operators are well connected, the same victim exploited in a province can then be easily transported to a brothel in Buenos Aires, or abroad. The participation of corrupt public officials and police officers facilitates the running of these networks.⁴

12. When victims are not forcefully abducted, they are usually recruited by means of false offers for work as waitresses, secretaries, cleaning ladies or nannies. The offers are advertised in flyers or classified advertisements in newspapers. Sometimes, girls are invited to "castings" for modelling or hostessing jobs and promised high earnings and access to a luxurious lifestyle.⁵ It is important to make clear that even in cases in which victims are recruited to offer sexual services, they are deceived regarding their eventual working conditions. In other cases, it is the victims themselves who are coerced by pimps and brothel owners to recruit more women under threat of violence against them or their families or as the only means to improve their working conditions. It is also common for pimps and traffickers to "charm" their victims, becoming their boyfriends and even having children with them, later used as a means of coercion and threat to force them to provide sexual services.

13. Most trafficking victims in Argentina, including those from Paraguay and Brazil, come from settings of economic insecurity where their basic needs and those of their families are not satisfied and with no real means of social improvement owing to their low educational levels.⁶

² 2010 Trafficking in persons report (see footnote 1).

³ A/HRC/WG.6/1/ARG/1, para. 115.

⁴ International Organization for Migration, "Estudio exploratorio sobre la trata de personas con fines de explotación sexual en Argentina, Chile y Uruguay", 2008. pp. 35-36.

⁵ Ibid. p. 37.

⁶ Ibid. p. 55.

2. Trafficking for labour exploitation

14. The Special Rapporteur received information regarding the existence of small textile sweatshops run in private family houses throughout the province and the city of Buenos Aires where which migrant workers are reportedly exploited. The workshops offer their services to larger commercial brands, both national and international. Workers are required to work and live on the premises, where their documents are withheld and their freedom of movement is totally controlled.

15. One non-governmental organization has identified approximately 600 clandestine workshops in the country working for more than 103 businesses. The organization has submitted judicial complaints with the support of the office of the ombudsperson in the city of Buenos Aires. It claims, however, that despite submitting proof of bonded labour and servitude in both workshops and farms, the responses from the justice system have not been appropriate. It has therefore resorted to raising awareness of the problem through campaigns and the media, and this has helped in the identification of more sweatshops all over the country, as well as the existence of a network linked to important clothing brands.

16. The cases reviewed by anti-trafficking non-governmental organizations in Argentina reveal that many victims are lured from abroad, mainly from Bolivia (Plurinational State of), by fake job advertisements that are sometimes posted in the native language of those recruited. Traffickers allegedly operate with the help of transport companies, which sometimes make deals with border guards to allow migrants to enter the country without the appropriate documents. Villazón, Yacuiba and the tri-border area have been identified as common entry points for irregular migrants, who are then exploited not only in textile workshops but also in agriculture and construction.

17. Once the workers arrive, their documents are withheld, they become indebted, are subjected to harsh working conditions and enclosed in the workshops, constantly breathing fabric dust, which makes them more vulnerable to diseases such as tuberculosis and other pulmonary ailments. There are reportedly large numbers of Bolivian migrant workers among tuberculosis patients in Buenos Aires public hospitals.

18. According to non-governmental organizations working with victims of labour exploitation, one of the main shortcomings in the Ministry of Labour is the lack of an effective inspections policy. Inspections aimed at investigating the existence of forced labour are rarely carried out and, reportedly, fines can easily be converted into bribes.

19. A famous case from 2006 illustrates how judicial proceedings have failed to investigate the existence of trafficking networks. On 30 March 2006, in the neighbourhood of Caballito in Buenos Aires, a clandestine workshop caught fire and six people (four children and two adults) who were locked inside lost their lives. Apparently more than 60 people were working in the overcrowded and slave-like conditions in the workshop. Many of them had been brought from Bolivia (Plurinational State of) under false pretences and without regular documents. Although this information pointed clearly towards a situation of trafficking in persons, the judge following the case focused only on the causes of the fire and only tried those managing the workshop, not the owners, who were not even summoned to testify. According to reports by non-governmental organizations, the two managers were finally acquitted and the workers were later transferred to other workshops, where they continued to face the same exploitative conditions.

20. The poultry industry also reportedly resorts to the use of irregular migrant workers, sometimes in conditions of forced labour. Investigations carried out by non-governmental organizations prove the existence of child labour and slavery in 30 farms owned by one company, which commercializes with large grocery stores in Argentina and also exports to the European Union. The company is said to operate with impunity, as its owner is related to local authorities.

21. With regard to agricultural work, sometimes entire families are recruited; although just the head of family receives payment, the whole family is encouraged to work in order to increase productivity. Reportedly, children are also used in the harvest of onion, garlic and carrots.

22. The Special Rapporteur heard the heartbreaking story of Oscar, a Bolivian survivor of labour exploitation who was forced to work from 16 to 17 hours a day in a poultry farm located in the province of Buenos Aires. Oscar and his family worked every day of the week and they were not allowed to leave the farm, which was surrounded by an electric fence. Not even when his children were sick or injured was Oscar allowed to seek medical assistance outside the farm. Oscar explained how the owner of the farm would force his wife and young children to help him collect eggs while he had to clean away poultry excrement. The work at the farm also involved the handling of pesticides and other toxic chemicals without appropriate training or instruments. Reportedly, even young children were involved in these tasks. Owing to contact with chemicals and the terrible working conditions, Oscar's wife suffered a miscarriage and another woman experienced a stillbirth.

