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**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN
AND A GENDER PERSPECTIVE****Report of the Special Rapporteur on the human rights aspects of the
victims of trafficking in persons, especially women and children,
Sigma Huda*****Summary**

This report is submitted in accordance with Commission on Human Rights decision 2004/110. It covers the period January-December 2005. Section I outlines the Special Rapporteur's activities during this reporting period. Section II is devoted to a thematic study on the relationship between trafficking and the demand for commercial sexual exploitation. Section III contains the Special Rapporteur's conclusions and recommendations.

Section II of the report first seeks to clarify the definition of trafficking adopted in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter referred to as the Protocol). The purpose of this section is to foster the consensus reached through the negotiation process surrounding the drafting of the Protocol, and to provide a legal interpretation of the Protocol definition. Second, the report addresses the concept of demand, explaining what is meant by this term, and discussing various factors that are relevant to a proper understanding of demand. Third, the report highlights a variety of methods employed throughout the world by States, intergovernmental organizations and non-governmental organizations in order to target the demand side of trafficking.

* The reason for the late submission of this report is to reflect the latest information.

Annex

**REPORT OF THE SPECIAL RAPPOREUR ON THE HUMAN RIGHTS
ASPECTS OF THE VICTIMS OF TRAFFICKING IN PERSONS,
ESPECIALLY WOMEN AND CHILDREN, SIGMA HUDA***

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I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

Country visits

1. This report is submitted in accordance with Commission decision 2004/110. During the reporting period the Special Rapporteur visited Bosnia and Herzegovina (21-28 February) and Lebanon (7-16 September) at the invitation of the Governments concerned. The reports on these missions are contained respectively in addenda 2 and 3 to the present report.

2. Concerned by reports of trafficking for commercial sexual exploitation, the Special Rapporteur also requested a visit to Japan, which should take place in 2006. She has also requested visits to Senegal, Nigeria, Thailand, Japan and all six member States of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), and is awaiting responses to these requests. Bahrain and Oman have already positively responded to her request and extended an invitation for a visit in 2006.

Participation in meetings, conferences and trainings

3. On 7 March 2005, the Special Rapporteur addressed the Commission on the Status of Women, held in New York, on the occasion of the Review and Appraisal of the Beijing Declaration and Platform for Action and the Outcome Document of the twenty-third special session of the General Assembly (Beijing Plus Ten Review). In her presentation, she expressed concern that some countries still continued to treat trafficked persons as criminals rather than as victims and underlined that in all anti-trafficking interventions the human rights of the victim had to remain paramount and at the centre of the interventions. In the course of her stay in New York, she also met with United Nations Children's Fund (UNICEF) representatives, the Inter-agency Group on Trafficking and the Coordinator of the Anti-Trafficking Unit of the Organization of American States.

4. In April 2005, she presented her first annual report to the Commission on Human Rights in Geneva. In her oral presentation she highlighted that the human rights of victims of trafficking should be at the centre of all efforts to combat trafficking and protect, assist and provide redress to victims of trafficking. She also had a number of bilateral meetings and participated in parallel events on the outcome of the Beijing Plus Ten Review and on migration, trafficking and human rights.

5. On 24 May 2005, the Special Rapporteur addressed the participants of a training day for senior UNICEF staff working in the North Africa and Middle East region. She briefed participants on the normative framework to address the issue of child trafficking, underscoring the need to understand instruments such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons (hereinafter referred to as the Protocol), the Convention on the Rights of the Child, ILO Convention 182 on the Worst Forms of Child Labour and Convention 28 of the Hague Conference on the Civil Aspects of International Child Abduction as an interlinked set of protective norms that should be read together so that they reinforce each other.

6. From 20 to 24 June 2005, the Special Rapporteur took part in the 12th Annual Meeting of Special Procedures mandate-holders in Geneva and served as the Rapporteur to the meeting. She has also been made Rapporteur for the Coordination Committee of five members set up by the Special Procedures for this year. She was encouraged to learn that all participants, Member States, non-governmental organizations (NGOs) and other mandate-holders seemed to agree on the need to continue and enhance the special procedures system in the course of the current reform efforts.

7. From 30 June to 1 July 2005, she took part in the Final Conference of the Network for European Women's Rights (NEWR) at the University of Birmingham, which focused on trafficking in women, reproductive rights, political participation and social entitlements of women in the context of an ever-growing European Union.

8. In July, the Special Rapporteur gave a presentation on trafficking and the work of her mandate in the context of the Beijing Plus Ten Review at the Forum on Human Security at Chubu University, Japan (9-10 July). During her stay, she also addressed the Human Security Conference of the International Movement Against All Forms of Discrimination, held in Tokyo.

9. From 30 August to 2 September 2005, the Special Rapporteur attended the Thirteenth Workshop of the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region, held in Beijing (China). She briefed participating Member States on the state of trafficking in Asia. In addition, she outlined the links between trafficking on the one hand and microlevel factors such as discrimination and macrolevel factors such as migration or security on the other hand.

10. From 4 to 6 October 2005, the Special Rapporteur attended a Conference of the World Organisation Against Torture, held in Geneva, on "Poverty, Inequality and Violence: is there a human rights response?". In her interventions, she stressed that international action was most effective if it was coupled with efforts to advance human rights through the courts and other national mechanisms, a lesson that should also be taken into account in all efforts to uphold the human rights of victims of trafficking. She also stressed the importance of advocacy and awareness at all levels including government machineries on the harms of trafficking and what it constitutes.

11. From 12 to 14 October 2005, she took part in an informal seminar with Member States in Geneva on enhancing and strengthening the Special Procedures of the Commission on Human Rights.

12. On 15 October, the Special Rapporteur gave a press briefing in the British House of Lords on forced marriage as a part of trafficking and migration. She also addressed the seminar of the European Women's Lobby (EWL) in London on "Trafficking in Women for Sexual Exploitation: Who is Responsible?". On 17 October, she participated in a press conference at the European Parliament with survivors of prostitution and human rights activists on "Trafficking for Sexual Exploitation: Who Speaks for Women in Prostitution?", sponsored by the joint American-Swedish project on demand, organized by the Coalition Against Trafficking in Women (CATW) and the EWL.

