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**Human Rights Council**

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Agenda item 3

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

 Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to the United States of America[[1]](#footnote-2)\*

 Note by the Secretariat

The Special Rapporteur on trafficking in persons, especially women and children, visited the United States from 6 to 16 December 2016, at the invitation of the Government. In the present report, she highlights the country’s strong and long standing commitment to combating trafficking in persons, as evidenced by its periodically revised anti-trafficking legal framework and policies for the protection of victims, its multidisciplinary approach and awareness raising efforts, and the support provided to CSOs towards the provision of assistance and protection to victims of trafficking. She also notes the United States’ regional and international engagement in combatting trafficking.

The Special Rapporteur nonetheless expresses concern about, inter alia, the State’s limited identification of trafficking for labour exploitation and forms of trafficking other than for sexual exploitation. Moreover, the current approach to migration policies and management, including the detention of irregular migrants, the temporary placement and return of unaccompanied migrant children, and the temporary, non-immigrant visas tying migrants to single employers create vulnerabilities to human trafficking including re-trafficking. The absence of “vacatur” and “safe harbour” laws in some states as well as the criminalisation of prostitution also contribute to vulnerabilities to human trafficking. Economic inequalities and social exclusion, discrimination and insufficient labour protections create a favourable environment for traffickers in the country. She also notes challenges related to coordination among federal, state and local level authorities to counter trafficking; and the dearth of data on trafficking which inhibits the understanding of the extent and prevalence of trafficking in the country.

On that basis, the Special Rapporteur makes a number of recommendations to the Government, aimed at addressing remaining gaps on prevention, prosecution and victim protection, including: addressing root causes such as poverty and economic equalities, gender and minorities discrimination, inadequate labour protections and restrictive immigration policies. Further recommendations include ensuring that immigrants holding temporary visas are free to change employment; banning detention of children; providing individualised services for victims and ensuring that they have access to remedies and to employment while awaiting decisions on immigration relief. She also recommends improving identification of cases of trafficking for labour exploitation; ensuring the implementation of the non-punishment principle for offenses victims have committed as a direct result of their trafficking situation; decriminalising prostitution, or at least not arresting, prosecuting or detaining people engaging in prostitution, as some cases of exploitation of prostitution could amount to trafficking; developing a comprehensive and systematic data collection system, and supporting efforts of businesses to prevent and combat trafficking especially in their supply chains.

 Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to the United States of America[[2]](#footnote-3)\*\*

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 I. Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro visited the United States of America from 6 to 16 December 2016, at the invitation of the Government. The objectives of the visit, which included meetings in Washington DC, New York, San Francisco and Houston, were to examine the prevalent forms of trafficking in persons and assess the effectiveness of measures taken by the Government to combat trafficking in persons and to protect the human rights of trafficked persons.

2. During her visit, the Special Rapporteur met with representatives from the Department of Agriculture, Department of Defence, Department of Homeland Security, Department of the Interior, Department of Justice, Department of Labour, Department of State and the US Agency for International Development. She also met with the San Francisco Mayor’s Task Force on Anti-Human Trafficking, the Houston Mayor Special Advisor on Human Trafficking and the City Attorney. She further exchanged with members of Congress in Washington DC, the Superior Court of the District of Columbia, the Immigration Court, the Human Trafficking Initiative Court and the Commission on Human Rights in New York. She also visited an Office of Refugee Resettlement Children’s Facility and an Immigration and Customs Enforcement’s detention facility in Houston.

3. Moreover, she exchanged views with representatives from the United Nations High Commissioner for Refugees, the Organisation of American States and members of the diplomatic community. She also met representatives from the business sector in Washington and San Francisco as well as civil society organisations (CSOs) in the four cities visited.

4. The expert expresses her gratitude to the Government for its invitation and cooperation; to CSOs, for their inputs and assistance and to the United Nations Information Centre and the Food and Agriculture Organisation for their support prior and during the visit. She is grateful to the resilient survivors who courageously shared their experiences in the hope of preventing future trafficking.

 II. Main findings

 A. Forms and manifestations of trafficking in persons

5. The United States faces challenges as a destination, transit and source country for men, women, children, including LGBTI individuals, migrant workers and unaccompanied migrant children, runaway youth, American Indian and Alaska Natives, persons with disability. In some places African American women and girls are disproportionately affected by trafficking in persons.[[3]](#footnote-4) Both US nationals and migrants, mainly from Central America and South East Asia, are trafficked within and into the United States. Mexico, China, the Philippines, Guatemala and Honduras are the most common countries of origin for trafficking victims.[[4]](#footnote-5) According to the national hotline, the highest number of trafficking cases has been in California, Texas, Florida, Ohio and New York.[[5]](#footnote-6) The close proximity to international borders and high rates of immigrant populations make, amongst other factors, these regions more vulnerable to trafficking in persons.

6. The economic prosperity of the United States favours mobility within the country as well as migrants in search of better livelihoods. Yet economic inequality and social exclusion, discrimination, organised crimes such as drug trafficking, and insufficient labour protections are causes of vulnerability to human trafficking.

7. While many workers have found employment that meets their qualifications and aspirations, some have been compelled to work in precarious or informal employment, on short-term or part-time contracts, on temporary visa if they are migrants rendering them vulnerable to human trafficking. Traffickers’ modus operandi typically involves deceptive and fraudulent practices regarding the nature and type of the employment by some recruitment agents and employers. Many find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers for their journey, when promises of well-paying employment turn into exploitative situations. Passport and wages retention as well as threats of deportation are common forms of control of migrants’ workers in certain sectors.

 1. Trafficking for sexual exploitation

8. From 2007 to 2016, 31,659 potential sex trafficking cases were identified in the United States through the national hoteline/textline.[[6]](#footnote-7) In 2016, 73 percent of reported cases concerned sex trafficking. [[7]](#footnote-8)

9. Adults- predominantly women, and children are compelled to engage in prostitution/sex work by family members, individuals with whom they are romantically involved, gangs or others who have forced them into prostitution/sex work or lured them with a promise of a false job including via online ads. Trafficked persons for sexual exploitation are US citizens and foreign nationals alike. Sex trafficking often occurs in fake massage parlours, escort services, in brothels, in private homes, on the street, or at hotels/ motels.

10. There are also reports indicating that Native Americans are disproportionately at risk of being trafficked, especially for sexual exploitation.[[8]](#footnote-9) The influx of young, unaccompanied men working for high-paying oil jobs such as in the Bakken Shale region (North Dakota) coincides with increased human trafficking of Native women and children which is partly met by women from the reservations.[[9]](#footnote-10)

 2. Trafficking for labour exploitation

11. Victims of trafficking for forced labor and exploitation make up 14 percent of reported cases to the national hotline/textline.[[10]](#footnote-11) Victims, mainly from Mexico, Jamaica, Philippines, South Africa and Peru holding temporary, non-immigrant visas (mostly A-3, B-1, G-5, H-2A, H-2B, J-1, and H-1B) [[11]](#footnote-12) worked in agriculture, landscaping, hospitality, restaurants, and domestic work among others. Labour exploitation was at times accompanied by sexual abuse.