23. Whenever the workers attempted to complain or threatened to go to the authorities, the farm owner would taunt them that their claims would not be taken seriously because they were just undocumented immigrants and he was well connected with the authorities. Finally, when Oscar had the courage to complain about his situation, he was fired from the farm, without receiving pending payments or compensation.

24. Oscar explained that, when recruited, Bolivian farm workers were offered good working conditions, free housing and salaries ranging from 1,000 to 2,000 pesos. However, once in Argentina, they were paid approximately 800 pesos and forced to work in slave-like conditions.

B. Legislative and institutional framework

1. Legislative framework

25. Argentina is party to most major international human rights instruments, including the International Covenant on Civil and Political Rights and the two Optional Protocols thereto, the International Covenant on Economic Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the two Optional Protocols thereto, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

26. Argentina has also signed and ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, International Labour Organization (ILO) Conventions No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labour (1999), No.29 concerning Forced or Compulsory Labour (1930) and No. 105 concerning the Abolition of Forced Labour (1957).

27. With regard to regional human rights instruments, Argentina is party to the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).

28. Article 15 of the Constitution prohibits slavery and penalizes the selling and buying of persons. Furthermore, following the constitutional reform of August 1994, under article 75 (22) of the Constitution, most human rights instruments ratified by Argentina have constitutional status and are interpreted as complementary to the rights and guarantees recognized in the Constitution.⁷ These international human rights instruments have the same status as all other constitutional provisions and prevail over national and provincial law.⁸

29. The Law on the Prevention and Punishment of Trafficking in Persons (No. 26.364), enacted on 20 April 2008, defines the crime of trafficking in persons in accordance with the definition set out by the Palermo Protocol and establishes provisions to prevent this crime and to provide assistance to victims. The Law amended the Criminal Code (arts. 145 bis and ter) prohibiting and punishing all forms of trafficking in persons, of both adults and children. It also amended the Code of Criminal Procedures (art. 33) establishing trafficking as a crime of federal competency, subject to examination by the federal courts. The Law responds to the fact that the crime of trafficking involves movement of victims and perpetrators through the country's different jurisdictions, especially in the case of internal trafficking, and aims to help reduce the possibility of collusion between perpetrators and local judicial authorities when crimes are being investigated.

30. Briefly before the Special Rapporteur's mission to Argentina, a new draft of the law had been drawn up by the Commission on Women, Family, Childhood and Adolescence and the Commission on Penal Legislation of the Chamber of Deputies, with the support of several women's and human rights organizations. The draft proposal (a) eliminates the issue of consent for adult victims; (b) increases minimum penalties;⁹ (c) establishes new penalties for withdrawing, retaining or destroying identification documents;¹⁰ (d) introduces aggravating circumstances, such as the victim pregnancy or disability; (e) creates a national programme to fight against trafficking and assist its victims, which would be inter-institutional and monitored by both chambers of Congress; (f) creates a federal council headed by the Ministry of Justice, with participation of other ministries, legislators, counsellors and the Office of the National Prosecutor; and (g) creates an advisory body comprising provincial representatives and members of civil society. The draft is yet to be approved by the plenary of the Chamber.

31. With regard to other laws relevant to the fight against trafficking in Argentina, the Special Rapporteur noted the Comprehensive Law on the Prevention, Punishment and Elimination of Violence against Women in their Interpersonal Relations (Law No. 26.485).

⁷ The full list includes the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the First the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. A/HRC/WG.6/1/ARG/1, para. 6.

⁸ After being approved by Congress, other treaties and conventions on human rights require the vote of two thirds of the members of each Chamber in order to acquire constitutional status.

⁹ The maximum prison sentence is raised from six to 10 years' imprisonment. In cases in which the victim is under 18 years old, the minimum penalty is raised from four to five years' imprisonment and the maximum penalty from 10 to 15 years. In cases of children under 13 years, penalties are between 10 and 15 years' imprisonment.

¹⁰ Introducing a penalty of three to eight years of imprisonment through article 145 quater of the Criminal Code.

The law, together with its byelaw, negotiated in Congress with broad participation of women's organizations, it includes prevention, assistance and access to justice and security provision for victims of gender violence. It also creates a national observatory of violence against women to monitor and evaluate the situation of violence against women and the programs and policies to address this issue.

32. The domestic legal framework dealing with refugees is set out in Refugee Law No. 26.165 (2006) that establishes a national refugee commission in charge of evaluating asylum claims and finding durable solutions for refugees. The law enshrines important provisions, ranging from those relating to the refugee status determination procedure to those referring to local integration and the search for durable solutions for refugees (such as resettlement). The refugee regulation is further complemented by an important number of decrees and administrative regulations dealing with specific issues, such as residence permits, documentation and extradition, in line with international protection standards.

