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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Report submitted by the Special Rapporteur on the sale of children,
child prostitution and child pornography, Najat Maalla M'jid***

* Submission of this report was delayed due to the recent appointment of the new Special Rapporteur. Initial consultations were held at the end of June 2008 and the report was drafted in July 2008.

Executive summary

The present report is submitted in accordance with Human Rights Council resolution 7/13, in which the Council decided to extend the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography. This is the first annual report submitted to the Council by Najat Maalla M'jid, appointed Special Rapporteur on the sale of children, child prostitution and child pornography on 26 March 2008.

In the present report, Ms. Maalla M'jid outlines her vision of the mandate and the working methods she intends to use, drawing on the work and experience of her three predecessors in the hope of making progress in implementing the mandate entrusted to her.

In chapter I, the Special Rapporteur provides an account of her activities since her appointment. In chapter II, she defines the framework of her mandate and in chapter III she sets out her intended working methods and provides a detailed description of the methodology she intends to adopt in carrying out her mission: her approach will be participatory, based on coordination and consultation with all partners (Governments, national and international non-governmental organizations, special procedures of the Council, treaty bodies, United Nations specialized agencies, funds and programmes and other intergovernmental organizations, and the private sector).

In her conclusions, contained in chapter V, the Special Rapporteur sets out the strategic direction of her action and the major areas she will focus on in order to achieve the objectives of her mission, which are as follows:

- (a) A better understanding of the situation of the sale of children, child prostitution and child pornography and of contributory factors (socio-economic, cultural and environmental);
- (b) Implementation of a comprehensive child protection system that ensures the best interest of the child and encompasses prevention and care as well as medical, psychological, social and legal support for child victims and promotion of the rights of the child;
- (c) Effective and concerted national, regional and international coordination and cooperation.

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Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 7/13, in which the Council decided to extend the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography. This is the first annual report submitted to the Council by Ms. Najat Maalla M'jid, appointed Special Rapporteur on the sale of children, child prostitution and child pornography on 26 March 2008.
2. Ms. Maalla M'jid succeeds Juan Miguel Petit, who held the mandate from 2001 to 2008, Ofelia Calcetas-Santos, Special Rapporteur from 1994 to 2001 and Vitit Muntarbhorn, Special Rapporteur from 1991 to 1994.
3. The Special Rapporteur wishes to pay resounding tribute to her predecessors for their work and for their progress in preventing and combating the sale of children, child prostitution and child pornography. Her mandate will maintain and build on their activities and accomplishments.
4. Since its establishment by the Commission on Human Rights in Commission resolution 1990/68, the mandate on the sale of children, child prostitution and child pornography has been continuously renewed, which, regrettably, underscores the need for the international community to remain vigilant with respect to these issues and for all stakeholders to step up their action to eliminate these shameful practices.
5. At its seventh session, the Council considered the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography and decided, in its resolution 7/13, to extend the mandate for a period of three years.
6. In the present report, Ms. Maalla M'jid reviews the information received and activities undertaken by her predecessor since January 2008 and by herself since 1 May 2008, when she assumed her position.
7. However, in view of the short time that has elapsed since the Special Rapporteur assumed her position, she does not provide an in-depth analysis of specific topics but rather sets out a legal, methodological and thematic framework and a plan of action for her first mandate.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

8. The present report covers the period from 1 January to 31 July 2008. At the seventh session of the Council, Juan Miguel Petit, the previous Special Rapporteur, introduced his final report (A/HRC/7/8), and took part in interactive dialogue with the members of the Council and a number of events organized by non-governmental organizations (NGOs).
9. After assuming her functions on 1 May 2008, the Special Rapporteur held initial consultations in Geneva from 16 to 18 June, when she met with numerous NGOs working with child protection, and representatives of the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO) and the Chairperson of the Committee on the Rights of the Child.

10. The Special Rapporteur also attended the briefing organized by the Special Procedures Division of the Office of the United Nations High Commissioner on Human Rights (OHCHR) on 19 and 20 June 2008.

11. From 23 to 27 June 2008 the Special Rapporteur attended the fifteenth annual meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Human Rights Council and of the advisory services programme, which enabled her to meet with fellow special rapporteurs and hold bilateral consultations with a number of them.