13. On 19 and 20 October 2005, the Special Rapporteur took part in the conference on “Tackling Human Trafficking: Policy and Best Practices in Europe” organized by the Presidency of the European Union, the European Commission and the Nordic Baltic Task Force against Trafficking in Human Beings.

14. From 23 to 26 October, she attended the World Conference on Prevention of Family Violence, held in Banff, Canada. In her speech to the plenary she explained why the multibillion operation of trafficking - the fastest growing business of organized crime - could be eradicated only with a human rights based strategy that also took into account the demand for sexual exploitation, and gender inequalities and poverty.

15. At the invitation of UNICEF and the non-governmental organization End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), the Special Rapporteur attended the World Summit on the Information Society (WSIS) in Tunis and participated in a panel discussion on protecting children from sexual exploitation through information and communication technology. She spoke on the different aspects of cybercrime as it relates to children.

16. On 6 and 7 December 2005 she attended the 5th General Conference of the Council for Security Cooperation in the Asia Pacific (CSCAP) in Jakarta, where she delivered a keynote address on trafficking in persons.

Communications to Governments and other actors

17. Since her appointment the Special Rapporteur has sent 29 communications to Governments and to date has received 10 responses.

18. In January 2005, she provided the Secretary-General of the Council of Europe with comments on the draft European Convention against trafficking in human beings, and welcomed the initiative of the Council of Europe in drafting the Convention. However, she endorsed the recommendations formulated by Amnesty International and Anti-Slavery International in response to the December 2004 draft of the Convention, as well as those of CATW and opinion No. 253 (2005) of the Parliamentary Assembly of the Council of Europe, on the need to strengthen the draft of the Convention to ensure an adequate and effective framework for the protection of the human rights of the victims of trafficking and to strengthen aspects of the convention addressing demand for sexual exploitation.

19. The Special Rapporteur, in collaboration with the Special Rapporteur on the sale of children, child prostitution, and child pornography, also sent a letter to the Preparatory Committee of the Second Phase of WSIS. While commending the contribution of WSIS to building an all-inclusive and equitable information society, they also expressed their concern that abusive use of information and communication technology related to child abuse, child pornography, trafficking and exploitation of human beings was not adequately reflected in WSIS's agenda.

Press statements and publications

20. On the occasion of International Women's Day, the Special Rapporteur, together with the Special Rapporteur on violence against women and the Special Rapporteur on adequate housing, issued a public statement calling for the universal recognition and promotion of women's rights to housing, employment and freedom of movement. On Human Rights Day, the Special Rapporteur participated in a joint statement of mandate-holders expressing alarm at attempts by many States to circumvent provisions of international human rights law, including the absolute prohibition of torture.

21. She also contributed to two country-specific press releases issued by a considerable number of special procedures mandate-holders in her capacity as independent expert appointed by the Commission on Human Rights.

22. Finally, the Special Rapporteur contributed an article on "Sex Trafficking in South Asia" for the World Report on Women's Health of the International Federation of Gynaecology and Obstetrics (FIGO), scheduled to be published in the FIGO Journal in mid-2006.

II. DEMAND FOR COMMERCIAL SEXUAL EXPLOITATION AND TRAFFICKING

23. This year the Special Rapporteur, together with the Special Rapporteur on the sale of children, child prostitution, and child pornography, decided to gather information for a thematic study of the relationship between trafficking and the demand for commercial sexual exploitation.

24. To gather information, they sent a questionnaire to all Member States, and to intergovernmental and non-governmental organizations working on issues related to trafficking. The following Governments have responded to the questionnaire: Angola, Azerbaijan, Belarus, Benin, Brazil, Bulgaria, Canada, Chile, the Czech Republic, El Salvador, Estonia, Finland, Germany, Honduras, Israel, Japan, Kazakhstan, Lebanon, Mexico, the Netherlands, Nicaragua, Norway, Oman, Pakistan, the Philippines, Portugal, the Republic of Korea, Romania, Slovenia, Spain, Switzerland, Turkey, the United States of America, Venezuela (the Bolivarian Republic of) and Yemen.

25. Field offices of the International Organization for Migration in Ankara, Athens, Azerbaijan, Belarus, Freetown, Haiti, Hanoi, Helsinki, Lisbon, Sri Lanka and Tirana, and UNICEF field offices in Indonesia, the Philippines and Sri Lanka have also responded to the questionnaire.

26. The following NGOs and individuals have responded to the questionnaire: Central Union for Child Welfare, Finland; Casa Alianza, Honduras; Raices, Chile; Prostitution Research and Education, United States of America; Diane Post (submission related to work she had undertaken in Cambodia), SOS Sexisme, Anne Marie Trouxe, Missing Persons' Families Support Centre, Lithuania; Task Force on Human Trafficking, Israel; International Centre for Missing and Exploited Children and the National Center for Missing and Exploited Children, United States of America; Coalition Against Trafficking in Women, United States of America;

Justice for Widows and Orphans Project, Zambia; Franciscans International, Switzerland; Franciscans International, Madagascar; Coalition Against Trafficking in Women, Europe; UNANIMA International, United States of America; Family, Child, Youth Association, Hungary; Belgian Child Rights NGO Coalitions, Belgium; Centro Amar, Peru; Bonded Labour in the Netherlands (BlinN), Netherlands; Human Rights Advocates, United States of America; Sister Pietrina Raccuglia; World Education, Cambodia; Comisión Justicia y Paz, Bolivia; Equality Now, United States of America; ECPAT International, Thailand; Machon Toda`a and Isha L`Isha - Haifa Feminist Center, Israel; European Women`s Lobby, Brussels; Save the Children, Denmark; AFESIP International, Laos; and Annamaria Castelfranchi Galleani, Italy.

27. Whilst people are trafficked for different purposes, the Special Rapporteurs` joint thematic study focused principally upon the linkages between demand and sex trafficking. The reasons for this chosen focus are set out below.