33. Other relevant laws include the Law for the Integral Protection of the Rights of Girls, Boys and Adolescents (No. 26.061), which protects in article 9 the child's rights not to be subjected to any kind of exploitation;¹¹ and Law No. 25.764 on the National Programme for the Protection of Witnesses, which is quoted in article 6 (E) of the Law against Trafficking.¹²

34. Besides article 145 bis and ter, which specifically criminalize trafficking in persons, the Criminal Code establishes other penalties for related crimes, some of which were used by judges and prosecutors prior to the enactment of the anti trafficking law in 2008:

- Articles 119 and 120: Crimes against sexual integrity (Law No. 25.087)
- Article 125 and 125 bis: promotion and facilitation of child prostitution and promotion and facilitation of corruption of minors
- Article 126: promotion and facilitation of prostitution of others
- Article 127: exploitation of prostitution of others
- Article 128: child pornography (Law No. 26.388)
- Article 140: reduction to servitude
- Article 142 bis: illegitimate deprivation of liberty

2. Institutional framework

35. A number of institutions are involved in the fight against trafficking in Argentina.

36. The Office for the Rescue and Assistance of Victims of Trafficking was established in August 2008 in the Ministry of Justice, Security and Human Rights by resolution 2149 and mandated to investigate and prevent the crime of trafficking, as well as to provide assistance to trafficking victims up until the moment they testify in a judicial procedure. Through Ministry of Justice resolution No. 1679/2008, specialized units were established within the Gendarmerie, the Federal Police, the Naval Prefecture and Airport Police to help prevent and investigate trafficking in persons. These four security forces depend of the Ministry of Justice and are part of the Office for the Rescue and Assistance of Victims of

¹¹ The article also highlights the State's ultimate responsibility in protecting the rights of the child by means of a protection system composed of administrative and judicial organisms and protection policies.

¹² The law provides for the protection of trafficking victims from all kinds of reprisal against them or their families, with the possibility of being incorporated to the national programme for the protection of witnesses.

Trafficking. The Office also runs a shelter to assist victims trafficking for sexual exploitation.

37. The Fiscal Unit of Assistance in Extortive Kidnapping works under the Public Prosecutor and helps in the investigation of trafficking crimes referred to in articles 145 bis and ter of the Criminal Code.

38. The National Secretariat of Childhood, Adolescence and Family provides assistance to trafficking victims once they have testified in a judicial proceeding. It also provides training and capacity-building activities on trafficking and child exploitation to public officials throughout the country.

39. The Office for the Integral Assistance to Victims of Crime works under the Public Prosecutor and is mandated to, inter alia, provide legal advice to victims of crime, particularly victims with low incomes, and to direct them to the relevant assistant mechanisms, whether State-run or non-governmental.

40. The “victims against violence” programme, which also operates inside the Ministry of Justice, was created to help victims to escape from situations of sexual abuse, domestic violence and child exploitation and prostitution. It runs several “brigades” that carry out street patrolling in Buenos Aires and that receive emergency calls from victims.

41. The National Refugee Commission, an inter-ministerial organ working within the Ministry of the Interior, is in charge of evaluating asylum claims and finding durable solutions for refugees and victims of trafficking with international protection needs.

42. The National Programme for the Prevention of Kidnapping and Trafficking of Children and the Crimes against their Identity comprises a national information registry of lost minors (Law No. 25.746), which aims to centralize and facilitate the sharing of information on missing and located children throughout the country.

43. The National Commission to Eradicate Child Labour, which was created within the Ministry of Labour, Employment and Social Security in 2000, has led the development of a national plan to prevent and eradicate child labour. Since its creation, similar commissions have been set up at the provincial level.

44. The National Committee of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism was created within the Ministry of Tourism in 2007 to promote the adoption of the Code of Conduct by relevant businesses in Argentina. The Code is an international initiative launched by ECPAT¹³ with the support of the World Tourism Organization and the United Nations Children’s Fund (UNICEF).

45. The number of governmental actors involved in the issue of trafficking and the consequent challenges in coordination, coupled with existing gaps in terms of the delivery of assistance, jeopardize these national anti-trafficking efforts.

C. Identification of trafficked persons

46. Through the establishment of specialized investigative units within four security forces – the Gendarmerie, the Federal Police, the Naval Prefecture and the Airport Police – and with the participation of the Office for the Rescue and Assistance of Victims of Trafficking, the authorities have carried out raids to identify victims of trafficking for sexual exploitation. Places of exploitation are usually brothels, which offer their services

¹³ ECPAT is a global network of organizations and individuals working to eliminate child prostitution, child pornography and the trafficking of child for sexual purposes.

through newspapers, presentation cards, flyers and the Internet, and commonly have a front as a legitimate business venture, such as a bar or a nightclub.

47. Between the enactment of Law No. 26.362 in April 2008 and August 2010, 613 raids were carried out by security forces and 605 people were arrested.¹⁴ The Special Rapporteur did not receive any information on police raids of workshops, farms or other businesses where victims of labour trafficking might be exploited.

48. Given that the above special forces do not have the resources to cover the entire country, they often rely on provincial police forces, which sometimes, however, collude with brothels owners; when raids are carried out, victims have often already been removed from the establishment. Although significant efforts are made to provide local forces with adequate training and awareness on trafficking, they still lack the capacity to adequately investigate and provide assistance to victims. They are unaware of the specific methods required to investigate these cases, which are different to the methods usually adopted for other crimes.

49. The Office for the Rescue and Assistance of Victims of Trafficking is mandated to participate in interventions and to interview possible victims in order to establish if they willingly work in the establishment. Nevertheless, according to an investigation on trafficking cases carried out by a specialized research centre in Buenos Aires, the Office was not always summoned to participate in police raids. In cases in which it had intervened, it was not clear what criteria had been used to identify victims, as it had not been consistent in all the cases analysed. Some non-governmental organizations have even accused the Office of discouraging potential victims to identify themselves as such.