12. On 16 July 2008 the Special Rapporteur joined with nine other special procedures mandate holders¹ in expressing concern with respect to European Community Directive 2008/.../EC, on common standards and procedures in Member States for returning illegally staying third-country nationals (the “Return Directive”) adopted by the European Parliament on 18 June 2008.²

13. As part of her commitment to continuing with the work of her predecessor, who had requested an invitation from the Governments of Estonia and Latvia, the Special Rapporteur renewed that request by letter dated 29 July 2008, emphasizing the value of these visits for the implementation of her mandate.

14. During July, the Special Rapporteur also sent letters to the Governments of Cambodia, Chile, India and Thailand reiterating the requests for visits made by her predecessor.

II. MANDATE ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

A. Approach

15. The Special Rapporteur will seek to ensure continuity in the implementation of the mandate and will base her work to a large extent on that of her predecessors. She will seek to consolidate their efforts and, on the basis of her own experience, her vision of the situation and methodological developments in the special procedures system, will explore new directions in which to develop the mandate.

¹ The Chairperson-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the right to education; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on violence against women, its causes and consequences; the independent expert appointed by the Secretary-General on the situation of human rights in Haiti.

² See document COM (2005) 0391 - C6-0266/2005 - 2005/0167 (COD), available at <http://www.europarl.europa.eu/oeil/file.sjp?id=5269672>.

B. Scope of the mandate

16. As Vitit Muntarbhorn, the first mandate holder in 1991,³ pointed out, the title of the mandate on “the sale of children, child prostitution and child pornography” poses a number of problems of definition and interpretation. The first is the definition of the word “child” itself, and particularly the age criteria applied in domestic legal systems to define a “child”. Article 1 of the Convention on the Rights of the Child provides that “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. Similarly, the notion of the “sale of children” may be interpreted narrowly or else more broadly, to cover “child trafficking”.

17. The Special Rapporteur is resolved not to box herself in with a strict and rigid interpretation of her mandate, but to remain alert to emerging trends and methods in the sale of children, child prostitution and child pornography. Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography gives the following definitions:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

18. In carrying out her mandate the Special Rapporteur will base her work on this definition and the provisions of article 3 of the Optional Protocol with respect to States parties’ obligation to criminalize certain acts and activities related to the sale of children, child prostitution, and the production, distribution, dissemination, import, export, offer, sale or possession of child pornography. Article 3 of the Optional Protocol refers to acts and activities committed in the context of sale of children for the purpose of sexual exploitation as defined in article 2, in addition to transfer of organs of the child for profit, engagement of the child in forced labour and the illegal adoption of a child. These definitions will allow the Special Rapporteur to implement her mandate within a clear legal framework and yet take into consideration endemic situations and emerging problems.

19. In view of the scope of the mandate, the Special Rapporteur is convinced that close cooperation and ongoing collaboration with particular human rights protection and promotion mechanisms will be needed in order to better ascertain all the causes and consequences of the sale of children, child prostitution and child pornography and to recommend comprehensive and holistic programmes of action.

³ E/CN.4/1991/51, paras. 8-14.

20. Based on her professional experience and her work with associations in children's matters, the Special Rapporteur feels that United Nations institutions, including the mandates of special procedures such as her own, can be difficult for individuals and associations to understand and use, particularly at the local level and especially where there is a lack of familiarity with international human rights promotion and protection procedures. She considers it necessary to seek to improve communication with these partners in order to derive the maximum benefit from their experience and knowledge, and from the wealth of information they gather in the course of their practical day-to-day work. The Special Rapporteur also wishes to emphasize the importance to child victims and vulnerable children of information and communication concerning her mandate.

C. Legal framework

21. As indicated above, the Special Rapporteur's framework for action is established by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Convention itself, these being the most specific international legal instruments on the subject. She will also draw inspiration from the general comments and decisions of the Committee on the Rights of the Child.

22. To the extent that the situations covered by her mandate are multifaceted and could have implications for the enjoyment by actual or potential victims of a wide range of civil, cultural economic, political and social rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also form a natural legal framework for the mandate; again, the Special Rapporteur will take into consideration treaty bodies' decisions, general comments and, where appropriate, case law.

23. The Special Rapporteur will also take other international human rights instruments into account, and some other international agreements that have an impact on the situation of actual or potential child victims of sale, prostitution or pornography, such as ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment; and ILO Convention No. 105 (1957) concerning the Abolition of Forced Labour; the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally;⁴ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);⁵ the United Nations Convention against Transnational Organized Crime⁶ and its Protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

⁴ General Assembly resolution 41/85.