28. The Special Rapporteur wishes to express her wholehearted thanks to all those who provided information.

Introduction

29. The issue of demand is of crucial importance in addressing trafficking of women and children from a human rights perspective, and was recognized as a crucial issue in the Protocol.

30. Preliminarily, the Special Rapporteur wishes to condemn the continued practice of source countries turning a blind eye to sex trafficking as well as to the debt bondage and slavery-like conditions suffered by trafficking victims within their borders and abroad. She notes that socio-economic, political and cultural conditions in many parts of the world make women and children particularly susceptible to being trafficked, thereby fostering the supply side of trafficking. These conditions are often ignored or even tacitly encouraged by Governments, often for the purpose of encouraging tourism within their borders.

A. Defining trafficking

31. As a preliminary matter, it is necessary to clarify what is meant by both demand and trafficking. These tasks will be taken up in reverse order, with this first section addressing the meaning of trafficking, and the next section addressing the concept of demand.

32. The Protocol definition of trafficking stands today as the accepted international definition of trafficking. Indeed, since its establishment, the Protocol definition has been adopted verbatim into the domestic positive law of several States,¹ and it continues to frame governmental and NGO anti-trafficking initiatives at the local, national, and international levels.

33. One of the many benefits of the Protocol definition is that it provides a foundation upon which anti-trafficking discussion, research, and policy development may transcend the general

debate about the rights and wrongs of prostitution to a significant extent.² The Protocol definition reflects an important resolution between deeply divided views regarding the acceptability of the commercial sex industry, establishes clear criteria for understanding what counts as trafficking, and makes it possible to frame anti-trafficking initiatives with consistency and clarity.

The Protocol definition of trafficking

34. The Protocol's definition of trafficking is as follows:

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under 18 years of age.

35. This definition establishes four elements in defining trafficking: act, means, end result³ and victim status. In cases where the victim is an adult, at least one of the means listed in subparagraph (a) must have been employed in order for the act to constitute trafficking. It is logically impossible under the Protocol definition to have a case of adult trafficking in which one or more of the means set forth in subparagraph (a) has not been used.

36. In any individual case, one or the other victim status will necessarily be fulfilled (i.e., the purported victim will be either a child or an adult). If the victim is a child, then the means element becomes irrelevant, and the question of whether trafficking has occurred will be determined solely by reference to the act and end result elements. If the victim is an adult, then the question of whether trafficking has occurred will be determined by reference to the act, means and end result elements, with the important caveat that the consent of the adult victim is irrelevant to a determination of whether trafficking has occurred. The Special Rapporteur addresses this caveat in the next section.

The irrelevance of consent

37. As a matter of legal interpretation, article 3 (b) of the Protocol significantly widens the scope and meaning of trafficking. Thus, any recitation of the Protocol definition must include mention of article 3 (b) in order to convey the agreed-upon scope and meaning of trafficking.

38. As noted above, it is logically impossible under the Protocol definition to have a case of adult trafficking in which one or more of the means set forth in subparagraph (a) have not been used. At least one of the means set forth in subparagraph (a) must be used, or else the act in question does not count as an act of trafficking.

39. In other words, the second clause of article 3 (b) (“where any of the means set forth in subparagraph (a) have been used”) will be satisfied in 100 per cent of adult trafficking cases, because it is a logical prerequisite to establishing that a case of adult trafficking has occurred.

40. It should now be clear that the second clause of article 3 (b) is referential to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. It does not limit the universe of cases in which consent is deemed irrelevant. Simply put, the victim’s consent to the intended exploitation set forth in subparagraph (a) is irrelevant in all trafficking cases under the Protocol definition.⁴

41. The Protocol does not necessarily require States to abolish all possible forms of prostitution.⁵ It does, however, require States to act in good faith towards the abolition of all forms of child prostitution and all forms of adult prostitution in which people are recruited, transported, harboured, or received by means of the threat or use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of one person having control over another, for the purpose of exploiting that person’s prostitution.

42. For the most part, prostitution as actually practised in the world usually does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty. Put simply, the road to prostitution and life within “the life” is rarely one marked by empowerment or adequate options.

43. Thus, State parties with legalized prostitution industries have a heavy responsibility to ensure that the conditions which actually pertain to the practice of prostitution within their borders are free from the illicit means delineated in subparagraph (a) of the Protocol definition, so as to ensure that their legalized prostitution regimes are not simply perpetuating widespread and systematic trafficking. As current conditions throughout the world attest, States parties that maintain legalized prostitution are far from satisfying this obligation.

The irrelevance of border crossing

44. The Protocol definition of trafficking does not require proof of movement of the victim across borders or otherwise. Trafficking is just as much trafficking even when it occurs in the victim’s own home village, town or city.

45. Despite the irrelevance of border crossing, global concern rightly attaches to the violation of fundamental human rights in both local and international trafficking, and this has been reflected in the growing recognition that domestic trafficking is as serious a human rights violation as international trafficking.

Trafficking and terminology

46. This section seeks to connect the issue of terminology to the consensus reflected in the Protocol definition. By identifying terms that are consistent with the Protocol's legal definition of trafficking, the Special Rapporteur hopes to foster the consensus reached in the Protocol and better enable it to serve as a working definition in anti-trafficking research and policy initiatives.

47. The Protocol's definition of trafficking implicitly rejects the terminology of "sex work", "sex worker" and "clients". The Special Rapporteur will therefore use the terms "prostitution" and "prostitute-user".

48. The Protocol casts an extremely wide net in defining trafficking, one which arguably captures every present manifestation of prostitution. The terms "sex work", "sex worker" and "client" wrongly suggest that prostitution, as currently practised, does not typically fall within the category of trafficking.⁶ The Special Rapporteur believes that this reflects a profound misinterpretation of the current practice of prostitution throughout the world. Based on her experience and investigations as Special Rapporteur, she finds it evident that most prostitution is accomplished by one or more of the illicit means outlined in subparagraph (a) of the Protocol and therefore constitutes trafficking.⁷

49. Moreover, two important textual points should be noted: the term "sex work" was rejected in the drafting of the Protocol itself, which instead employs the term "prostitution"; and the Protocol's sharp distinction between the "exploitation of prostitution" and "forced labour" would be conflated by use of the terms "sex work", "sex workers" and "clients".