50. Apart from the raids carried out by the police, it is extremely difficult for victims to approach the authorities given their lack of trust in the police and their well-founded fear of not being adequately assisted and then of being subjected to retaliation by traffickers. The Government runs the “Victims against violence” programme, which was set up within the Ministry of Justice by resolution 314/2006 with the aim of providing assistance to victims of violence, whatever its nature, helping them to escape violent situations in safety and to guarantee them their rights. The programme targets in particular victims of domestic abuse, sexual exploitation and child prostitution and trafficking. It comprises a number of *brigadas* with emergency numbers that operate around the clock:

- **Brigada niñ@s** (0800 number) is a specialized team on sexual commercial exploitation of children and adolescents and human trafficking. The team is made up of psychologists, social workers and personnel from the Federal Police. It patrols the streets of Buenos Aires. Its main objectives are to prevent child sexual and commercial exploitation, help victims, raise social awareness of this crime and target clients.
- **Sexual Abuse and Family Violence** has an emergency number (137 toll-free) for situations of violence. When a call is placed, a car manned by two Federal Police officers is sent to the crime scene, accompanied by a psychologist and a social worker. They detain the aggressor, offer the victim legal, social and psychological aid and/or take her (or him) to a hospital if necessary. A competent judge is immediately informed of the situation and a team accompanies the victim for the next 72 hours, providing assistance, shelter and legal aid as required.
- **Sexual Violence.** A mobile brigade intervenes when a victim of rape or sexual violence files a complaint with a police commissary. The mobile brigade comprises a psychologist and a social worker, who accompany the victim while filing the

¹⁴ Statistics provided by the Office for the Rescue and Assistance of Victims of Trafficking.

complaint, giving testimony, receiving medical attention and identifying the aggressor. The team also accompanies the victim's family, if necessary. The brigade operates from a centre where psychologists, social workers, lawyers, a sociologist and a gynaecologist offer support. The centre helps anyone who enters directly or is referred by a judge.

51. The above programme is said to be innovative in that it allows psychologists and social workers to coordinate with police officers when addressing each case, fostering also greater awareness and sensitivity among security forces with regard to gender violence. At the present time, the programme only operates in the city of Buenos Aires and, although it may tend to victims of trafficking, it does not have a specific brigade for cases of human trafficking.

52. One important limitation encountered by the Special Rapporteur was the lack of reliable data on victims identified and assisted by the different Government programmes. For example, the statistics provided by the Office for the Rescue and Assistance of Victims of Trafficking concern all persons found by the police in raids of establishments and do not specify how many of these are eventually identified as trafficking victims and assisted as such.

D. Protection of trafficked persons

53. The Office for the Rescue and Assistance of Victims of Trafficking (see paragraph 37 above) is composed of an interdisciplinary team that includes anti-trafficking divisions within the four security corporations in Argentina, in addition to psychologists, social workers and lawyers. The team is mandated to intervene along with the security forces from the moment a first contact is established with the victims, whether they have been rescued or have escaped from their captors. Anti-trafficking law No. 26.364 establishes that victims should provide their testimony in special conditions of protection and care, and that the interventions of the Office are aimed at guaranteeing that such conditions are met.

54. Public Prosecutor resolution No. 94/09 features a protocol of action to assist victims of trafficking. This was elaborated by the Fiscal Unit of Assistance in Extortive Kidnapping (see paragraph 38 above) and the Office for the Integral Assistance to Victims of Crime (see paragraph 40 above) in the office of the Attorney General. The resolution provides general intervention guidelines to assist victims of trafficking in person in criminal processes that lead to their rescue, the adoption of certain legal precautions when taking their initial statement to ensure its validity in further stages of the proceedings, and an operative guide, to be consulted by prosecutors during the victim's testimony which systematizes the basic questions required to help clarify the case.

55. During this process, the Office for the Rescue and Assistance of Victims of Trafficking offers victims psychological, medical and legal assistance and determines if they are ready to testify, and under what conditions. A psychologist assists the victims throughout the entire judicial proceeding and helps to determine whether the victim is ready to testify. If the victim is under 16 years of age, he or she will testify only in the presence of a psychologist and not before a judge. Once the victim has testified, the Office ceases to provide them assistance and it is the Ministry of Social Development that initiates an assistance programme.

56. The Office for the Rescue and Assistance of Victims of Trafficking runs a shelter in the city of Buenos Aires, where victims are logged in for the duration of the judicial proceedings before they testify. Since opening in February 2010, the shelter has logged in 60 victims, mostly from Paraguay and Bolivia (Plurinational State of). From the enactment

of Law 26.362 to December 2009, the Office participated in 384 raids, in which 406 alleged perpetrators were detained and 578 victims rescued.

57. In the Ministry of Social Development, the National Secretariat of Childhood, Adolescence and Family (see paragraph 39 above) currently runs two shelters; at the time of the Special Rapporteur's visit, the body was about to open a third. The location of the shelters is confidential and is not disclosed to the judicial authorities in order to ensure the safety of victims. The body provides victims with medical and psychological assistance, recreational activities and educational assistance, among other services. Victims are then repatriated after a risk assessment is carried out to ensure they will not be re-victimized. IOM is usually summoned to assist with repatriations.