⁵ General Assembly resolution 40/33.

⁶ General Assembly resolution 55/25.

III. MANDATE AND WORKING METHODS OF THE SPECIAL RAPPORTEUR

24. The Special Rapporteur wishes to emphasize from the outset that her mandate is set in the context of various mechanisms for the promotion and protection of human rights, in particular within the special procedures system. Her mandate cannot in any sense be taken in isolation from the other mandates. Similarly, the various situations and violations covered by her mandate need to be considered as part of a holistic approach to the protection and promotion of human rights.

25. This concerted approach will make it possible to obtain a comprehensive overview and a wide-ranging analysis of the situation, with a view to proposing concrete, realistic and achievable recommendations and actions; these will in turn make it possible to pursue genuine child protection policies, properly coordinated, based on an intersectoral and multisectoral approach, appropriate to specific situations and covering prevention and the rehabilitation and reintegration of children, in addition to promotion of the rights of the child.

26. This means, *inter alia*, that a significant part of the Special Rapporteur's work will involve sharing information and coordinating with those special procedures and treaty bodies whose thematic mandates are by their nature bound up with the issues of sale of children, child prostitution and child pornography, in particular the Committee on the Rights of the Child; the Special Rapporteur on contemporary forms of slavery; the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the independent expert to direct an in-depth study of the question of violence against children; the Special Representative of the Secretary-General for Children and Armed Conflict; and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

27. With respect to the part of her mandate devoted to "the analysis of the root causes of sale of children, child prostitution and child pornography,"⁷ the Special Rapporteur proposes to cooperate with the Representative of the Secretary-General on internally displaced persons; the Special Rapporteur on the right to education; the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people; the independent expert on minority issues; the independent expert on the question of human rights and extreme poverty; and the Committee on the Elimination of Discrimination against Women.

28. In this context, in chapter III of her report the Special Rapporteur will identify those issues that, because of their cross-cutting nature, will be tackled in close coordination and cooperation with the aforementioned mandate holders, and those that are more directly covered by her mandate. Even for these more specific issues, however, the Special Rapporteur might well join with other mandate holders in bringing particular situations to the attention of Governments and other concerned parties. Depending on the type of the violation reported, she might join forces with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable

⁷ Human Rights Council resolution 7/13, para. 2 (b).

standard of physical and mental health; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; or the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

29. The Special Rapporteur intends to carry out her task in accordance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, adopted by the Council in its resolution 5/2, and the Manual of Operations of the Special Procedures of the Human Rights Council.⁸ In particular, the Special Rapporteur will implement her mandate in complete independence, in close cooperation with all stakeholders, favouring dialogue and basing her conclusions and recommendations on reliable information, reviewed objectively and impartially.

30. In implementation of Council resolution 7/13, the Special Rapporteur will be required, through her various activities, to “identify, exchange and promote best practice” and to “continue [...] his/her efforts to promote comprehensive strategies and measures on the prevention of sale of children, child prostitution and child pornography”.⁹ Only through a constructive, coordinated approach will it be possible to improve victims’ situation and prevent violations against potential victims in the future, which must remain the ultimate and principal goal for all stakeholders.

31. As to the practical aspects of her work under the mandate, the Special Rapporteur intends to apply the special procedures working methods as set out in the relevant resolutions, in particular the resolutions on the establishment and renewal of the mandate on the sale of children, child prostitution and child pornography¹⁰ and, most recently, Council resolution 7/13. Her mandated tasks include conducting country visits and making recommendations to the Council accordingly; sending communications and urgent appeals to Governments; presenting annual thematic reports to the Council; publishing press releases; holding ongoing discussions with stakeholders at the governmental, intergovernmental, non-governmental and civil society levels; and advocacy work to facilitate the achievement of her mandated objectives.

32. With respect to country visits, before sending requests to the Governments concerned the Special Rapporteur will establish a number of indicators as a basis for the request, including implementation of effective programmes to prevent and combat the sale of children, child prostitution and child pornography and/or receipt of reliable reports of violations of children’s rights falling within the scope of her mandate. The main purpose of these country visits is to propose concrete programmes and/or amendments to existing programmes to the Governments concerned and, where appropriate, to those that could face similar situations, in order to better

⁸ See the revised draft presented to the fifteenth annual meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the Human Rights Council, held in Geneva from 23 to 27 June 2008 (http://www2.ohchr.org/english/bodies/chr/special/annual_meetings/15th.htm).