B. What does "demand" mean?

50. Article 9, paragraph 5, of the Protocol states as follows:

States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

51. Three issues deserve particular emphasis:

(a) Demand must be understood in relation to exploitation, irrespective of whether that exploitation also constitutes trafficking;

(b) Demand must be understood as that which fosters exploitation, not necessarily as a demand directly for that exploitation;

(c) It is not necessary for demand itself to lead to trafficking; rather, it is sufficient that the exploitation fostered by the demand leads to trafficking.

52. The demand side of trafficking is not, therefore, properly understood as the demand for a trafficking victim's prostitution, labour or services.⁸ Rather, demand must be understood expansively, as any act that fosters any form of exploitation that, in turn, leads to trafficking.

53. To foster is to "support ... encourage or help to grow [or] to promote the growth of".⁹ For example, the use of digitally created pornography, in which no actual person is used to make the images, may nonetheless be deemed to foster sexual exploitation.¹⁰

54. These comments should not be construed as minimizing the role of actors who are typically understood to constitute the demand side of trafficking (e.g., prostitute-users, slave-holders, etc.), but merely to clarify that direct involvement in the exploitative market is not a prerequisite for locating a person as part of the demand side of trafficking.

On the limitations of economic analysis

55. Principally, trafficking is a human rights issue, not a market economy issue. Analysing trafficking solely in economic terms inevitably masks its human rights dimensions. Tools of economic analysis are designed to explain and evaluate markets in terms of efficiency. Such tools are not necessarily well-designed for furthering the goal of protecting human dignity.¹¹

56. It is with caution, therefore, that this report employs concepts such as supply and demand in discussing trafficking. In using these concepts, the Special Rapporteur remains cognizant of the limitations of economic analysis and will attempt to construct a meaning of demand which is consistent with a human rights approach to trafficking.

On demand and trafficking generally

57. Paradigmatically, the demand side of trafficking consists of actors such as prostitute-users, slave-holders and people who purchase products created through trafficked labour. Many of these same actors also fall within the definition of "traffickers". However, the overlap between these two categories is not complete; for while every trafficker constitutes part of the demand side of trafficking (because they foster the exploitation that leads to trafficking), not everyone on the demand side of trafficking necessarily satisfies the definition of "trafficker".

58. For example, consumers who purchase goods produced through trafficked labour are properly understood as part of the demand side of that trafficking market, but they are not themselves traffickers, since they have not committed any of the five actions specified in the act element of the Protocol definition of trafficking (i.e., they have not recruited, transported, transferred, harboured or received any person; rather, they have merely received goods - albeit goods produced through trafficked labour).

59. With respect to many trafficking markets, States parties need not eradicate demand simply because that demand is occasionally met by goods produced by trafficked labour. For example, the consumer market for athletic shoes could be met occasionally by shoes produced

by people who have been subjected to one or more of the means of trafficking listed in subparagraph (a) of the Protocol definition. There are reasonable steps States parties may take to discourage the demand side of such markets without seeking to wholly eradicate the consumer demand for athletic shoes. For example, States parties could investigate claims of trafficked labour and assist consumers in identifying such goods, thereby enabling consumers to avoid the purchase of such products.¹² In many market sectors, there is good reason to believe that such measures will reduce the demand side of those trafficking markets.

60. However, there is little reason to believe that the same holds true in the sex-trafficking market, and thus States parties have an obligation under article 9, paragraph 5, to discourage the use of prostituted persons generally. Prostitute-users are typically incapable of distinguishing and/or unmotivated to differentiate between prostituted persons who have been subjected to the illicit means delineated in article 3 (a) of the Protocol and those who have not. This conclusion is supported by empirical research¹³ and several responses to the joint questionnaire. As noted in one non-governmental response, “the ignorance of the customer in relation to the real circumstances the victims undergo, the lack of his sensitization or even his indifference” is a “stimulating factor” in the sex-trafficking market.

The difference sex makes: demand and sex trafficking

61. In what follows, the Special Rapporteur will limit her focus to demand in sex trafficking and, in particular, to the demand side of sex trafficking as constituted in part by the prostitute-user.

62. First, it should be noted that all forms of trafficking violate fundamental human rights and present issues of pressing global concern. By limiting her focus to sex trafficking, the Special Rapporteur does not wish to suggest otherwise.

63. However, there are several reasons why it makes sense to focus on sex trafficking and, in particular, the role of the prostitute-user in creating demand:

- While the human rights of women and children are violated in many forms of trafficking, sex trafficking is a particular form of trafficking in which the human rights of women and children are violated as women and children;
- Unlike the purchaser of consumer goods produced through trafficked labour, the prostitute-user is simultaneously both the demand-creator and (by virtue of his receipt of the trafficked person) part of the trafficking chain;
- By engaging in the act of commercial sex, the prostitute-user is thereby directly inflicting an additional and substantial harm upon the trafficking victim, tantamount to rape, above and beyond the harmful means used by others to achieve her entry or maintenance in prostitution;
- There is good reason to believe that many prostitute-users are aware that the women and children they use in prostitution are subjected to the illicit means delineated in the Protocol, and that widespread cultural norms encourage the use of prostituted persons despite this knowledge;

- There is little reason to believe that any significant amount of prostitution throughout the world exists without use of one or more of the illicit means delineated in the Protocol;
- The use of force, threats, coercion, fraud, deception, abuse of power, and/or abuse of a position of vulnerability are so prevalent throughout many aspects of non-commercial sexual activity, that it is extremely unlikely that any substantial number of prostitute-users would be deterred from using prostituted persons on the grounds that the prostituted person has been subjected to these illicit means;
- Even the best intentioned prostitute-users will probably be unable to discern the difference between women who have been subjected to the illicit means delineated in the Protocol and those (if any) who have not been.¹⁴

The gendered demand for commercial sex

64. Buying sex is a particularly gendered act. It is something men do as men. It is an act in which the actor conforms to a social role that involves certain male-gendered ways of behaving, thinking, knowing and possessing social power.