12. First-hand information about victims exploited through precarious or informal employment being subjected to reduction or non-payment of salary, long working hours and a lack of rest days was also received. Some recruitment agencies take advantage of the vulnerable situation of migrant workers to offer low wages and benefits and charge future employees with recruitment fees, which can include migration or settlement expenses. As a result, migrant workers may find themselves in an inextricable situation where reporting violations of their rights, or returning voluntarily to their home country is impossible due to the debts they incurred.

13. Most temporary work visas tie a migrant worker to a single employer. As a result, if they leave their jobs, they lose their legal status to work in the country and are at risk for deportation. This situation can be exploited by traffickers who use it as a means of controlling their victims. In fact, 40 percent of labour trafficking reported to the national hotline/textline are linked with temporary visas.[[12]](#footnote-13)

 3. Trafficking for domestic servitude

14. United States hosts about two millions domestic workers.[[13]](#footnote-14) An estimated 95 percent of domestic workers are women and 46 percent are foreigners.[[14]](#footnote-15) As their work is performed in private households, including those by diplomats and international civil servants, where oversight is by nature limited, domestic workers are vulnerable to trafficking for domestic servitude.

15. The majority of 16 potential victims identified by one NGO between August 1, 2014 and July 31, 2015, were located in Northeast United States, were all females, and 25 percent were Filipina.[[15]](#footnote-16) One survivor shared how she had been brought by international civil servants with a promise to attend school in the US while helping them, but found herself working long hours without any wage, with no passport and monitored interactions with the outside world. She finally was rescued after a neighbour signalled her presence to the police.

16. Many victims of trafficking for domestic servitude are recruited trough family or community ties. Employment agencies- in source countries and the US- also play a role in the trafficking of domestic workers. Victims face abuses and exploitation that further contribute to the trafficking situation, including breaches of contract, non-payment of salary, deductions of recruitment and permit fees from their already meagre wages. At the hand of their employers and their families, many domestic workers experience physical and mental abuses as well as threat of deportation.

17. Some domestic workers hold special visas which tie their immigration status to a single employer. If domestic workers with an A-3, G-5 or NATO-7 visa leave an abusive situation, they become undocumented and risk deportation. Further, traffickers frequently use victims’ unfamiliarity with U.S. laws to make them believe there is danger in reporting their trafficking situation to law enforcement or seek help.

 4. Other forms of trafficking

18. There are also cases of trafficking of unaccompanied migrant children who, after processing and treatment by agencies of the Department of Homeland Security and the Department of Health and Human Services, have been placed with family members in the US. At times, these children have been trafficked for sexual and labour exploitation by criminal networks that posed as family members or forced them into begging or drug smuggling.

19. A potential case of trafficking for purposes of organ removal was also brought to the attention of the Special Rapporteur. The victim was brought into the US after marrying her husband living in the country, she escaped from a moving car that was taking her to a hospital where she was due to have her kidney involuntarily taken.

20. Cases of trafficking of persons with disabilities for purposes of sexual exploitation, forced labour and others also exist. In such cases, traffickers who may also be family members, steal their victims’ social security and disability benefits.[[16]](#footnote-17)

 B. Post-visit information about the criminalization of irregular migration and the impact on trafficked persons[[17]](#footnote-18)

21. Post-visit legal reform related to immigration may affect the human rights of trafficked persons. These include the Executive Order on “Border Security and Immigration Enforcement Improvements” signed by President Trump on 25 January 2017, which confirms the detention of individuals apprehended on suspicion of violating immigration law pending the decision of their removal or immigration relief. The Special Rapporteur cautions that the routine detention of migrants who are possible victims of human trafficking, even though they are classified as smuggled and processed for removal, in the absence of accurate identification of trafficking grounds may amount to “penaliz[ing victims] solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation” mentioned under section 102(19) of the Trafficking Victims Protection Act (2000).

22. Another source of concern is the Executive Order on “Protecting the nation from foreign terrorist entry into the United States”, signed on 27 January 2017, revised on 6 March 2017, and subjected to a ruling by a district court in Hawaii on 15 March 2017 barring the Department from implementing the Order. By limiting the refugee resettlement programme, the Order poses risks to women and men who may be subject to human trafficking. In this context, the Special Rapporteur will pay close attention to the enforcement of the Executive Order on “Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking”, signed on 9 February 2017, which includes specific provisions related to trafficking in persons, to ensure its implementation does not adversely affect trafficking victims.

 C. Legislative, policy and institutional framework

 1. Legislative framework

 a) International and regional legal framework

23. The United States is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), and to a number of international human rights instruments, including the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. It has also ratified the Abolition of Forced Labour Convention, 1957 (No.105) and the Worst Forms of Child Labour Convention, 1999 (No.182) of the International Labour Organization (ILO).

24. Regrettably, the country is not party to several human rights conventions pertinent to the fight against human trafficking, although it had pledged to ratify a number of them during its Universal Periodic Review of 2015 including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 Convention relating to the Status of Refugees and numerous ILO conventions are yet to be ratified.

25. The United States is a signatory to the American Convention on Human Rights but is yet to ratify the Inter-American Convention on the International Traffic in Minors from 1994.

 b) Domestic legal framework

26. At the federal level, slavery and involuntary servitude are prohibited under the Thirteen Amendment to the Constitution. The Victims of Trafficking and Violence Protection Act (TVPA) adopted in 2000 has been revised four times since.

27. Under the TVPA of 2000, severe forms of trafficking in persons include situations “in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” or “the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery”. Trafficking in persons for forced labour carries a penalty of a maximum 20 years’ imprisonment and a fine for “whoever knowingly recruits, harbours, transports, provides, or obtains by any means, any person for the purpose of severe forms of trafficking in persons”. Trafficking for sexual exploitation leads to a mandatory minimum of 10 and 15 years imprisonment and/or a fine or life imprisonment (if victim is a child under 14).[[18]](#footnote-19) The TVPA also provides for a long term form of immigration relief for trafficked persons who cooperate with law enforcement– known as the T-visa (see section G below). The 2008 revision of TVPA authorizes foreign victims to apply for T-visa when they are, inter alia, “unable to participate in a law enforcement interview due to physical or psychological trauma” – or are under 18 years. The 2013 revision of TVPA calls on the State Department to provide information to the Department of Labour relating to its List of Goods Produced by Child Labour or Forced Labour. It also establishes measures to prevent child marriage. The fact that the TVPA has been revised with additional provisions for the protection of victims several times since 2000 indicates the Government’s commitment to address emerging forms of trafficking in persons and adopt a victim-centred approach.

28. The Preventing Sex Trafficking and Strengthening Families Act (2014) and the Justice for Victims of Trafficking Act ( 2015) which enable survivors to provide formal input into federal anti-trafficking policies further complete the anti-trafficking legal framework.

29. In addition, Chapter 77 of US Code 18 on peonage, slavery and trafficking in persons can be invoked to prosecute trafficking or trafficking- related offences. In the United States, local and state governments have traditionally been responsible for crime control. Therefore, while the TVPA was enacted at the federal level, this did not preclude states from additionally exercising jurisdiction and criminalizing human trafficking under states’ criminal legislation. In fact, virtually all 50 states have criminalised human trafficking.

