



دائرة القضاء
JUDICIAL DEPARTMENT

Encyclopedia of Combating Human Trafficking

Part One

International Conventions

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Introduction

Slavery is an old evil that human kind has been unable to defeat. Although we live in the twenty first century and despite the tremendous civilization witnessed by humanity, slavery still exists in many countries, regardless of the new forms it has taken differently from the traditional one. Trafficking in human beings is in fact a modern form of slavery, and it is often conducted by organized criminal groups, either within the borders of countries or across international borders. At the present time, it is no exaggeration to say that the victims of this crime, mainly women and children, has come to one million persons a year, at the world level⁽¹⁾.

Inferring Arab legislations, we can say that the majority of Arab countries tend to enact a separate law to combat human trafficking. The UAE legislature has been a pioneer in combating the crime of trafficking in human beings, by enacting the Federal Law No. 51 of 2006, the first Arab legislation issued in this area. Then, many Arab countries followed the UAE steps and issued their own legislations, including the Bahraini Law No. (1) of 2008 on combating trafficking in persons⁽²⁾, the Omani special law issued before the end of 2008 on combating trafficking in human beings, pursuant to the Royal Decree No. 126 of 2008⁽³⁾, the Jordanian Law No. 9 of 2009 on the prevention of human trafficking⁽⁴⁾, and the Syrian Legislative Decree No. 3 of 2010 to prevent the crimes of trafficking

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1. Refer to the second paragraph of the preamble of the US Public Act No. 106-386, on the protection of Victims of Trafficking and Violence, stating «As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700.000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50.000 women and children are trafficked into the United States each year».
 2. This law was promulgated on the ninth of January, 2008, and came into force on the second day following its publication in the Official Gazette.
 3. The said Omani Royal Decree was issued on the twenty-third of November 2008, and came into force on the second day following its publication in the Official Gazette.
 4. This law was published in the Official Gazette on the first of March, 2009. It came into force 30 days after publication date. Refer to the Official Gazette of the Hashemite Kingdom of Jordan , No. 4952 dated March 1st, 2009 , p 920 .

in persons¹⁾, and finally in the same year, Egypt issued Law No. 64 of 2010 on combating trafficking in human beings²⁾.

With regard to comparative legislations, the United States has issued a special law on the crimes of trafficking in human beings, i.e. Law No. 106-386 on the protection of victims of trafficking and violence, issued on the 28th of October, 2000³⁾. This law outlines the different forms of trafficking crimes and provides for a separate penalty for each form of such crimes.

The crime of human trafficking, in nature, falls under the transnational crimes, as it is usually committed in more than one region or country. Commonly, victims are transported from one country to another receiving State. Due to this nature, the United Nations issued a special Convention against Transnational Organized Crime, and supplemented it by Palermo protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Since it is a transnational crime, it is essential for the entire international community to cooperate in the fight against this crime. This cooperation will be feasible only if consistency between the relevant national legislation to combat trafficking in human beings is taken into account.

Recognizing the importance of this crime, and out of our desire to strengthen international efforts to combat this crime, the Judicial Department have decided to issue an Encyclopedia of combating human trafficking, which encompasses all relevant international conventions to combat trafficking in human beings (Part I), Arab legislations on combating this crime (Part II), then European legislations

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1. This decree was issued on January 7th 2010 , and came into effect after three months from its issuance date.
 2. This law was promulgated on the ninth of May, 2010, and was published in the Official Gazette on the same day of its issuance. It came into force on the second day following its publication. See: Official Gazette of the Arab Republic of Egypt, No. 18 bis, dated May 9, 2010 , p5 and beyond.
 3. Victims of Trafficking and Violence Protection Act of 2000, Public Law, 106-386-Oct. 28, 2000.

relevant to the fight against trafficking in human beings (Part III), followed by the U.S. legislations on combating trafficking in human beings (Part IV), then Asian legislations designed to combat trafficking in human beings (Part V), and finally African legislations to combat trafficking in Human Beings (Part VI).

To expand benefits and to facilitate access to this encyclopedia by all parties interested in combating the crime of trafficking in human beings, this encyclopedia will be issued in both Arabic and English .

In conclusion, we hope this encyclopedia will help all legal professionals, be judges, litigants, lawyers, counsels, legal researchers, law enforcement agencies or academics in universities, colleges and institutes of higher education.

Judicial Department – Abu Dhabi

United Nations Office on Drugs and Crime, Vienna

**UNITED NATIONS CONVENTION AGAINST
TRANSNATIONAL ORGANIZED CRIME
AND PALERMO PROTOCOL**

UNITED NATIONS
New York, 2004

**United Nations Convention Against
Transnational Organized Crime
And Palermo Protocol⁽¹⁾**

Foreword

With the signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings.