65. The act of prostitution by definition joins together two forms of social power (sex and money) in one interaction. In both realms (sexuality and economics) men hold substantial and systematic power over women.¹⁵ In prostitution, these power disparities are merged in an act which both assigns and reaffirms the dominant social status of men over the subordinated social status of women.

Racism and demand for commercial sex

66. The demand for commercial sex is often further grounded in social power disparities of race, nationality, caste and colour.

67. Some prostitute-users actively seek prostituted women and children of different nationalities, races or ethnic groups for the purpose of exploiting these power disparities, engaging in a “highly sexualised form of racism”, by which they rationalize to themselves that woman and children of different races, nationalities or ethnic groups are not harmed by sexual exploitation.¹⁶

68. In addition to creating conditions which facilitate trafficking per se, racism and prejudice against ethnic minorities create conditions which place prostituted women and children at greater risk from additional harm from both traffickers and prostitute-users.

69. In a world which continues to bear the hallmarks of white supremacy and male dominance, women and girls oppressed on the basis of race, nationality, caste and/or colour are especially vulnerable to sexual exploitation. Prostitute-users often abuse this vulnerability and, in so doing, abuse their own position of relative social power over trafficked persons.

Supply and demand: which factor drives the market?

70. Does supply or demand drive the sex-trafficking market? While some claim that demand for the use of prostituted persons is the “most immediate and proximate cause of the expansion of the sex industry”,¹⁷ others claim that it may equally be true that “supply generates demand rather than the other way around”.¹⁸ This debate can be understood in one of two ways, and the distinction lies in one’s understanding of the term “supply”.

71. If supply is understood to include all aspects of the supply side of the sex-trafficking market, then this debate presents a false choice. For, if supply includes the economic, social, legal, political, institutional and cultural conditions which make women and children vulnerable to being trafficked, then it is clear that both supply and demand drive the sex-trafficking market.

72. In this sense, it is true that “markets cannot be understood in abstraction from the broader social, economic, political and institutional context in which they operate”, and “governments are heavily implicated in the construction of the [sex trafficking] market through their (often gender discriminatory) policies on immigration and asylum, employment, economic development, welfare, education and so on”.¹⁹

73. If, however, supply is understood to include only trafficking victims themselves (and not the unjust conditions which create their vulnerability) - then it must be made clear that supply does not drive the market; for the question of whether supply or demand drives the sex-trafficking market necessarily calls for a normative judgement to be made in determining who should be deemed responsible for the existence and expansion of this market.

74. As a normative matter, it is clear that responsibility for the sex-trafficking market lies with prostitute-users, traffickers, and the economic, social, legal, political, institutional and cultural conditions which oppress women and children throughout the world. It would be a grave injustice to impute responsibility for driving the sex market to its victims themselves. Such a claim is tantamount to victim blaming, and constitutes a further violation of the human rights of trafficking victims.

Globalization and demand: global wrongs, local harms

75. In response to the joint thematic study questionnaire, many governments noted that a globalized, free market economy has increased the demand for cheap labour and services, including prostitution.

76. Undoubtedly, globalization, along with the continuing oppression of women, has created a gendered context for migration, and punitive immigration policies undoubtedly violate the human rights of trafficking victims.

77. However, it is misleading to conceptualize the demand side of trafficking as principally an issue of globalization. For, whilst trafficking occurs systematically throughout the world and is intricately linked with the processes of globalization, the use and abuse of trafficking victims by those who constitute the demand side of trafficking occurs as a local phenomenon as well.

78. Thus, the Special Rapporteur wishes to highlight the importance of understanding demand as both a global and a local problem. It is global in the sense that it drives international sex trafficking and violates fundamental human rights (which in itself raises issues of global concern). Yet it is local in the sense that it is happening everywhere - in our own local villages, towns, cities - mostly carried out by men who are part of the core fabric of our local communities.

III. CONCLUSIONS AND RECOMMENDATIONS

79. **Demand created by prostitute-users is not the only factor that drives the sex-trafficking market. However, it is the factor which has received the least attention and creative thought in anti-trafficking initiatives. By and large, anti-trafficking policy has been directed towards detecting, preventing and punishing the conduct of traffickers, or towards stemming the supply of victims through educational campaigns or the like.**²⁰

80. While these projects are important and necessary, they must be complemented by targeted projects that discourage demand.

A. Human rights approach to trafficking

81. **At the outset, the Special Rapporteur wishes to dispel a common misconception regarding the nature of a human rights approach to trafficking. It has been wrongly assumed in some quarters that a human rights approach to trafficking is somehow inconsistent with the use of the criminal law to punish prostitute-users. This conclusion can only be based upon the assumed premise that men have a human right to engage in the use of prostituted persons. This premise should be rejected. Men do not have a human right to engage in the use of prostituted persons. In some domestic legal systems, men have been granted a legal right to engage in the use of prostituted persons, but, as suggested above, this right may be in direct conflict with the human rights of persons in prostitution, the vast majority of whom have been subjected to the illicit means delineated in subparagraph (a) of the Protocol and are, therefore, victims of trafficking. Where the human rights of trafficking victims conflict with the legal rights granted to prostitute-users, the human rights of trafficking victims must prevail. That is what counts as a human rights approach to sex trafficking.**

B. Criminalizing the use of prostituted persons

82. In responding to the questionnaire several sources have provided information about government attitude towards prostitution.

83. **The Swedish law that prohibits the purchase of sexual services is a particularly apt expression against the demand side of trafficking, for it not only formally condemns the use of prostituted persons, but does so in a context which explicitly recognizes the gendered nature of the commercial sex industry: "As with all laws, the [Swedish] law has a normative function. It is a concrete and tangible expression of the belief that in Sweden woman and children are not for sale. It effectively dispels men's self-assumed right to buy women and children for prostitution."**²¹

84. A recently enacted law in the Republic of Korea imposes tougher penalties on brothel owners and buyers, while protecting prostituted victims.²² It is a criminal offence under the Philippines' Anti-Trafficking in Persons Act of 2003 to hire any person to engage in prostitution or pornography.²³ Chile recently enacted (for the first time) a criminal law which penalizes prostitute-users who exploit prostituted children.²⁴

85. An NGO noted in its response to the questionnaire that the benefits of criminalizing the use of prostituted persons may go beyond expressive condemnation and produce a deterrent effect as well; fewer visits would be paid to brothels if clients were to fear criminal penalties as a result. A Bolivian NGO reported that it had met with prostituted women to discuss the potential effects of criminalizing demand and had come to the conclusion that a penalization of clients would reduce the demand for sexual exploitation.