⁹ Resolution 7/13, paras. 2 (d) and (e).

¹⁰ See in particular Commission on Human Rights resolutions 1990/68 and 2001/75.

protect children's rights and prevent violations. The Special Rapporteur takes a programmatic view of country visits: violations are an indicator of problematic situations that all partners in a given country or region must address.

33. The Special Rapporteur wishes to explore the feasibility of conducting regional or transnational missions, though the different kinds of situations currently covered by her mandate makes an analysis of the regional and transnational dimensions essential for a more comprehensive view (regional or transnational) of the situation with regard to the sale of children, child prostitution and child pornography.

34. With respect to communications sent to Governments, including requests for information in the form of questionnaires, the Special Rapporteur wishes to develop this part of her mandate in order to obtain a more realistic and practical view of the problems related to the sale of children, child prostitution and child pornography. In order to do so it will be necessary, as emphasized above, to better explain the terms and scope of her mandate to the organizations concerned, in particular grass-roots organizations and associations, and to victims or potential victims. To that end the Special Rapporteur will in the first instance review and update the questionnaire in order to make it more accessible to victims, civil society associations and grass-roots organizations.

35. As part of her work, the Special Rapporteur plans to pay particular attention to the follow-up to her various activities, in particular country visits and communications. She will look especially closely at the possibility of follow-up missions to countries and will publish follow-up reports to country missions, based on information gathered from the Governments concerned and intergovernmental and non-governmental organizations concerning the implementation of recommendations. She will also step up her interaction with local partners so as to keep abreast of the implementation of her and her predecessors' recommendations.

36. The Special Rapporteur is aware of the important role played by technical and financial partners (international bilateral/multilateral cooperation; intergovernmental organizations), the media, international and regional police/customs organizations, international Internet companies and the tourism sector, and will develop close ties of cooperation with these partners in order to achieve her objectives.

IV. REFLECTIONS ON THE MANDATE

37. Given the short time that has elapsed since the Special Rapporteur's appointment, the present report provides only an outline of the direction that her work will take during her mandate. Having read the reports of her predecessors and held discussions with the United Nations specialized agencies, funds and programmes (UNICEF, ILO), major NGOs, other mandate holders, treaty bodies (in particular the Committee on the Rights of the Child), the independent expert to direct an in-depth study of the question of violence against children and the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur emphasizes the need to develop an integrated system for child protection, based on a global, intersectoral and multisectoral approach that takes account of the best interest of the child and child protection, and encompasses (a) prevention; (b) medical, psychological, social and legal support; and (c) promotion of the rights of the child.

38. Informing and raising awareness among all partners would help clarify and improve their understanding of the mandate by, inter alia:

(a) Clearly explaining what kinds of violations come within the scope of the Special Rapporteur's mandate, so as to avoid confusion and overlap with other special procedures mandates and obtain information specifically on the sale of children, child prostitution and child pornography;

(b) Improving understanding of the Special Rapporteur's role and the mission;

(c) Reaching out to the international, regional and local organizations working with child victims or potential victims of sale, prostitution and pornography and establishing a cooperative relationship with them. To this end, the Special Rapporteur considers that the partners concerned should come together at a seminar, ideally, in 2009.

39. The involvement of children themselves is an aspect the Special Rapporteur will pay particular attention to; an interactive approach will allow her to take children's opinions and suggestions into account in her recommendations. The Special Rapporteur is aware that this exercise will call for close collaboration with children's rights organizations and institutions in a special effort to involve children in the defence of their own rights.

40. In accordance with the guiding principles of the Convention on the Rights of the Child and Commission on Human Rights resolution 2001/51 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), the working methods of the Special Rapporteur will incorporate the gender perspective, the best interests of the child and the Guidelines on HIV/AIDS and human rights.¹¹

41. In-depth analysis of the socio-economic, cultural and environmental factors, and in particular of the market supply and demand underpinning the sale of children, child prostitution and child pornography, will make it possible (a) to implement appropriate and effective prevention strategies and (b) to pick out emerging trends.