One of the starkest contrasts in our world today is the gulf that exists between the civil and the uncivil. By “civil” I mean civilization: the accumulated centuries of learning that form our foundation for progress. By “civil” I also mean tolerance: the pluralism and respect with which we accept and draw strength from the world’s diverse peoples. And finally, I mean civil society: the citizens’ groups, businesses, unions, professors, journalists, political parties and others who have an essential role to play in the running of any society.

Arrayed against these constructive forces, however, in ever greater numbers and with ever stronger weapons, are the forces of what I call “uncivil society”. They are terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society. They take advantage of the open borders, free markets and technological advances that bring so many benefits to the world’s people. They thrive in countries with weak institutions, and they show no scruple about resorting to intimidation or violence. Their ruthlessness is the very antithesis of all we regard as civil. They are powerful, representing entrenched interests and the clout of a global enterprise worth billions of dollars, but they are not invincible.

The Millennium Declaration adopted by the Heads of State meeting at the United Nations in September 2000 reaffirmed the principles underlying our efforts and should serve to encourage all who struggle for the rule of law. The Declaration states that “men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice”.

(1) Under the Federal Decree No. (35) of 2007, the UAE has acceded to the UN Convention against Transnational Organized Crime.

At the Millennium Summit, world leaders proclaimed freedom—from fear and from want—as one of the essential values in the twenty-first century. Yet the right to live in dignity, free from fear and want, is still denied to millions of people around the world. It is denied to the child who is working as an indentured labourer in a sweatshop; to the father who must pay a bribe to get medical care for his son or daughter; to the woman who is condemned to a life of forced prostitution.

I believe the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing. It is rooted in social and economic conditions in the countries from which the victims come, facilitated by practices that discriminate against women and driven by cruel indifference to human suffering on the part of those who exploit the services that the victims are forced to provide. The fate of these most vulnerable people in our world is an affront to human dignity and a challenge to every State, every people and every community. I therefore urge the Member States to ratify not only the United Nations Convention against Transnational Organized Crime, but also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which can make a real difference in the struggle to eliminate this reprehensible trade in human beings.

Criminal groups have wasted no time in embracing today's globalized economy and the sophisticated technology that goes with it. But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete. The Convention gives us a new tool to address the scourge of crime as a global problem. With enhanced international cooperation, we can have a real impact on the ability of international criminals to operate successfully and can help citizens everywhere in their often bitter struggle for safety and dignity in their homes and communities.

The signing of the Convention in Palermo in December 2000 was a watershed event in the reinforcement of our fight against organized crime. I urge all States to ratify the Convention and the Protocols thereto at the earliest possible date and to bring these instruments into force as a matter of urgency.

Kofi A. Annan
Secretary-General

**General Assembly resolution 55/25 of 15 November 2000
United Nations Convention against
Transnational Organized Crime**

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

Expressing its appreciation to the Government of Poland for submitting to it at its fifty-first session a first draft United Nations convention against transnational organized crime⁽¹⁾ and for hosting the meeting of the inter-sessional open-ended intergovernmental group of experts, established pursuant to resolution 52/85 of 12 December 1997, on the elaboration of a preliminary draft of a possible comprehensive international convention against transnational organized crime, held in Warsaw from 2 to 6 February 1998,

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998,

Expressing its appreciation to the Government of Thailand for hosting the

(1) A/C.3/51/7, annex.

Asia-Pacific Ministerial Seminar on Building Capacities for Fighting Transnational Organized Crime, held in Bangkok on 20 and 21 March 2000,

Deeply concerned by the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels,

Noting with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly,

Determined to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level,

Strongly convinced that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes,

1. Takes note of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime⁽¹⁾, which carried out its work at the headquarters of the United Nations Office for Drug Control and Crime Prevention in Vienna, and commends the Ad Hoc Committee for its work;
2. Adopts the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens them for signature at the High-level Political Signing Conference to be held in Palermo, Italy, from 12 to 15 December 2000 in accordance with resolution 54/129;
3. Requests the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Palermo in accordance with resolution 54/129;

(1) A/AC.254/34.