86. The Directorate General on Crime Prevention of the Bolivarian Republic of Venezuela has agreed to undertake an empirical study to determine whether the prohibition, legalization or regulation of prostitution would affect or impact trafficking in persons.

87. In the Netherlands, the use of prostituted persons has never been punishable by law and both pimping and brothel-keeping are now legal as well. In response to the questionnaire, the Government of the Netherlands noted that its laws aim to establish a clear separation between the legal prostitution sector on the one hand and illegal activities, involving sexual exploitation, on the other. For the reasons explained above in section II there is good reason to question whether it is possible in practice to maintain such a distinction.

88. States parties have an obligation under article 9, paragraph 5, to discourage the demand side of trafficking. The Special Rapporteur believes that this obligation can be effectively met through criminalization of the use of prostituted persons and good faith enforcement of these provisions.

89. While criminalization does not guarantee that an activity will cease to exist, there is no doubt that criminalization serves as a clear and effective means of discouraging the activity. To discourage is to "deprive of courage, confidence, or moral energy".²⁵ Thus, the obligation to discourage demand speaks directly to the State's obligation to engage in a normatively expressive project of condemning the demand side of trafficking. Since expressive condemnation of harmful conduct is one of the central functions of the criminal legal system, it stands to reason that States parties should be encouraged to criminalize the use of prostituted persons as a way of fulfilling their obligations under article 9, paragraph 5 of the Protocol.

90. The Special Rapporteur emphasizes that any criminal sanction relating to the commercial sex industry should not be used to penalize trafficked women and children. Domestic laws and policies that penalize prostituted women and children contribute to their vulnerability, and make women and children more susceptible to being victimized by

sex trafficking. This point was noted in a response to the questionnaire with reference to a specific country: “as women in prostitution are punished, but not the users of sex services, it creates the demand of using sex services”.

91. The Special Rapporteur condemns laws and policies that penalize prostitutes, particularly where no similar penalties are imposed upon prostitute-users. Measures taken to address demand should ensure that victims of trafficking are neither criminalized nor subjected to punitive measures such as deportation, which would render them vulnerable to other human rights violations and to re-trafficking.

92. It has been claimed that criminalization, even when it is targeted only against prostitute-users, may have the unwanted effect of pushing prostitution out of sight, thus making trafficking victims more vulnerable to human rights abuses. However, it is equally true that legalization of prostitution has the effect of making human rights abuses appear as if they were simply legitimate work, thereby “hiding” such abuses in plain view. This dynamic was noted by an NGO in its response: “Prostitution being legal, the authorities do not keep an eye on the sex industry so more and more victims are drawn into providing sexual services against their will.”

C. Extraterritorial jurisdiction

93. The implementation of extraterritorial jurisdiction is an important and commendable development in strategies to target the demand side of sex trafficking. A number of States responding to the questionnaire, including Denmark, Finland, Israel, the Netherlands, and the United States of America, reported that they have implemented extraterritorial jurisdiction which would enable the prosecution of child sex tourists. In the United States, for example, the Protect Act has been used to prosecute several child sexual predators, who engaged in the use of prostituted persons with children in countries including Cambodia, the Philippines, Thailand, and Viet Nam.²⁶

94. As noted by the Government of Finland, despite the existence of such provisions in law, it is often a problem in practice to obtain evidence from local police and investigative authorities in jurisdictions where the offences occurred.

D. Reasons against legalizing the use of prostituted persons

95. The alternative to criminalizing the use of prostituted persons is to allow such activity to remain or become legal. Such an approach encourages the demand side of trafficking and is therefore to be discouraged. This point is well made in a questionnaire response submitted by the Coalition Against Trafficking in Women: “Legalized prostitution gives new generations of men and boys the moral and social permission to engage in the exploitation of prostitution with a clear conscience. They say, ‘if it’s legal, it must be OK’.”

96. This point was further emphasized by the response submitted on behalf of Machon Toda’a and Isha L’Isha - Haifa Feminist Centre, which noted that “any policy which promotes the banality and inevitability of prostitution increases the demand”.

97. A number of jurisdictions have established legalized prostitution. Not surprisingly, such policies increase and embolden the commercial sex industry within the jurisdiction, thereby increasing the demand for commercial sex and fuelling the sex-trafficking market.

98. It is sometimes claimed that legalizing prostitution will create a healthy transparency in the sex industry, which will in turn lead to less corruption and abuse; however, as noted in responses to the questionnaire with reference to countries where prostitution has been legalized, “lifting prohibitions of brothels has up till now not made the branch all that transparent as expected” and “although [prostitution is] registered and under the control of the Government, women live in slavery like conditions”.

99. As noted by an NGO, it is counterproductive in practice to distinguish between demand for trafficking victims and demand for the use of prostituted persons generally: “In practice, it is extremely difficult to prove that [this distinction] is within the knowledge of the offender, especially when sexual services are involved and consequently penal prosecution is not possible.”

E. Non-criminal sanctions against the use of prostituted persons

100. The questionnaire asked specifically about possible links between military deployment and the demand for sexually exploitative services. Several respondents confirmed that the influx of international aid workers, military personnel, peacekeepers and employees of international organizations in a situation of armed conflict or political instability often brings about a demand for services deriving from sexual exploitation. As the Special Rapporteur’s report on her visit to Bosnia and Herzegovina shows, this can lead to an increase of trafficking. Human rights advocates also provided information on the role of United Nations peacekeeping troops in creating a demand for prostitution and trafficking in post-conflict situations. The Special Rapporteur welcomes all efforts to combat the demand for prostitution in these specific situations.