30. The federal law provides labour protections under the Fair Labour Standard Act and the Migrant and Seasonal Agricultural Protection Act. Federal criminal law may provide additional labour-related protection, for instance when the destruction or confiscation of passports or other immigration documents relates to situations of trafficking in persons. Further, the Tariff Act (1930) bars the importation of products made by forced labor. The Trade Facilitation and Trade Enforcement Act (2015) repealed the “consumptive demand” exception that had allowed importation of certain forced labor-produced goods if the goods were not produced “in such quantities in the United States as to meet the consumptive demands of the United States,” thereby enhancing the ability of the U.S. to enforce this prohibition.

31. Yet, the Special Rapporteur is concerned that, according to 29 US Code 1802(8)(B)(ii) and (10)(B)(iii), migrant workers holding H-2A visa for temporary or seasonal agricultural work are excluded from labour protections provided under the Migrant and Seasonal Agriculture Protection Act. Further, she is concerned that the National Labour Relations Act does not apply to public sector employees at the federal and state levels, agricultural workers and domestic workers, as also raised by the Working Group on the issue of human rights and transnational corporations and other business enterprises despite analogous protections for employees in the federal workforce found in the Federal Labor Relations Act. This in effect prevents workers from forming unions to demand improved labour conditions. The exclusion of lawfully present immigrants from the Medicaid programme[[19]](#footnote-20) for a five-year waiting period, with the exception of emergency care, also increases the vulnerability of migrant workers. She nevertheless encourages states to issue statutes to accord agricultural employees associational and collective bargaining rights as is the case in California.

32. Concerning domestic workers protection, the Department of State provides specific safeguards. The Special Rapporteur welcomes the obligation on foreign diplomatic mission and international organization personnel who employ a domestic worker to a written contract, which includes that the minimum wage and the working hours and prohibits deductions from wages for lodging, medical insurance, travel, or meals.

33. There are also encouraging developments regarding state laws to counter trafficking for labour exploitation such as the California Transparency in Supply Chains Act, which requires companies to report on their actions to eradicate slavery and human trafficking in their supply chains. Yet, inconsistent disclosure of information and lack of appropriate sanctions, amongst others[[20]](#footnote-21) pose implementation challenges.

 2. Policy framework

34. The Federal Strategic Action Plan on Services for Victims of Human Trafficking 2013-2017 aims to strengthen coordination and capacity of governmental and non-governmental entities. [[21]](#footnote-22)

35. In support of the Government’s zero tolerance policy on trafficking in persons by federal contractors and subcontractors, the Federal Acquisition Regulations (FRA) require all Government contracts to prohibit federal contractors and subcontractors from engaging in severe forms of trafficking in persons. In 2012, President Obama’s Executive Order on “Strengthening Protections Against Trafficking In Persons In Federal Contracts”, prohibited amongst others, contractors and subcontractors from using misleading or fraudulent recruitment practices, charging employees recruitment fees, and confiscating or otherwise denying an employee access to his/her identity documents. In compliance with this, the Department of Defence ensures that employees and contractors who facilitate or support trafficking in persons face consequences, even if such activities may be legal within the host country. The National Strategy for Child Exploitation, Prevention and Interdiction and the National Action Plan on Responsible Business Conduct adopted in 2016, further strengthen the anti-trafficking policy framework.

36. Yet, more effort to strengthen policy coherence between anti-trafficking and labour policies is necessary to tackle labour trafficking more effectively. In addition, the country’s immigration policy based on the criminalization of irregular migrants, which may include victims of trafficking, has unintended impacts on the prevalence of trafficking (see subsection B).

 3. Institutional framework

37. In order to coordinate anti-trafficking initiatives, a number of task forces have been put in place by various entities. At the federal level, the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group coordinate the efforts of 15 federal departments and agencies to address human trafficking. The US Advisory Council on Human Trafficking, composed of 11 survivor leaders, also provides the federal Government with experience-based advice and recommendations.

38. At the State and local levels, the Special Rapporteur discussed strategies implemented by San Francisco Mayor’s Task Force on Anti-Human Trafficking and the Houston Mayor Special Advisor on Human Trafficking.

39. She commends the efforts of authorities at the federal, state and local levels to adopt new legislation, refine internal regulations and set up task forces all of which demonstrate that anti-trafficking efforts are a long standing commitment in the country.  The interaction between government authorities and the vibrant CSOs engaged in combating trafficking is praiseworthy. However coordination between government bodies at the Federal, States and local levels remains a challenge, partly owing to the differences in state and federal legislation, the varying level of commitment of each institution to the issue of trafficking, their understanding of trafficking, the potential redundancy and overlap of their actions.

 D. Identification of trafficked persons

40. The Anti-trafficking Coordination Team Initiative (ACTeam) coordinated by the Department of Justice’s Human Trafficking Prosecution Unit, the Federal Bureau of Investigations, the Labour Department and the Department of Homeland Security’s Immigration and Customs Enforcement, the Department of State’s Diplomatic Security, and the Department of Health and Human Services are, amongst others, responsible for identifying trafficked persons.

41. Trafficked persons are also detected through a national human trafficking toll-free hotline funded by the Department of Health and Human Services that operates 24 hours a day, seven days a week in over 200 languages. Other useful hotlines include the National Center for Missing & Exploited Children’s hotline for reporting crimes against children including child prostitution; the Department of Labour’s Wage and Hour Division and the Office of Inspector General hotlines for complaints on labour issues; and the Department of Defence’s hotline for identifying and reporting suspected fraud, waste and mismanagement, including trafficking in the Department’s programs and operation. In addition, victims are identified by CSOs some of whom are funded by the Department of Justice and Department of Health and Human Services.

 1. Trafficking for sexual exploitation

42. At the state level, individuals engaged in prostitution/sex work can be arrested on prostitution-related charges. This provides police with the ability to conduct raids which may at time allow for the identification victims of human trafficking. However, these prostitution-related arrests may have unintended negative consequences on potential victims of sex trafficking. Lack of confidence on law enforcement, fear of arrest, prosecution or deportation are some of the obstacles that increase their insecurity and force them to work underground in dangerous environments; which in turn renders their identification as victims of trafficking more difficult. In this regard, the expert welcomes the stance taken by the sex work and trafficking impact committee of the San Francisco Mayor’s anti-trafficking task force. She believes that a human rights-based approach to trafficking, which necessarily includes the de-criminalisation of the selling of sexual commercial services, is necessary to allow individuals to report their situation without fear.

43. In addition to law enforcement officials, local community-based organisations, health services and child welfare and protection services assist in victim identification. The judiciary has also a role in the identification of trafficked persons. In this regard the expert welcomes the protocol issued by the Executive Office for Immigration Review of the Department of Justice to identify trafficking victims appearing before immigration courts. She stresses the need for its implementation across the country.

 2. Trafficking for labour exploitation

44. Wage and Hour Division officials of the Department of Labour conduct labour inspections to administer and enforce federal labour laws. The Special Rapporteur was informed that the agriculture, construction and hospitality industries are predominantly vulnerable to labour trafficking. The Department of Defence also seeks to identify human trafficking in both its domestic and international operating environments, including in its own supply chain.