58. In 2009, the National Secretariat of Childhood, Adolescence and Family provided direct assistance to 146 people, and 48 more were assisted through partner agencies in the provinces. Of the total, 52 per cent were victims of trafficking for labour exploitation, 36 per cent of trafficking for sexual exploitation and 12 per cent were children found in the place of exploitation of their families. With regard to nationality, 53 per cent of victims were from Bolivia (Plurinational State of), 14 per cent from Paraguay, 14 per cent from Argentina, 11 per cent from the Dominican Republic, 5 per cent from Peru and 3 per cent from Colombia.¹⁵

59. A large minority of the victims (43 per cent) were exploited in the province of Buenos Aires, but only 38 per cent directly in the city of Buenos Aires. The other victims (19 per cent) suffered from exploitation in other provinces, such as Santa Fe, Córdoba, Río Negro, Santa Cruz, La Pampa, Tierra de Fuego and Chubut. Of the victims assisted in 2009, 97 per cent of them decided to return to their town or country of origin.

60. The National Secretariat of Childhood, Adolescence and Family also provides training and capacity-building activities on trafficking and child exploitation throughout the country. It carries out awareness-raising campaigns, particularly in areas of recruitment such as the tri-border area, working closely with other provinces but also in collaboration with other countries, such as Uruguay and Paraguay. It has provided technical assistance to relevant authorities in the provinces and, through this work, become aware of the need to establish an assistance protocol for victims of trafficking, which was adopted by the Federal Council of Childhood, Adolescence and Family in November 2008.

61. Most of the work done by the Secretariat is focused on prevention, working with low-income families to prevent children from dropping out of school and engaging in child labour and/or prostitution. It also aims to change cultural perceptions of sexual exploitation, working closely with schools, trade unions, health centres and the media to raise awareness at the local level.

62. One of the main limitations of the above assistance initiatives is the lack of adequate and sufficient shelters. Until recently, only two shelters run by non-governmental organizations provided services: one in Tucuman, run by Organización María de los Ángeles, and the other in Cordoba, run by Hermanas Adoratrices. The Office for the Rescue and Assistance of Victims of Trafficking opened one shelter in February 2010, and the city of Buenos Aires opened another in August 2010 (although the latter is only for women and child victims of trafficking for sexual exploitation). The shelters run by the Ministry of Social Development do not have the necessary characteristics to cope with victims of trafficking; indeed, they are actually shelters for children that allocate a small area to trafficking victims. Sometimes the victims are hastily repatriated and not allowed to go through an adequate reflection period, affecting thus any judicial procedure. Once

¹⁵ Statistics provided by the Ministry of Social Development.

foreign victims are repatriated, IOM may carry out some follow-up on their situation, but the same does not apply to victims of internal trafficking.

63. The Office for the Rescue and Assistance of Victims of Trafficking mainly operates in the province and city of Buenos Aires, and does not have enough resources to permanently assist and offer shelter services in other provinces of the country. Furthermore, since it only provides assistance to victims until they make a statement in a judicial proceeding, there is little follow-up on victims beyond that point.

64. The Special Rapporteur visited a privately run shelter that receives some funding from the city of Buenos Aires. The funding is actually a small stipend that only applies to victims referred to the shelter through the local authorities; victims referred from different provinces or arriving on their own are therefore not entitled to such support and the shelter needs to cover their expenses independently. In many cases, the type of specialized psychological and psychiatric support that these victims need is not available or is inadequate in public hospitals, so the shelter needs to resort to private service providers, absorbing very high costs.

65. At the shelter, the Special Rapporteur heard the story of A, a young victim of trafficking for sexual exploitation who arrived at the age of 12 years. A and other young girls were sexually abused and exploited by a man who ran a small shop in their neighbourhood. From the time an official complaint was filed with the police against A's trafficker in 2006 until his arrest in 2010, the man remained in contact with his victim, constantly harassing her, pressuring her to drop the charges and not to testify against him. During that time, he also continued to run a network of sexual exploitation of girls in his neighbourhood.

66. A's reluctance to testify against her exploiter was seen as an obstacle by prosecutors handling the case, and the testimonies of non-governmental organizations and other service providers assisting her and other of the victims were not taken seriously by the authorities.

67. The above case is a clear example of the long delays encountered in investigations and of the failure of authorities to address the special needs of trafficking victims during judicial procedures. As is common in cases of child sexual abuse, A saw her exploiter as a father figure and was initially reluctant to act against him. It took years of therapy and support from for A to realize that she had been subjected to exploitation; it was not until she decided to denounce his continued harassment that she finally received protective custody against her abuser, who was eventually arrested. The support, counselling and protection that A received over the years and that eventually led to her recovery were provided and funded by the private shelter.

E. Prosecution of perpetrators

68. After the enactment of anti-trafficking law No. 26.364, the crime of trafficking in persons was incorporated into the area of competence of the Fiscal Unit of Assistance in Extortive Kidnapping (see paragraph 38 above). Through its resolution No. 160/8, the Public Prosecutor's office approved a plan of action on trafficking in persons, which was elaborated by the Unit and aims to provide all federal prosecutors with adequate tools to identify, investigate and persecute these crimes and also provide, through the competent bodies, adequate assistance to its victims. The plan establishes the provision of:

- In situ assistance by Unit officers to help with trafficking investigations carried out in each federal prosecutor's office
- Useful online information on persons, addresses, document, telephones, and other data available through the Unit's own records and records to which it has access

- Direct collaboration in investigations when required by the main prosecutor investigating the case

69. The plan also aims to provide information on the crime of trafficking in persons, including case law and jurisprudence, in order to gradually compensate the State's limited experience in addressing trafficking as a federal crime. Through the plan, prosecutors investigating crimes relating to articles 145 bis and ter of the Criminal Code are mandated to establish communication with the Unit from the outset, and to demand, if necessary, its assistance to guarantee the coordination and use of equal criteria followed by the Public Prosecutor's office.