101. To mention a few examples of action taken in this regard, the United Nations, the United States and Norway have banned their military personnel from engaging in the use of prostituted persons. One NGO noted that the recent United Nations policy shift regarding the use of prostituted persons has had a positive impact: “according to reports, [this policy] has led to a reduction in demand for sexual services which in turn has had a great impact on the number of sex workers in the street”.

102. Norway further prohibits all of its civil servants from engaging in the use of prostituted persons during official travel, whilst the United Nations Code of Personal Conduct for Blue Helmets prohibits its staff from engaging in any use of prostituted persons.

103. Forty-six nations of the North Atlantic Treaty Organization have agreed to prohibit their military personnel from engaging in the use of prostituted women who are known to be controlled by traffickers and the Organization for Security and Cooperation in Europe (OSCE) has adopted a code of conduct for all mission members in Bosnia and Herzegovina that prohibits mission members from promoting or facilitating prostitution and trafficking in persons.

104. Civil sanctions have been implemented to target the demand side of trafficking in several jurisdictions throughout the United States. Under these laws, both pimps and prostitute-users may be sued in civil court and made to pay monetary damages.²⁷

F. Information, education and advocacy campaigns

105. A variety of information, education and advocacy campaigns aimed at discouraging demand have been undertaken by governmental, non-governmental and community-based organizations in recent years. The Special Rapporteur welcomes all such activities and encourages governments, intergovernmental and non-governmental organizations to study their impact and replicate successful practices. The Special Rapporteur mentions below some of the measures that have been undertaken and that have been reported in responses to the questionnaire.

106. In Brussels, Belgium, ECPAT Belgium has undertaken a widespread information campaign targeting the demand for child prostitution and encouraging the community and tourists to report suspected child sexual abuse.

107. In Chicago, United States of America, the Chicago Coalition for the Homeless has implemented a community-based Prostitution Alternative Roundtable, which engages community members in dialogue with prostitution survivors, law enforcement and social services representatives and policymakers. This programme has educated key players on the root causes of sexual exploitation, reduced victim-blaming behaviours, and targeted the demand for sexual exploitation.

108. In Leith, Scotland, United Kingdom, community activists have joined together to discourage prostitute-users through public demonstrations, carrying placards with messages such as “You can’t get no satisfaction in Leith!” In Winnipeg, Canada, police have initiated “Operation Snapshot” whereby prostitute-users are videotaped whilst kerb-crawling and the videos are broadcast on the Internet.

109. In several states of the United States of America, the names and photographs of convicted prostitute-users are published on television, billboards, and the Internet. In France, a number of prominent men have signed a pledge not to engage in rape or the use of prostituted persons, stressing the need to create a form of masculinity based on mutual respect.

110. In Angola, the Government organized public sensitization campaigns against “catorzinha”, the practice of selling daughters to wealthy men as “virgin mistresses”.

111. In Germany, a programme entitled “Prevention and Suppression of Child Abuse by Sex Tourists” educates German holidaymakers regarding child prostitution abroad and provides them with details of institutions and organizations to contact if they suspect sexual exploitation of children.

112. In Perugia, Italy, the Government has placed large cement barriers along the roadways to discourage prostitute-users from stopping along the road to purchase sex

from trafficked women and girls. In both Canada and the United States, educational programmes referred to as “John Schools” have been implemented, whereby men arrested for the use of prostituted persons are required to attend classes in which they are educated about the harms of prostitution.

113. On Batam Island, Indonesia, poster campaigns call upon potential prostitute-users to ask themselves, “How would you feel if someone did this to your daughter?” In Harare, Zimbabwe, police have initiated “Operation No to Prostitution”, in which undercover female police officers pose as prostituted women in order to target and discourage potential prostitute-users.

114. Military personnel in Kosovo have attended education sessions regarding sex trafficking. A list of pubs and buildings that are out of bounds for soldiers has been drawn up and is regularly updated.

115. In Switzerland, the Government is supporting an OSCE project to raise awareness within the national tourism industry about sex trafficking. Efforts are also being made to cooperate with multinational companies to identify ways in which the private sector and authorities can cooperate to combat trafficking. In Madrid, Spain, city officials have embarked on an educational poster campaign, displaying signs which read, “Prostitution exists because you pay for it. Don’t contribute to the exploitation of human beings.”

116. In Mexico, the Prosecutor General of the Republic, the National Family Development System, the National Commission of Women and UNICEF have joined together to launch a campaign entitled “Open your eyes. Don’t close your mouth” which aims to eradicate the sexual exploitation of children.

Notes

¹ E.g., Art. 186 Criminal Code - Bosnia and Herzegovina (*Official Gazette* 3/03) and the Philippines’ Anti-Trafficking in Persons Act 2003, Republic Act No. 9208.

² For the history of the various sides of the debate regarding the Protocol definition, see Janice Raymond and Malka Marcovich, “Victory in Vienna” (Coalition Against Trafficking in Women 2000); Ann Jordan, “UN Trafficking Protocol: Lost Opportunity to Protect the Rights of Trafficked Persons”, (Stop Traffic 2000); Jo Doezema, “Who Gets to Choose?: Coercion, Consent and the UN Trafficking Protocol”, 10 *Gender & Dev.* 20 (2002); and Dorchen Leidholdt, “Demand and the Debate” Conference Proceedings, *Demand Dynamics: The Forces of Demand in Global Sex Trafficking* (Chicago, Illinois: International Human Rights Law Institute of DePaul University 2004).

³ The Special Rapporteur is using the term “end result” rather than “purpose” in order to avoid begging the question of the requisite mental state that must be established in order to establish that a person has engaged in an act of trafficking. Bosnia and Herzegovina, for example, has adopted a negligence standard in defining the requisite mental state. *Supra*, note 1.

⁴ Where trafficking occurs without the use of one or more of the means set forth in subparagraph (a) (as may be the case in child trafficking), then consent is irrelevant simply by virtue of its logical (not legal) irrelevance.