42. In view of the lack of information, highlighted by her predecessors, on: (a) child pornography (see E/CN.4/2005/78 and Add.1 to 4); (b) the sale of children's organs (see A/HRC/4/31); and (c) the sale of children for adoption (see E/CN.4/2003/79) the Special Rapporteur proposes to report on these three themes.

43. In his last report to the Council (A/HRC/7/8), Juan Miguel Petit noted that the law in some countries continues to criminalize child victims of sexual exploitation. The Special Rapporteur proposes to develop an advocacy programme to urge that, child victims of sexual exploitation should not be criminalized in domestic law and that the fact that a child consents should be disregarded.

¹¹ E/CN.4/1997/3.

44. In a similar vein, the Special Rapporteur also proposes, during her mandate, to urge States that have not already done so to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

45. With respect to the strategies deployed by States, while the previous Special Rapporteur identified and listed examples of best practice, he also noted a regrettable absence of standards and protocols for the care of child victims of trafficking and commercial sexual exploitation (A/HRC/7/8 paras. 27 to 69 and 75 to 77). The Special Rapporteur proposes to help develop standards and procedures for the care of child victims of sale, sexual exploitation or pornography, in consultation and close cooperation with all partners.

46. With regard to country visits, the Special Rapporteur will in the first instance undertake the visits already planned by her predecessor, to which the States concerned have agreed. The transnational and regional perspective will be a priority in country visits, along with joint or coordinated visits with other special procedures mandate holders, in particular the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, in particular women and children.

47. The States to be visited will be selected based on the following criteria:

- Follow-up to recommendations made on previous visits
- Analysis of communications from countries
- Countries that have undergone or are due to undergo universal periodic review
- Countries that are due to report or have reported to the Committee on the Rights of the Child, where the Committee has made recommendations relevant to the mandate
- Proposals from NGOs or United Nations specialized agencies, funds or programmes

48. The Third World Congress Against Sexual Exploitation of Children and Adolescents will be held in Rio de Janeiro, Brazil from 25 to 28 November 2008, and the Special Rapporteur has made known her wish to attend and to chair a round table on “Areas for bilateral and/or multilateral cooperation to prevent and combat sex tourism and child pornography”.

49. Throughout her mandate, the Special Rapporteur will favour a participatory, consultative approach, through sustained partnership with Governments, civil society, international, regional and national NGOs, United Nations agencies, international intergovernmental organizations, other special procedures mandate holders, treaty bodies and the private sector. This partnership will be developed through exchanges of information, preparation of country visits, contribution to thematic reports, organization of workshops and seminars, identification of best practices, production of material (information and awareness-raising, standards and guidelines and so on) and, most of all, follow-up to the implementation of recommendations. To that end partnership mechanisms will be established, including an updated database (national, regional and international NGOs, United Nations agencies, international forums, intergovernmental organizations, the private sector and so on); questionnaires; and regular updating of the website.

50. Lastly, the Special Rapporteur will place particular emphasis on follow-up to recommendations made in her own reports or in other documents such as the reports of the Working Group on the universal periodic review, the final comments of the Committee on the Rights of the Child and the United Nations Study on Violence Against Children, provided, of course, that they come within the scope of her mandate.

V. CONCLUSIONS

51. **The Special Rapporteur has endeavoured in this report to outline her view of her mandate and the methods whereby she will discharge that mandate. Having analysed the reports of the three previous special rapporteurs, the reports of the Committee on the Rights of the Child and the United Nations Study on Violence Against Children, and having held meetings with NGOs, United Nations agencies, treaty bodies and other special procedures mandate holders, she has set out the strategic directions that she proposes to take during her mandate.**

52. **It is as yet premature to present conclusions in the form of recommendations.**

53. **The next report will contain concrete, realistic and achievable recommendations appropriate to the context and situations.**

54. **That having been said, the Special Rapporteur wishes to emphasize the multisectoral, intersectoral, national, transnational and international dimensions of the sale of children, child prostitution and child pornography, which call for efficient cooperation from all those directly or indirectly involved with children's issues.**

55. **Lastly, the Special Rapporteur wishes to underscore the importance of implementing a comprehensive child protection system that ensures the best interest of the child and encompasses prevention and care as well as medical, psychological, social and legal support for child victims and promotion of the rights of the child. That will require concerted, effective national, regional and international coordination and cooperation.**