4. Notes that the Ad Hoc Committee has not yet completed its work on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;
5. Requests the Ad Hoc Committee to continue its work in relation to this draft Protocol, in accordance with resolutions 53/111, 53/114 and 54/126, and to finalize such work as soon as possible;
6. Calls upon all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein;
7. Recommends that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to developing a comprehensive convention on international terrorism, pursuant to resolution 54/110 of 9 December 1999, should take into consideration the provisions of the United Nations Convention against Transnational Organized Crime;
8. Urges all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto;
9. Decides that, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Transnational Organized Crime decides otherwise, the account referred to in article 30 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require for implementation of the Convention and the protocols thereto, including for the preparatory measures needed for that implementation;
10. Decides also that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the United Nations Convention against Transnational Organized Crime by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and

other rules and mechanisms described in article 32 of the Convention, which will be communicated to the Conference of the Parties at its first session for consideration and action;

11. Requests the Secretary-General to designate the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention to serve as the secretariat for the Conference of the Parties to the Convention in accordance with article 33 of the Convention;
12. Also requests the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the United Nations Convention against Transnational Organized Crime and to discharge the functions of secretariat of the Conference of the Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 10 above.

United Nations Convention against Transnational Organized Crime

Article 1. Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2. Use of terms

For the purposes of this Convention:

- (a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) “Predicate offence” shall mean any offence as a result of which proceeds

have been generated that may become the subject of an offence as defined in article 6 of this Convention;

- (i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- (j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

Article 3. Scope of application

- 1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:
 - (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
 - (b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.
- 2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:
 - (a) It is committed in more than one State;
 - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
 - (d) It is committed in one State but has substantial effects in another State.

Article 4. Protection of sovereignty

- 1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
- 2. Nothing in this Convention entitles a State Party to undertake in the territory

of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5. Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
 - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
 - (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
 - (a) Criminal activities of the organized criminal group;
 - (b) Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
 - (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6. Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary

- to establish as criminal offences, when committed intentionally:
- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
 - (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
 - (b) Subject to the basic concepts of its legal system:
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
2. For purposes of implementing or applying paragraph 1 of this article:
- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
 - (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;
 - (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
 - (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
 - (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;
 - (f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7. Measures to combat money-laundering

1. Each State Party:
 - (a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;
 - (b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering.
2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.
4. States Parties shall endeavour to develop and promote global, regional, sub-regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8. Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person

or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
 3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
 4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9. Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11. Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.
5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.
6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12. Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
 - (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
 - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.
2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

**Article 13. International cooperation for
purposes of confiscation**

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
 - (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
 - (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.
2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.
3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:
 - (a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
 - (b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
 - (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.
5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14. Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.
2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
 - (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a

part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

- (b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15. Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:
 - (a) The offence is committed in the territory of that State Party; or
 - (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence is committed against a national of that State Party;
 - (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
 - (c) The offence is:
 - (i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
 - (ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.
3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.
5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article

has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16. Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.
3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. States Parties that make extradition conditional on the existence of a treaty shall:
 - (a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
 - (b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition

with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18. Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.
4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.
5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities

- receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.
6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
 7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the 21 corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.
 8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
 9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.
 10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:
 - (a) The person freely gives his or her informed consent;
 - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.
 11. For the purposes of paragraph 10 of this article:
 - (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody,

- unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
 - (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.
12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.
13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.
14. Requests shall be made in writing or, where possible, by any means capable

of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:
 - (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
 - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
 - (e) Where possible, the identity, location and nationality of any person concerned; and
 - (f) The purpose for which the evidence, information or action is sought.
16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior

consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.
21. Mutual legal assistance may be refused:
 - (a) If the request is not made in conformity with the provisions of this article;
 - (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, order public or other essential interests;
 - (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
 - (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.
22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
23. Reasons shall be given for any refusal of mutual legal assistance.
24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.
25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.
26. Before refusing a request pursuant to paragraph 21 of this article or postponing

- its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.
27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.
28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
29. The requested State Party:
- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
 - (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.
30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20. Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.
2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
3. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22. Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23. Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24. Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - (a) Establishing procedures for the physical protection of such persons,

such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

- (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
 4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25. Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26. Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:
 - (a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:
 - (i) The identity, nature, composition, structure, location or activities of organized criminal groups;
 - (ii) Links, including international links, with other organized criminal groups;
 - (iii) Offences that organized criminal groups have committed or may commit;

- (b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.
- 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
- 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
- 4. Protection of such persons shall be as provided for in article 24 of this Convention.
- 5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27. Law enforcement cooperation

- 1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:
 - (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
 - (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
 - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - (ii) The movement of proceeds of crime or property derived from the commission of such offences;

- (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
 - (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
 - (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
 - (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
 - (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.
2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

**Article 28. Collection, exchange and analysis of information
on the nature of organized crime**

1. Each State Party shall consider analyzing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.
2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29. Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:
 - (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
 - (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
 - (c) Monitoring of the movement of contraband;
 - (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
 - (e) Collection of evidence;
 - (f) Control techniques in free trade zones and free ports;
 - (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
 - (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
 - (i) Methods used in the protection of victims and witnesses.
2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