⁵ As the travaux préparatoires makes clear, the Protocol is to be interpreted “without prejudice to how States parties address prostitution in their respective domestic laws”. United Nations document A/55/383/Add.1, paragraph 64.

⁶ The same logic extends to the choice between the term “pimp” and “manager”. Such terms suggest a legitimacy and respect for human dignity in prostitution that is inconsistent with the lived experiences of prostitutes, users and pimps in actuality.

⁷ These observations are based on the Special Rapporteur’s experiences as a legal advocate for prostituted women in Bangladesh, as well as her experience as Special Rapporteur on Trafficking. See also, Marina Barnard, “Violence and Vulnerability: Conditions of Work for Streetworking Prostitutes” 15 (5) *Sociology of Health and Illness* 683 (1993); Jody Raphael and Claudine O’Leary, “Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago” (Chicago: Center for Impact Research, 2002); M.H. Silbert and A.M. Pines, “Victimization of Street Prostitutes” 7 *Victimology* 122 (1987), Melissa Farley, et al., “Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder” 8 (4) *Feminism and Psychology* 405 (1998); Melissa Farley and Howard Barkan, “Prostitution, Violence Against Women, and Posttraumatic Stress Disorder” 27 (3) *Women and Health* 37 (1998) Evelyn Giobbe, “WHISPER Oral History Project” (Minneapolis: 1987).

⁸ Bridget Anderson and Julia O’Connell Davidson, “Is Trafficking in Human Beings Demand Driven?” (IOM 2003), p. 9.

⁹ Oxford English Dictionary Online 2nd ed. (last visited 20 December 2005).

¹⁰ Catharine A. MacKinnon, “Pornography as Trafficking” 26 *Mich. J. Intl. L.* 993 (2005).

¹¹ The same point holds with respect to concepts borrowed from migration theory such as “push” and “pull” factors.

¹² Of course, States parties should seek to penalize individuals and corporations that employ and benefit from the use of trafficked labour. Regrettably, often governments do not engage in the type of investigative or educational activities that would discourage demand in many consumer markets. Instead, States are often wilfully blind to the use of trafficked labour in the production of many consumer goods sold in their domestic markets.

¹³ Anderson and O’Connell Davidson, *supra* note 8, p. 23, table number 5, reporting that between 77 per cent and 100 per cent of prostitute-users in a multi-country study were aware that women were being trafficked into prostitution and, despite this knowledge, continued to engage in the use of prostituted persons. Prostitute-users are often unable to make such distinctions because they are motivated to construct a “fiction of mutuality around their

encounters with prostitutes”. Julia O’Connell Davidson, “Eroticising Prostitute Use” in Roger Matthews and Maggie O’Neill (eds.), *Prostitution* (Ashgate, Dartmouth, 2003), pp. 209-210.

¹⁴ Recall that the means need not be employed by the prostitute-user, but instead may have been used by a third party long before the instance of the use of prostituted persons at issue. As noted above, there is little reason to believe that the prostitute-user would be capable of differentiating prostitutes who have been subjected to such means and those who have not. *Supra*, notes 13, 16. Anderson and O’Connell Davidson, *supra* note 8, p. 26, where the authors assume that prostitute-users’ good intentions make it “much less likely” that they will engage in commercial sex with trafficking victims. This assumption is ill-founded. It is extremely difficult if not impossible as a practical matter for prostitute-users to avoid using trafficked prostitutes, even if in good faith they attempt to do so. The logical implication is that prostitute-users who wish to assure themselves that they will not engage in commercial sex with a trafficking victim ought to desist in their use of prostituted persons altogether - for surely if they are so well-intentioned, they would rather forego the experience of commercial sex than risk inflicting a further tremendous harm upon the trafficking victim.

¹⁵ This is not to say that every man holds power over every woman in every situation of social or economic life, or that people of one sex never act in accordance with a gender role typically assigned to the other. It is simply to acknowledge that gender, as a social hierarchy, shapes social interactions in various realms - and perhaps nowhere more so than in prostitution.

¹⁶ ECPAT response to the questionnaire, p. 7, quoting Julia O’Connell Davidson and Julia Sanchez Taylor, “Child Prostitution and Sex Tourism in the Dominican Republic” (ECPAT International, Bangkok, Thailand 1996) pp. 16-17.

¹⁷ Janice G. Raymond, “Prostitution on Demand” 10 (10) *Violence Against Women* 1156, 1160 (2004).

¹⁸ Anderson and O’Connell Davidson, *supra* note 7, p. 41.

¹⁹ This seems to be the understanding of supply adopted in Julia O’Connell Davidson’s “‘Sleeping with the enemy’? Some Problems with Feminist Abolitionist Calls to Penalize those who Buy Commercial Sex” 2 (1) *Social Policy & Society* 55, 59 (2003).

²⁰ It should be noted that some anti-trafficking policy has been geared towards punishing the victims, rather than targeting traffickers and demand. Such measures are inconsistent with a human rights approach to trafficking and violate States parties’ obligations under the Protocol.

²¹ Gunilla Ekberg, “The Swedish Law that Prohibits the Purchase of Sexual Services” 10 (10) *Violence Against Women* 1187, 1205 (2004).

²² Dorchen Leidholdt and Hilary Sung-hee Seo, “Korea on Right Path to Fight Sex Trade” *The Korea Times* (26 October 2004).

²³ Philippines Anti-Trafficking in Persons Act, Republic Act No. 9208.

²⁴ Chilean Criminal Code, article 367.

²⁵ U.S. Pub. L. No. 108-21, 117 Stat. 650 (2003).

²⁶ See, for example, the report of Budapest Group, “The Relationship Between Organized Crime and Trafficking in Aliens” (IOM Policy Development, Austria, 1999), finding that 80 per cent of female prostitutes in Dutch brothels were trafficked into the Netherlands for the purpose of the exploitation of prostitution. Cited in Raymond, *supra*, note 22.

²⁷ Florida Statutes Annotated Section 796.09; Hawaii Statutes Section 663J-1, et seq. See also, Illinois’ Predator Accountability Act, H.B. 1299, currently pending in the Illinois legislature.