70. Another important Public Prosecutor resolution, No. 99/09, makes reference to the work that the Fiscal Unit of Assistance in Extortive Kidnapping has carried out in assisting investigations related to trafficking and how it has become clear that the national norms regarding the prohibition of brothels are not being observed. Although prostitution is not penalized as such, the promotion, facilitation or exploitation of prostitution is prohibited by law, including the establishment of brothels. Nevertheless, sexual exploitation has been proven to be taking place in these establishments. The resolution calls on all federal prosecutors to order the closure of all brothels that operate under the cover of legal establishments.

71. Through the above resolutions, the Fiscal Unit of Assistance in Extortive Kidnapping acquired the faculty to carry out preliminary investigations on trafficking activities which have subsequently led to police raids in suspected brothels. Information leading to these raids has also been provided by victims, non-governmental organizations, consulates, the Office for the Integral Assistance to Victims of Crime and, sometimes, the press. However, most criminal investigations into trafficking for sexual purposes are brought to justice when victims file a complaint directly, indirectly or anonymously.

72. With regard to prosecution, the anti-trafficking law has been criticized by several women's and human rights organizations in the country in that it distinguishes between victims who are over 18 years of age and those who are under that age when referring to the issue of "consent". In practice, adult victims have had to prove they did not initially consent to engage in the activities to which they were subjected and that their exploiters used violence, abuse, deceit and so on to force them into such activities. Others argue that it is not the law per se that is faulty but rather the way investigations are conducted, as prosecutors and judges have lacked the sensitivity to understand that the victim's initial "consent" is coerced and sometimes vitiated by subsequent events, and should therefore not have any effect on the way traffickers are prosecuted.

73. Other criticisms refer to the weak penalties envisaged by the relevant law in the Criminal Code. Traffickers may be subjected to a prison term of three to six years (four to ten years in aggravating circumstances)¹⁶ if trafficking adults, and a prison sentence of four to ten years (and up to 15 years in aggravating circumstances)¹⁷ if trafficking children. Some organizations have pointed out that the current penalties for stealing livestock in some cases might be harsher, ranging from four to ten years in prison.¹⁸ However, the possibility of increasing further the penalties for trafficking is limited owing to the "proportional" nature of the Criminal Code, which establishes a maximum penalty of 25 years of prison for the crime of homicide. As mentioned above, a new draft of the law is to

¹⁶ Aggravating circumstances refer to (a) when the perpetrator is related to the victim; (b) the crime being committed by more than three people; and (c) the crime having involved more than three victims.

¹⁷ Aggravating circumstances refer to the victim being under 13 years of age and the means used for their recruitment.

¹⁸ Criminal Code, art. 167 quarter.

be approved by the plenary of the Chamber, which would eliminate the issue of consent and modify penalties imposed to convicted traffickers.

74. The crime of trafficking is within federal competence and jurisdiction, although many of the crimes associated to trafficking, such as exploitation, reduction to servitude, and crimes against sexual integrity, fall inside the competence of local authorities. Since trafficking cases are usually detected at the time of exploitation and prosecutors do not always have the sensibility to link exploitation with a situation of trafficking, cases tend to be addressed by local jurisdiction and are not always channelled to the federal authorities. This not only has an impact on the severity of the penalties but may even affect the judicial proceedings from the onset if corrupt local authorities are involved with the traffickers. According to information received, the few convictions that have been handed down on trafficking charges have not reached the highest-ranking members of trafficking networks.

75. Another shortcoming identified by the Special Rapporteur was the lack of investigations into the financial resources that should be recovered when a trafficking case is being handled. This is something that is missing in investigations relating to organized crime in general, not just to trafficking. By investigating the financial resources of crime with the same rigour and at the same time as the crime itself, the establishing of compensation for victims could be easier and performed within the same criminal process.

F. Cooperation with civil society

76. Civil society organizations in Argentina have played a crucial role in raising awareness of and fighting against trafficking in persons. The women's movement has been particularly active in both national and international debates concerning anti-trafficking legislation and programmes. Non-governmental organizations in Argentina have also played a crucial role in rescuing and providing assistance to victims of trafficking.

77. The Special Rapporteur noted with concern the great constraints faced by activists, non-governmental organizations and even public servants fighting against human trafficking in the country. She met with a judge who is currently under protective custody of the Gendarmerie because of threats he received following his intervention in the dismantlement of a trafficking network in 2008. The Special Rapporteur also received information regarding acts of intimidation against a magistrate in the Province of Rio Negro who had been falsely accused of corruption, apparently in retaliation for investigating trafficking cases in the region since 2007.

78. Non-governmental organizations carry out their work in many provinces of Argentina, offering services such as free training and technical assistance to public servants, activists and parliamentarians; drafting guidelines and training material on trafficking; and opening and managing shelters for victims. They have also helped victims to file formal complaints with the judicial system. The organizations provide direct assistance to victims and their families, and thus face important financial constraints and the threat of reprisals from traffickers. Reports of telephones having been tapped or bugged, computers hacked and written threats are common. This is coupled with persecution and criticism from certain Government authorities, who discredit their work and sometimes even portray them as troublemakers and "traitors".