45. However, victims fear that reporting human rights abuses will result in employment loss, deportation or physical violence by their exploiters and thus remain unidentified. According to the Department of Agriculture some victims, particularly migrant workers opt not to report such violations for fear of having their future visa applications denied. Migrant workers’ rights may also be violated by multiple actors who are motivated by perverse incentives that often converge to the detriment of migrant workers, including private sector employers, recruitment agencies, union-busting firms, Immigration and Customs Enforcement Agency, local police forces and sheriffs’ offices, and private detention facilities.[[22]](#footnote-23) Migrant workers, especially those working in remote areas and those in irregular migration situation are also vulnerable and isolated as they face additional challenges in understanding domestic laws and connecting with local networks and services.

 3. Trafficking for domestic servitude

46. With regards to the identification of trafficked domestic workers, besides self-reporting or reporting by a third party, the annual requirement for migrant domestic workers employed by diplomatic mission and international organisation personnel in Washington DC to physically register, without the presence of their employer is a good opportunity for authorities to inform workers of their rights and how to seek help, review their working conditions and identify possible trafficking situations.

 4. Trafficking of children

47. All unaccompanied migrant children from non-contiguous countries are referred to the Department of Health and Human Services’ Office of Refugee Resettlement (ORR) for temporary placement. For those from contiguous countries (Mexico and Canada), the authorities can allow a child to withdraw his or her application to enter the United States and return home, but only after a screening has taken place to ensure they will not be returned to harm and have not been victims of human trafficking. Such screening by the Customs and Border Protection (CBP), which has a law enforcement approach, may intimidate potential child victims. Where victims are not adequately identified, they will be returned home with heightened risk of re-victimisation.

48. Generally, there is concern that the number of trafficked persons identified and supported is still low compared to the estimated dimension of trafficking in the country. Moreover, the disproportionate number of identified sex trafficking cases as opposed to trafficking for labour exploitation, due to their apparent ease of detection, makes it essential to prioritize the identification of labour trafficking victims.

 E. Protection

 1. Services provided to victims

49. The Federal Government provides funding to government and non-governmental entities serving victims and trafficking survivors related to case management, medical and dental care, mental health and substance abuse treatment, shelter, translation and interpretation services, immigration and legal assistance, employment and training, transportation assistance, and other recovery services. In 2015, a 50 percent increase in new beneficiaries compared with beneficiaries served by grantees in 2014 was noted by the Department of Justice’s Office for Victims of Crime which administers grant funding to support trafficking victims.[[23]](#footnote-24) The Special Rapporteur welcomes this increase as well as the announcement by the Department of Justice (DOJ) in March 2016 that cooperation with law enforcement would no longer be an eligibility requirement (with the option to be waived) for accessing DOJ-funded victim services.[[24]](#footnote-25) The provision of assistance to trafficked persons should be unconditional to their participation in criminal proceedings.

50. The expert notes that more resources are needed to provide victims with adequate legal counsel and representation in criminal proceedings. Additionally, she encourages the authorities to adopt a more human rights-centred approach to ensure further protection from harm and provision of tailored assistance that meets victims individual needs. Survivors who manage to escape from their traffickers face heightened risk and vulnerability. Providing victims with effective protection, helps to further establish a relationship of confidence between law enforcement officials and survivors who may be more inclined to assist in criminal proceedings.

51. She expresses serious concerns at the limited number of temporary shelters and long-term housing services for identified victims. Placement into ORR shelters for unaccompanied children must occur within 72 hours of apprehension. However, accounts of children kept in detention centres because of lack of sufficient safe shelters in the country were brought to her attention. The situation of male victims for whom no shelter exists is also of concern, despite provisions in the 2005 and 2008 revisions of the TVPA allowing for the creation of such facilities.

52. Finally, the expert commends the role of CSOs for providing protection and assistance to victims of trafficking. Insufficient or irregular government funding however remains a barrier for victims rehabilitation, particularly those that are underserved such as youth, male, and transgender victims.

 2. Non-criminalisation of trafficked persons

53. Trafficking victims require protection for offences committed as a result of having been trafficked. Federal anti-trafficking law recognizes that minors under the age of 18 who engage in prostitution/sex work are likely to be victims of sex trafficking and are thus entitled to receive protection. However, States are not bound to follow it. This can result in inconsistencies between federal and some state laws on the age of majority, (which is less than 18) in some States.[[25]](#footnote-26) This inconsistency poses a challenge for the identification and protection of trafficked children who may not readily self-identify as victims, including because their trafficking may involve romantic or familial relationships. The criminalisation and detention of trafficked girls and boys with juveniles who have committed crimes, instead of receiving the medical, legal and social assistance their status as victims of a crime requires, is against the best interest of the child, and can never be considered a means of protection.

54. The Special Rapporteur welcomes states that have adopted “vacatur laws” which allow victims to expunge criminal convictions records against them for crimes committed as a result of their status of trafficked persons. She cautions that criminal records are indeed challenges that hinder survivors’ ability to obtain services, including housing.

 F. Investigation, prosecution and punishment

55. Investigation for human trafficking offences is conducted through a collaborative, multi-agency approach between federal, state, local, and tribal law enforcement agencies. The Department of Homeland Security, and particularly the Immigration and Customs Enforcement (ICE) Homeland Security Investigation, investigates cross-border crimes, including sex and labour trafficking of adults and children. In 2016, 1,025 trafficking cases were opened and 435 victims of trafficking were identified by the department.[[26]](#footnote-27)

56. The DOJ also investigates and prosecutes human trafficking crimes, through its Civil Rights Division, Criminal Division, U.S. Attorneys' Offices and Federal Bureau of Investigation (FBI). More specifically, the FBI is responsible for investigating human trafficking and supporting the victims of this crime through its Civil Rights Unit, the Violent Crimes Against Children Program, and the Office for Victim Assistance. In 2016, joint investigative efforts of the FBI’s human trafficking programs resulted in the initiation of over 1,800 trafficking investigations and the arrests of nearly 2,600 individuals for sex and labor trafficking offences by federal, state, and local law enforcement task force officers.[[27]](#footnote-28) While in 2015, 802 human trafficking investigations were opened by the Department of Justice in addition to the 1,011 investigations separately initiated by the Enhanced Collaborative Model anti-trafficking task forces of the Department. 175 human trafficking-related cases were also opened worldwide by the Department of State in 2015, and at least 10 human trafficking-related cases involving U.S. military personnel were investigated by the Department of Defence.[[28]](#footnote-29) Moreover, the Department of Labor’s Wage and Hour Division enforces federal labor laws and undertakes on-site investigations of industries where the potential for trafficking is high, while the Department of State’s bureau of Diplomatic Security examines trafficking cases involving visa and passport fraud.

57. A number of factors hamper the effective and swift investigation of trafficking cases, including limited coordination among enforcement agencies at the federal, state local levels, the varying levels of resources, skills and commitment to handle cases of trafficking. Moreover, the disproportionate focus on investigation of human trafficking cases for sexual exploitation in comparison to labour exploitation has been brought to the Special Rapporteur’s attention.

58. In terms of prosecution, 241 human trafficking prosecutions were initiated charging 531 and convicting 439 defendants in 2016.[[29]](#footnote-30) Out of the prosecutions initiated in 2015, only 2 percent involved labor trafficking.[[30]](#footnote-31) Penalties imposed on convicted traffickers ranges from five years to life imprisonment.

59. The Special Rapporteur acknowledges the positive measures taken to prosecute cases of human trafficking. She notes with satisfaction the marked increase in prosecution in Atlanta, El Paso, Kansas City, Los Angeles, Memphis, and Miami since the launching of the Anti-Trafficking Coordination Team (ACTeam) Initiative which brings together federal agents and prosecutors to implement a joint strategic action plan focused on investigating and prosecuting trafficking for sexual and labour exploitation. She also welcomes the role of specialized units in the District attorneys’ offices comprised of trained and dedicated law enforcement staff to deal with the crime of trafficking in persons in the state of New York. She notes however that many victims first come into contact with police officers and justice officials who do not have the same level of training and may thus treat victims as offenders. She encourages the authorities to ensure law enforcement officials at all levels are trained on how to identify, engage and support victims of human trafficking. The Department of Defence also prosecuted trafficking cases involving military members and civilian employees in both its domestic and international operating environments, including in its own supply chain. The expert regrets that only one trafficking case has been brought to the attention of the authorities over the past eight years.

60. In addition, the recently established Human Trafficking Initiative Court in New York makes it possible to dismiss criminal cases on grounds of prostitution and clear concerned individuals’ criminal records. 9,000 cases have been examined by 11 courts since its establishment in 2013. However, cases can only be brought to the Court as a consequence of an arrest for prostitution/sex work rather than on the basis of a complaint or a report.

61. There is also inconsistent application of the non–punishment principle which states that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.[[31]](#footnote-32) Minor children under the age of 18 are prosecuted for criminal activities in the absence of state safe harbour laws. Those who engage in prostitution/sex work, especially women, girls and LGBTI among whom are potential victims of trafficking are arrested and convicted for prostitution related charges. She regrets that not all vacatur laws apply to adults, nor to other forms of trafficking such as trafficking for labour exploitation.

62. Other reasons for low prosecution rates include uncertainty of some state and local law enforcement regarding their authority over forced labour cases, lengthy human trafficking trials, limited legal assistance and information on the case, diplomatic immunity of perpetrators, the inability of victims to work while in shelters, fear of reprisal when reporting traffickers and deportation as a result of not being aware of existing remedies (see section G) all of which further discourage victims of trafficking from identifying themselves as such and collaborating with authorities.

 G. Redress

63. Compensation and restitution are an integral part of effective remedies for victims of trafficking under international law and standards. In addition to any other civil or criminal penalties, the TVPA’s mandatory restitution entitles trafficking victims to receive compensation for their personal loss and for the economic value of their services either from their traffickers or the Domestic Trafficking Victims’ Fund.[[32]](#footnote-33) Federal prosecutors are required to seek restitution on behalf of victims of trafficking. The Department of Labor has also the authority to recover up to triple the amount of unpaid wages for trafficked persons.

64. In practice, restitution is infrequently awarded in trafficking cases, especially in cases relating to sexual exploitation because the victim has waived his/her right to obtain restitution, has not cooperated with law enforcement, the defendants are insolvent or other factors. Out of 306 indictments of federal trafficking cases from 2009-2012, restitution was awarded in only 36 percent of cases. Out of these, in sex trafficking cases, restitution was requested in 61 percent of indictments out of which 44 percent requests were granted. While out of 87 percent monetary restitution requested in labor trafficking cases, restitution was granted 93 percent of the time.[[33]](#footnote-34) What is of further concern is that child sex trafficking victims are least likely to see their restitution rights vindicated in federal courts or to pursue civil damages claims against their traffickers.[[34]](#footnote-35)

65. Permanent or temporary residence in itself may be a necessary and appropriate form of remedy. In this regard, the Special Rapporteur acknowledges the 3 forms of immigration relief available to victims of trafficking.1) The T non-immigrant status (T visa) which provides immigration protection to victims of severe forms of trafficking who would suffer extreme hardship involving unusual and severe harm upon removal, who reasonably assist law enforcement in the investigation and prosecution of human trafficking cases, or those who are unable to cooperate due to physical or psychological trauma, or are under 18 years old. T visa is obtained through an application and a law enforcement certification on the applicant’s status as a victim of trafficking that could also be replaced by the applicant’s statement. Its benefits include employment authorization, possibility of adjusting status to Lawful Permanent Resident; and ability of certain family members to obtain non-immigrant status as T visa derivatives. Out of the maximum 5,000 T visas allocated per year (besides the derivative T visas for the reunification of family members of victims), respectively 843, 613 and 610 T-visas were granted from 2013 to 2015.[[35]](#footnote-36) 2) The U non-immigrant status (U visa) which requires laws enforcement certification is available for victims of qualifying criminal activity, including human trafficking and fraud in migrant labor contracting. It allows the victims to remain in the country for up to 4 years which may be extended under certain circumstances, so they can assist with the investigation or prosecution of human trafficking or qualifying crimes, respectively. From 2013 to 2015, respectively 41, 26 and 29 U-visas were granted to trafficking victims.[[36]](#footnote-37) 3) The Continued Presence (CP) is a temporary immigration status that allows trafficking victims to remain in the United States during the investigation of the crime committed against them. This renewable two-year status provides stability for non-citizen trafficking victims while alleviating administrative burdens on victims, service providers, and the government. From 2013 to 2015, Continued Presence was respectively granted to 87, 72 and 173 trafficking victims. [[37]](#footnote-38) The Special Rapporteur commends these immigration reliefs but notes the low number of beneficiaries compared to the estimated number of trafficked persons.

66. Presently, post-conviction relief to ensure trafficking victims do not have criminal records due to immigration or other offences is inadequate. Some states have “vacatur” or expungement laws which provide for the criminal conviction committed as a result of the status of the victims of trafficking to be expunged. According to CSOs, gaps include provision of relief only for minors; limited types of offences that can be vacated, often prostitution-related offences; and burdensome proof of trafficking. Moreover, some of these laws fall short of providing full remedies to trafficked persons, for instance by sealing criminal records rather than vacating convictions. As a result, victims may find it difficult to find employment, housing, bank loan or education due to the discrimination and stigma that accompany criminal convictions. Given recent legal developments that call for prioritizing removal of migrants who have been convicted of “any” criminal offence, there is a need to expunge status related crimes committed by trafficked persons to prevent re-trafficking following repatriation.

67. Finally, the capacity of practitioners to correctly identify between cases of trafficking, particularly related to labour exploitation also affects the type of redress awarded to victims. Survivors of trafficking noted delays in processing their immigration application affects their access to federal benefits. They also shared how the lack of access to employment while waiting for redress affected their morals and hopes for a prompt recovery and social inclusion.