G. International and regional cooperation

79. Argentina is part of Niño Sur initiative of the Common Market of the South (MERCOSUR) that aims to promote the coordination of national efforts to comply with the Convention on the Rights of the Child and the harmonization of national laws with relevant

international instruments. Through the initiative, the recommendations on the rights of and assistance for children and young people who have been victims of trafficking or sexual exploitation were approved in 2006. Another Niñ@ Sur project is the “Twin Cities” initiative, which is aimed at developing a regional strategy to fight against human trafficking and the smuggling of children and adolescents in 15 MERCOSUR border cities. It includes prevention and assistance activities designed to improve the living conditions of children and adolescents and thus prevent them from becoming potential victims.

80. Several governmental agencies also work in cooperation with the United Nations system in Argentina. In collaboration with UNICEF, the office of the Ombudsman of Buenos Aires has been working on specific projects to help children and adolescents to protect themselves when sharing information through social networks and other Internet forums. UNICEF has also provided training activities, toolkits and materials to various public authorities on issues such as child sexual exploitation and child labour.

81. The Office of the United Nations High Commissioner for Refugees (UNHCR) and IOM have been providing the executive secretariat of the National Refugee Commission with support in training activities relating to trafficking in persons, with the aim of improving its ability to identify trafficking victims. Collaboration has also included joint eligibility interviews with UNHCR and the elaboration of informative material on trafficking and its provision to asylum-seekers and refugees. Argentina has been party to the UNHCR Regional Solidarity Resettlement Programme since 2005. Since that year, a growing number of refugees has found protection in the country, with one case being of a trafficking victim who was at risk in the first country of asylum.¹⁹

82. Furthermore, Argentina attended and participated in the Regional Conference on Refugee Protection and International Migration in the Americas: Protection Considerations in the Context of Mixed Migrations, co-organized by IOM and UNHCR and which resulted in a series of specific recommendations on trafficking in persons, which are yet to be implemented.²⁰

¹⁹ In line with the needs of the population in the countries of first asylum in the region, in 2008, UNHCR, its implementing partners (HIAS) and the Government of Argentina initiated a project aiming to ensure the minimum conditions for facilitating local integration of refugee women at risk (namely, women who lack the traditional protection of their families or communities and face physical and/or psychological threats, such as rape, sexual harassment, violence, exploitation and torture, among others). As a result, five cases (14 people) were resettled between 2008 and 2010, many of them under the Woman at Risk criterion.

²⁰ The recommendations on trafficking made at the conference included (a) a joint screening instrument should be elaborated by all stakeholders to better identify trafficked persons in mixed migration, and to ensure adequate and timely referrals to assistance and protection mechanisms; (b) existing cooperation mechanisms should be broadened to include more actors in counter-trafficking initiatives, in particular labour ministries and the private sector, given the recognition of the existing nexus between trafficking in persons and the dynamics of labour markets; (c) all stakeholders are encouraged to strengthen national coalitions against trafficking in persons, and replicate good practices in countries that have not yet established such a coalition; (d) States are encouraged to integrate counter-trafficking provisions into national legislation and policies concerning migration, labour, gender, children and security; (e) States are encouraged to develop common performance indicators in the framework of regional mechanisms and national counter-trafficking coalitions to facilitate the continual follow-up and evaluation of results of regional and national counter-trafficking plans of action; (f) international/regional and civil society organizations are encouraged to carry out a regional study to document the trends and characteristics of internal trafficking; (g) States are encouraged to replicate the good practice of other States in recognizing refugee status for those victims of trafficking who fulfil the refugee criteria;

III. Conclusions and recommendations

A. Conclusions

83. Statistical information essential to determine the prevalence rate, forms, trends and manifestation of human trafficking is lacking. Although several Government agencies come into contact with trafficking victims at different stages, there is no harmonized database to register such interaction.

84. The Law on the Prevention and Punishment of Trafficking in Persons has limitations, given the fact that victims over 18 years of age have to prove that they did not initially give their consent to engage in activities to which they were subjected, and that short sentences are given to convicted traffickers.

85. Coordination of anti-trafficking activities is weak, especially among governmental institutions and between federal and provincial authorities. Although the Ministry of Justice at the federal level has established a special office to rescue and assist victims of trafficking, the office mainly operates in the province and the city of Buenos Aires, and does not have enough resources to permanently assist and offer shelter services in other provinces of the country. Furthermore, the office only provides assistance to victims until they make a statement in a judicial proceeding; little follow-up on victims is provided beyond that stage. There is also a lack of appropriate shelters and other direct assistance for victims, including men.

86. Protection and access to justice are inadequate, including in the case of witness protection for victims and their families before and after trial.

87. Although the Ministry of Social Development, through its Secretary for Childhood, Adolescence and the Family, may provide assistance to victims of trafficking once they have gone through a judicial procedure, there is little follow-up after they have been repatriated or resettled, and lack of resources make it difficult for the institution to provide comprehensive assistance to victims sufficient to guarantee their well-being and to ensure that they do not fall back into trafficking networks.

88. Trafficking in children, particularly for the purposes of bonded labour/peonage and forced prostitution, is an especially worrying issue.

89. The safety and security of persons involved in fighting trafficking in persons and providing assistance and support to victims is not guaranteed.

90. Tools and referral mechanisms are not effectively in place for easy identification of victims, especially at the point of entry or of first contact with law enforcement agents. Currently, there are no solid and well-functioning inter-agency procedures in place to deal with victims of trafficking with international protection needs. The National Refugee Commission has never had a case of trafficking referred

(h) regional forums could be used to enhance awareness campaigns and to alert societies of the criminal nature of human trafficking and the protection needs of victims. The adoption of guidelines with proper safeguards for the protection of victims of human trafficking, as adopted at the Regional Conference on Migration, should be replicated in other regional migration forums; and (i) all stakeholders engaged in mixed movement management should be trained to identify trafficked persons, to appreciate the different forms of human trafficking and to be sensitive to the protection needs of women and of unaccompanied/separated children in particular.

by relevant authorities, such as the Fiscal Unit of Assistance in Extortive Kidnapping or the National Secretariat of Childhood, Adolescence and Family. For this reason, the challenge of establishing mechanisms to better identify, refer and process asylum claims from potential victims in compliance with international protection needs remains.

91. The capacity to address certain human trafficking issues is poor, including the sensitive issue of police corruption and of other members of the security forces directly involved in the implementation of the anti-trafficking measures taken by the Government, especially at the provincial level, where they receive bribes and collude with traffickers, who are thus able to evade arrest and prosecution.

92. Trafficking for labour exploitation is on the rise, but hidden. Labour inspectors appear not to have the necessary capacity for effective oversight.

93. The Special Rapporteur welcomes the acceptance by Argentina of a refugee victim of trafficking under the resettlement programme in 2009, and encourages the Government to continue to use resettlement as a response to trafficking victims with international protection needs.

B. Recommendations

94. The Special Rapporteur recommends that the Government of Argentina:

(a) Approve the proposed amendments to Law No. 26.364 in order to guarantee more stringent penalties against traffickers and to eliminate the issue of consent and distinction based on age;

(b) Allocate adequate resources to existing anti-trafficking offices and units within the Government to ensure that protection and assistance measures are carried out throughout the country;

(c) Provide holistic, reintegration and rehabilitative assistance to victims of trafficking, in full recognition of their human rights. Programmes of assistance to victims should be made available – not just in the city of Buenos Aires, but in all provinces – to reach victims of trafficking and potential victims who might fall prey to trafficking, without discrimination on grounds of sex, gender and/or sexual orientation;

(d) Establish a federal central agency to enhance coordination, not only among federal offices and units that have already been set up to combat trafficking in persons and assist victims, but also between them and authorities at the provincial and municipal levels;

(e) Demonstrate serious commitment and political will as part of the prevention effort to regulate businesses, such as within the textile industry, agriculture (including fisheries) and construction, as well as in the entertainment and sex industry; Adequate inspections should be carried out to ensure that these businesses are not involved in trafficking or using trafficked persons;

(f) Make adequate budget allocations to improve the effectiveness and sustainability of anti-trafficking initiatives, including financial support for civil society organizations currently providing victims of trafficking with assistance through their own (scarce) human and financial resources;

(g) Establish a zero-tolerance policy with regard to corruption to ensure that any State agent involved in the crime of trafficking is duly prosecuted and severely punished;

(h) Develop a comprehensive, holistic and integrative national plan of action on combating trafficking in persons that clearly sets out strategic objectives, allows for cooperation among State authorities, as well as between them and civil society organizations, and produces measurable indicators and monitoring and evaluation tools.

(i) Consider establishing a special fund for the compensation of victims of trafficking;

(j) Raise public awareness on the issue of human trafficking by means of the media, information and communications technology and other channels that appeal particularly to the young, including at all levels of education;

(k) Carry out a national study in collaboration with United Nations agencies and international organizations to inform evidence-based interventions, thus heightening the effectiveness and sustainability of actions to combat human trafficking;

(l) Scale up capacity-building training of all actors, especially the Police, the Gendarmerie, naval, airport and border guards, as well as of judges, prosecutors and labour inspectors, to increase their knowledge and skills to identify, protect and assist victims of trafficking;

(m) Strengthen labour laws and raise public awareness, especially in migrant communities, on labour rights to check exploitative labour, which is rampant in the informal sector;

(n) Guarantee the safety of and protection for human rights defenders involved in the campaign to end human trafficking;

(o) Strengthen cooperation with neighbouring countries and other countries of origin of victims of trafficking, in particular Bolivia (Plurinational State of), the Dominican Republic and Paraguay;

(p) Implement relevant training and capacity-building activities for authorities, including measures to establish a proper referral system to the refugee status determination procedure, as a mean to ensure that the right of victims to seek and be granted asylum, when appropriate, is fully respected;

(q) Improve witness protection programmes and allow for an adequate reflection period for victims before judicial proceedings or repatriation, and work with countries of origin to ensure that victims are not re-trafficked or re-victimized;

(r) Design, adopt and disseminate comprehensive checklists and protocols that assist in the prompt identification and referral of victims and potential victims of trafficking at the first point of contact.

95. Action should be taken by the Parliament to transform the Protocol to attain a constitutional status and become enforceable throughout Argentina.

96. The National Refugee Commission, with the technical assistance of UNHCR, should develop a full set of standard operating procedures, with the full participation of other stakeholders, including civil society. The procedures should include different measures to improve the identification, referral, risk assessment, social assistance and coordination among governmental and non-governmental actors to respond effectively to trafficking victims with international protection needs.