 H. Repatriation and reintegration

68. The reintegration of stateless victims of trafficking is one of the activities of the Presidential Task Force (TVPA 2000 section 105(d)(4)). The safe repatriation and reintegration of unaccompanied migrant children to their country of origin or of last residence, including placement with their families, legal guardians, or other sponsoring agencies is also envisaged under the 2008 revision of TVPA (section 235(5)(a)).

69. Legal assistance to enable trafficking survivors to bring their eligible family members who have been granted derivative visas is often demanded, though it is not always available due to limited resources. The Return, Reintegration, and Family Reunification Program for Victims of Trafficking operated by the International Organisation for Migration (IOM) and funded by the Department of State provides them with financial and logistical support including pre-departure assistance, travel arrangements and documentation, airport assistance and special escorts for unaccompanied children.  Since the program began in 2005, some 1,900 eligible family members legally joined over 800 trafficking survivors in the United States.[[38]](#footnote-39)

70. Under the same program, 30 survivors have been returned home voluntarily and benefited from reintegration assistance provided by IOM and NGOs to prevent the likelihood of re-trafficking in the country of origin.[[39]](#footnote-40) Further assistance to victims through programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, is provided by the Department of State and the United States Agency for International Development, in consultation with appropriate nongovernmental organizations (TVPA 2000, Section 107(a)(1)).

 I. Prevention

 1. Public awareness

71. Extensive awareness raising measures are undertaken by authorities at the Federal, State and local levels, as well as by CSOs and businesses to prevent human trafficking, often developed in cooperation with trafficking survivors. These include the Department of Homeland Security’s nationwide human trafficking awareness Blue Campaign for front-line responders; the Department of Justice’s guidance to immigration judges with respect, notably, to immigration court cases involving unaccompanied migrant children; the Department of Health and Human Services’ continued awareness raising campaigns and training for health professionals; the Department of Education’s efforts to integrate trafficking information into school curricula; the Department of Agriculture and the Department of Health and Human Services’ initiative to raise awareness for food and agricultural industries in rural communities; the Department of Defence’s training for all its personnel, including troops prior to their deployment; and the Department of Transportation and the Department of Homeland and Security’s human trafficking trainings for airline personnel through the Blue Lightning Initiative.

72. Furthermore, the “Know your rights” pamphlet delivered to temporary workers at US embassies to identify trafficking victims has been praised by trafficking survivors, which should encourage the authorities to continue to translate it into numerous languages and to share it widely with every individual entering the country, regardless of the type of visa held. Through its List of Products Produced by Forced or Indentured Child Labor, Findings on the Worst Forms of Child Labor, Sweat & Toil App, and its Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses, the Department of Labor raises awareness about trafficking in persons around the world and promotes efforts to combat. It also manages grant projects on combatting trafficking in many countries. USAID’s Supply Unchained initiative seeks to address the risks of human trafficking in global supply chains and business operations.

73. While the Special Rapporteur acknowledges these efforts, she notes gaps in knowledge and awareness of practitioners on all forms of trafficking particularly for labour exploitation. She also underscores the importance of addressing the root causes and demand of trafficking as a prevention strategy, which, in the context of the US, includes demand for exploitative labour and sex. Moreover, despite the commendable efforts by individual agencies to collect data on human trafficking including through the Human Trafficking reporting system (Office of Justice Program), the Uniform Crime Reporting Program (FBI), prosecution databases (US Attorney Office and DOJ prosecution units) the lack of comprehensive and centralised statistics with common indicators and disaggregated information remains a challenge to have an overview of the prevalence of trafficking in persons, and consequently to adopt counter trafficking initiatives, including targeted prevention action.

 2. Safe migration

74. Current immigration practices focus on the criminalization, return, or banning of certain nationals from entering the country rather than protecting irregular migrants - adults and children - among whom are potential victims of trafficking (see section B). In this regard, the Special Rapporteur wishes to reiterate that more opportunities for safe migration, i.e., legal, gainful and non-exploitative, are needed if the United States is to effectively address the demand for cheap and exploitable labour and fulfil its obligations to respect, protect and promote the rights of all workers including migrants, and prevent trafficking in persons.

 3. Cooperation with private sector

75. Globally, the prevention of trafficking through public-private partnerships is gaining ground. Through self-regulatory mechanisms such as codes of conduct or adherence to multi-stakeholder initiatives and industry coalition efforts that address sustainability concerns, including elimination of trafficking in persons from businesses’ operations and supply chains, businesses have taken steps to, inter alia, remove labour trafficking from their supply chains.

76. The Special Rapporteur was pleased to learn about the Government’s zero-tolerance policy against trafficking in persons for labour exploitation in Federal contracts. In this regard, she notes that suppliers do not seem to be always aware of their responsibilities. She advises and further notes that labour attachés in US embassies to play a role to ensure that the Federal Acquisitions Regulations and other pertinent anti-trafficking laws are implemented in practice.

77. She welcomes the California Transparency in Supply Chains Act, which requires companies to report on their actions to eradicate slavery and human trafficking from their supply chains; the first National Action Plan (2016) to promote and incentivize responsible business conduct to further address labor exploitation; and USAID’s Counter-Trafficking Code of Conduct which is implemented through its Persons Standard Operating Procedure to address trafficking risks amongst its employees, grantees grants or contractors.

78. Anti-trafficking initiatives by businesses in the electronic industry with whom she exchanged are also encouraging. Preventing trafficking for the purposes of labour exploitation and other exploitation being used in national, international and multinational businesses should be the aspiration of all ethical business in the US. In her meeting with representatives of the business sector, she was apprised about various multi-stakeholders initiatives to identify victims of labour trafficking. This includes a code of conduct that addresses forced labour in the supply chains established by the Electronic Industry Citizenship Coalition in cooperation with Vérité (NGO). She salutes this praiseworthy initiative and encourages federal authorities to support efforts of the private sector, including by strengthening social auditing and enhancing workers’ voices through adequate grievance and feedback mechanisms to monitor businesses’ compliance with trafficking in persons standards. (A/HRC/35/37)

 J. Cooperation and partnership

 1. National Cooperation

79. The Federal Strategic Action Plan on Services for Victims of Human Trafficking (2013-2017) aspires, inter alia, to foster collaborations and partnerships to enhance the community response to human trafficking by developing networks to expand access to services. The President’s Interagency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group coordinate efforts at the federal level. Other inter-agency cooperation at the federal, state and local levels include The Anti-Trafficking Coordination Teams (ACTeam), the Mayor’s Human Trafficking Task Force and the first Native American and Native Alaskan Human Trafficking Task Force. However, coordination among Federal, State and local level agencies is often uneasy and at times, hinders effective anti-trafficking actions.

80. Integrating anti-trafficking actions into broader strategies related to the protection of indigenous people’s rights, poverty eradication and access to justice for all is also important. In this regard, the collaborative efforts of the Department of Interior and the North Dakota tribal authorities to address violence against women and children, including through the adoption of the 2016 North Dakota Century Code is noteworthy. The Special Rapporteur further encourages the Department of Interior to continue its prevention and outreach work by identifying and addressing factors that make Native Americans and Alaskans vulnerable to trafficking in persons.

81. The contribution of and collaboration with CSOs and service providers is impressive and crucial in the fight against human trafficking. In this regard, civil society’s efforts to address labor trafficking, such as the Coalition of Immokalee Workers through its Fair Food Program which empowers farmworkers in Florida is commendable. The Special Rapporteur reiterates the need for sustained government support and funding to enable service providers to continue combatting trafficking in collaboration with the government that was stressed on in all her exchanges with CSOs.

 2. International, regional and bilateral cooperation

82. The United States has concluded several bilateral memorandums of understanding on combating transnational organized crime, including trafficking with Australia, Canada, Cuba, Taiwan, Mexico, Interpol and Europol. It also benefits from cooperation with the United Nations, international and regional organizations in areas such as training, assistance to victims of trafficking and repatriation.

83. At the international level, the leadership of the United States in convening anti-trafficking events is noticeable, such as the first Security Council meeting on human trafficking in situations of conflict during its presidency of the United Nations Security Council in December 2015. The Department of State’s Office to Monitor and Combat Trafficking in Persons which undertakes unilateral annual assessment of the trafficking situation in States worldwide is also a useful tool to promote and share good practices amongst States. Moreover, the Department of Labor’s reporting, including its List of Goods Produced by Child Labor or Forced Labor and foreign aid restrictions to dissuade countries that are willfully noncompliant with anti-trafficking standards are further tools used by the country to counter trafficking at the global level.

 III. Conclusions and recommendations

 A. Conclusions

**84. The Special Rapporteur commends the strong and long standing commitment of the United States to fight trafficking in persons, as reflected in the adoption of the Trafficking of Victims and Violence Protection Act that has been revised four times to address emerging forms of trafficking in persons and to strengthen victim protection; and the multidisciplinary approach to anti-trafficking measures, which involves remarkable efforts of government agencies, CSOs, businesses and trafficking survivors. Efforts to raise awareness, as means of preventing trafficking are also yielding fruits. She encourages the United States to continue and further strengthen anti-trafficking efforts at the federal, State and local levels, and continue to champion anti-trafficking action worldwide.**

**85. Issues to be further addressed in the country include the demand for cheap and unregulated labour, restrictive migration policies, and capacity gaps which hinder accurate identification and provision of assistance to victims of trafficking, especially for the purpose of labour exploitation. While efforts are made to address all forms of trafficking, at the operational level identification remain largely focused on trafficking for sexual exploitation, while the results in the field of trafficking for labour exploitation and other forms of trafficking are still limited. The current approach to migration policies and management, including the detention of irregular migrants, the temporary placement, detention and return of unaccompanied migrant children, and the temporary, non-immigrant visas tying migrants to single employers create vulnerabilities to human trafficking including re-trafficking. The absence of “vacatur” and “safe harbour” laws in some states as well as the criminalisation of prostitution also contribute to create vulnerabilities to human trafficking. Economic inequalities and social exclusion, discrimination and insufficient labour protections contribute to a favourable environment for traffickers in the country.**

**86. Despite federal funding and the commendable contribution of CSOs towards the provision of assistance and protection to victims of trafficking, serious concerns regarding the insufficient funding, services, facilities for trafficking survivors, especially children and men, remain.**

**87. Further remaining challenges are related to coordination among federal, state and local level authorities to counter trafficking. Moreover, the dearth of data on trafficking inhibits the understanding of the extent and prevalence of trafficking in the country.**

 B. Recommendations

**88. On the basis of the above findings, and in the spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to build on the efforts of the previous administration and on the traditionally bi-partisan counter-trafficking approach developed in the Congress, to address remaining gaps:**

**a) Ratify without delay the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;**

**b) Ratify, without delay, ILO Forced Labour Convention, 1930 (No. 29) its 2014 Labour Protocol, and ILO Domestic Workers Convention, 2011 (No. 189);**

**c) Ratify, without delay, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto;**

**d) Strengthen cooperation with international human rights mechanisms in the field of trafficking in persons, including the mandate of the Special Rapporteur on trafficking in persons, especially women and children;**

**e) Maintain cooperation and coordination with bilateral, international and regional law enforcement and victim services partners;**

**f) Support international efforts for greater accountability of the business sector in the field of human rights.**

**89. With respect to the national framework, she recommends that the Government:**

**a) Harmonise, and strengthen robust laws protecting workers to enjoy fair terms of employment, including by increasing the minimum wage, strengthening paid and sick leave, ensuring access to affordable medical care, ensuring the formation of unions in all sectors, prohibiting child labour, providing adequate recourse against illegal behaviour and effective oversight of labour conditions in temporary visa programs; eliminate fees;**

**b) Ensure that all anti-trafficking initiatives and actions are human rights-based, victim centred, focus on best interests of the child and encompass survivors inputs. Include trafficking for the purpose of the removal of organs in anti-trafficking regulations , programmes and activities;**

**c) Ensure that migrant workers with temporary, non-immigrant visas are free to leave or change employment or return to their country of origin;**

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**d) Ensure access to justice for indigenous women and men victims of human trafficking, including by ensuring that traditional justice models are adequately supported and empowered:**

**90. With regards to identification, training and capacity-building, she recommends that the Government:**

**a) Harmonize identification protocols to detect all forms of trafficking in persons, developing red flags and indicators to be used when screening vulnerable persons, including undocumented migrants and victims of labour trafficking;**

**b) Monitor visa requests from employers to ensure they do not misclassify visa programmes to avoid providing workers with minimum labour protections;**

**c) Ensure that victims of trafficking, particularly unaccompanied migrant children, can be accurately identified, avoid their repatriation and re-victimization; ban detention of children on immigration grounds.**

**d) Continue providing comprehensive training on trafficking in persons to enhance the knowledge and awareness of human trafficking of all stakeholders, including law enforcement, border and immigration officials, child welfare agencies, federal victim assistance staff, labour law enforcement, judges, prosecutors, lawyers.**

**91. With respect to support services for victims of trafficking:**

**a) Unconditionally protect and support all victims of trafficking, including child victims, LGBTI, native Americans, victims of labour trafficking and domestic servitude with full respect for their human rights;**

**b) Provide individualised services, including long and short term housing to all trafficked persons, including children and men; ensure victims have access to employment while awaiting decisions on immigration relief;**

**c) Prevent undue delay in processing of immigration relief for migrant victims of trafficking, facilitate access to legal representation and consider increasing grantees of available immigration relief;**

**d) Provide adequate and regular funding to service providers and organizations working on trafficking in persons to provide comprehensive assistance for victims of trafficking;**

**e) Maintain close cooperation with international and regional organizations, particularly the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees as well as diplomatic missions for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, for international protection of the victims and the application of the principle of non-refoulement;**

**f) Increase coordination between government bodies at Federal, National and State levels, as well as with CSOs to avoid redundancy and overlap of anti-trafficking efforts;**

**g) Use existing resources and innovative ways to identify victims, such as the Federal Department of Agriculture’s presence in all states and labour attachés in US Embassies to ensure implementation of anti-trafficking laws as the Federal Acquisition Regulations.**

**92. With respect to prosecution, the Special Rapporteur recommends that the Government:**

**a) Encourage State and local authorities to extend access to the Human Trafficking Initiative Courts on the basis of complaints of all trafficked persons (not only those charged for sex work);**

**b) Ensure the systematic implementation of the non–punishment principle so that trafficked persons are not prosecuted for offenses they are involved in as a direct result of their situation as trafficked persons;**

**c) Decriminalise the selling of commercial sexual services, and at least use police and prosecutorial discretion not to arrest, prosecute and detain persons involved in prostitution/sex work, also in order to encourage them to report trafficking and exploitation.**

**d) Encourage state authorities to raise the minimum age of criminal responsibility in some states and ensure that children under 18 are immune from prosecution for prostitution/sex work, and other non-commercial and non-violent offenses committed as a result of being subjected to trafficking. Extend this immunity to cover all forms of trafficking of children.**

**e) Adopt federal legislation, and encourage state authorities to adopt or amend existing state legislation to allow trafficked persons to vacate all convictions that result from being subjected to trafficking, including avoiding criminalisation of migrant trafficked persons under Executive Order on “Border Security and Immigration Enforcement Improvements” 2017;**

**f) Increase investigation and prosecution of cases involving labor trafficking cases, including in the hospitality, agriculture, and construction industries and in respect to domestic workers by also seeking waiver of diplomatic immunity were relevant;**

**g) Provide effective remedies to trafficked persons. Ensure that, as required by the TVPA and other statutes, mandatory restitution is requested by prosecutors and enforced by judges for all trafficking victims, particularly child victims of sex trafficking;**

**h) Increase collaboration with governmental and non-governmental partners, including financial institutions, to enhance financial investigations and enforcement actions, including asset seizure.**

**93. With respect to prevention, the Special Rapporteur recommends that the Government:**

**a) Continue improving efforts to raise awareness about all forms of trafficking in persons, including for forced labour, sexual exploitation and domestic servitude, in order to promote understanding of what constitutes trafficking among the general population, the migrant community, employers and employment agencies;**

**b) Prioritise efforts to design strategies aimed at addressing root causes of trafficking, including poverty and economic inequality, gender and other minorities discrimination, inadequate labour protections and restrictive immigration policies;**

**c) Continue efforts to determine prevalence of trafficking by developing and implementing a comprehensive and systematic data collection system on human trafficking at federal, state, and local levels such as the one envisaged under the Coordinated Assistance To Catch Human Traffickers Act;**

**d) Further strengthen coordination between government officials and the private sector, particularly in the tourism sector, internet and telecommunication, service providers, banks, trade unions and media to identify trafficking in persons, disseminate information, share best practices, and ensure redress for trafficked persons;**

**e) Support efforts of businesses to prevent and combat trafficking especially in supply chains by sensitizing and providing incentives for companies to adopt and implement self-regulatory mechanisms; adopt and strengthen existing state legislation such as the California transparency in supply chains act.**

1. \* The present report was submitted after the deadline in order to reflect the most recent developments. [↑](#footnote-ref-2)
2. \*\* Circulated in language of submission only. [↑](#footnote-ref-3)
3. Mayor’s taskforce on anti-human trafficking, Human trafficking report in San Francisco, 2016, p41 [↑](#footnote-ref-4)
4. Polaris, Hotline statistics (2016), [↑](#footnote-ref-5)
5. Ibid. [↑](#footnote-ref-6)
6. Ibid [↑](#footnote-ref-7)
7. Ibid. [↑](#footnote-ref-8)
8. Women Spirit Coalition, Sex trafficking http://www.womenspirit.net/sex-trafficking/ [↑](#footnote-ref-9)
9. Special Rapporteur on the rights of indigenous people , Preliminary finding of visit to US (2017) [↑](#footnote-ref-10)
10. Polaris, Hotline statistics (2016) [↑](#footnote-ref-11)
11. Labor Trafficking cases in the US reported to the National Hotline and Polaris’s BeFree Textline from 1/8/2014 - 31/7/2015 - Polaris; A Closer Look at Temporary Work Visas [↑](#footnote-ref-12)
12. Cases reported from 8/1/2014 - 7/31/2015- Polaris; Temporary visas [↑](#footnote-ref-13)
13. Economic Policy Institute Briefing Paper: Low Wages and Scant Benefits leave Many In-Home Workers Unable to Make Ends Meet, (2013), P.4,23 [↑](#footnote-ref-14)
14. National Domestic Workers Alliance. Home Economics: The Invisible and Unregulated World of Domestic Work (2012) [↑](#footnote-ref-15)
15. Polaris, Labor Trafficking in the U.S: A Closer Look at Temporary Work Visas [↑](#footnote-ref-16)
16. Human trafficking pro bono legal center: trafficking of persons with disabilities (2016) [↑](#footnote-ref-17)
17. For reasons related to the internal deadline for processing of this report, information on this post-visit development is gathered until March 15, 2017, despite ongoing developments. [↑](#footnote-ref-18)
18. 18 USC 1589 and 18 USC 1591 [↑](#footnote-ref-19)
19. https://www.healthcare.gov/immigrants/lawfully-present-immigrants/ [↑](#footnote-ref-20)
20. A/HRC/35/37 [↑](#footnote-ref-21)
21. https://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf [↑](#footnote-ref-22)
22. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20317&LangID=E [↑](#footnote-ref-23)
23. National Association of Adult Survivors of Child Abuse; Child abuse trauma prevention, intervention & recovery (2016) [↑](#footnote-ref-24)
24. Ibid. [↑](#footnote-ref-25)
25. Criminal majority of juveniles per State: http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx [↑](#footnote-ref-26)
26. White House fact sheet: Building a Lasting Effort to End Modern Slavery (2016) [↑](#footnote-ref-27)
27. National Strategy to Combat Human Trafficking (2017) [↑](#footnote-ref-28)
28. Department of State; Trafficking in Persons Report (2016) [↑](#footnote-ref-29)
29. White House, Fact sheet: Building a Lasting Effort to End Modern Slavery (2016) [↑](#footnote-ref-30)
30. Department of State; Trafficking in Persons Report (2016) [↑](#footnote-ref-31)
31. OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking [↑](#footnote-ref-32)
32. Trafficking Victims Protection Act (2000), 18 USC §1593 and §2259, Justice for Victims of Trafficking Act (2015) [↑](#footnote-ref-33)
33. Human Trafficking Pro Bono Legal Center and Wilmer Hale, When “Mandatory” Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking in the US (2014) [↑](#footnote-ref-34)
34. Alexandra F. Levy and Martina E. Vandenberg, Breaking the Law: The Failure to Award Mandatory Criminal Restitution to Victims in Sex Trafficking Cases, Saint Louis University Law Journal, Vol. 60 (2015) [↑](#footnote-ref-35)
35. US Government Accountability Office, Report to Congressional Committees (2016), p.55-57 [↑](#footnote-ref-36)
36. Ibid. [↑](#footnote-ref-37)
37. Ibid. [↑](#footnote-ref-38)
38. https://www.iom.int/news/january-us-human-trafficking-awareness-month [↑](#footnote-ref-39)
39. Ibid. [↑](#footnote-ref-40)