**Article 30. Other measures: implementation of the Convention
through economic development and technical assistance**

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
 - (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;
 - (b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;
 - (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
 - (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.
3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31. Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.
2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:
 - (a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
 - (b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
 - (c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;
 - (d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:
 - (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
 - (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
 - (iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and
 - (iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.
3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.
5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.
6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.
7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32. Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.
2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).
3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:
 - (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
 - (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
 - (c) Cooperating with relevant international and regional organizations and

- non-governmental organizations;
 - (d) Reviewing periodically the implementation of this Convention;
 - (e) Making recommendations to improve this Convention and its implementation.
4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
 5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33. Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.
2. The secretariat shall:
 - (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
 - (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and
 - (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34. Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party 36 independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least

one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37. Relation with protocols

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40. Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.
3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

PALERMO PROTOCOL

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2. Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3. Use of terms

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 eighteen years of age.

Article 4. Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5. Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6. Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

**Article 7. Status of victims of trafficking in persons
in receiving States**

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8. Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9. Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from re-victimization.

3. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
4. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
5. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
6. 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.

Article 10. Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with nongovernmental

organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12. Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13. Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14. Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention⁽¹⁾ and the 1967 Protocol⁽²⁾ relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for

(1) United Nations, Treaty Series, vol. 189, No. 2545.

(2) Ibid., vol. 606, No. 8791.

arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 16. Signature, ratification, acceptance,
approval and accession**

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party 50 to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18. Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

United Nations Office on Drugs and Crime

**MODEL LAW
AGAINST TRAFFICKING IN PERSONS**

V.09-81990 (E)

Introduction⁽¹⁾

The UNODC Model Law against Trafficking in Persons was developed by the United Nations Office on Drugs and Crime (UNODC) in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organized Crime⁽²⁾ and the Protocols thereto. It was developed in particular to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention⁽³⁾.

The Model Law will both facilitate and help systematize provision of legislative assistance by UNODC as well as facilitate review and amendment of existing legislation and adoption of new legislation by States themselves. It is designed to be adaptable to the needs of each State, whatever its legal tradition and social, economic, cultural and geographical conditions.

The Model Law contains all the provisions that States are required or recommended to introduce into their domestic legislation by the Protocol. The distinction between mandatory and optional provisions is indicated in the commentary to the law. This distinction is not made with regard to the general provisions and the definitions, as they are an integral part of the Model Law, but are not mandated by the Protocol per se. Recommended provisions may also stem from other international instruments. Whenever appropriate or necessary, several options for language are suggested in order to reflect the differences between legal cultures.

The commentary also indicates the source of the provision and, in some cases, supplies alternatives to the suggested text or examples of national legislation from various countries (in unofficial translation where necessary). Due regard is also given to the interpretative notes for the travaux préparatoires of the Protocol⁽⁴⁾ and the legislative guides for the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

It should be emphasized that matters related to international cooperation in criminal matters, as well as crimes of participation in an organized criminal group, corruption, obstruction of justice, and money-laundering, which often accompany human trafficking activities, are contained in the “parent” Convention. It is therefore

(1) The introduction is intended as an explanatory note on the genesis, nature and scope of the Model Law on Trafficking in Persons; it is not part of the text of the Model Law.

(2) United Nations, Treaty Series, vol. 2225, No. 39574.

(3) Ibid., vol. 2237, No. 39574.

(4) A/55/383/Add.1.

essential that the Trafficking in Persons Protocol provisions be read and applied together with the provisions of the Convention and that domestic legislation be developed to implement not only the Protocol but also the Convention. In addition, it is of particular importance that any legislation on trafficking in persons be in line with a State's constitutional principles, the basic concepts of its legal system, its existing legal structure and enforcement arrangements, and that definitions used in such legislation on trafficking in persons be consistent with similar definitions used in other laws. The Model Law is not meant to be incorporated as a whole without a careful review of the whole legislative context of a given State. In that respect, the Model Law cannot stand alone and domestic legislation implementing the Convention is essential for it to be effective.

The work on the UNODC Model Law against Trafficking in Persons has been carried out by the Organized Crime and Criminal Justice Section of the Division for Treaty Affairs in cooperation with the Anti-Human Trafficking and Migrant Smuggling Unit of the Division for Operations and the Statistics and Surveys Section of the Division for Policy Analysis and Public Affairs. Two consultant drafters, Marjan Wijers and Roelof Haveman, assisted UNODC. A group of experts⁽¹⁾ in the field of human trafficking, from a variety of legal and geographical backgrounds met to discuss and review the draft of the Model Law.

(1) Experts were from Canada, Côte d'Ivoire, Egypt, France, Georgia, Israel, Lebanon, the Netherlands, Nigeria, Slovakia, Thailand, Uganda and the United States of America, as well as representatives of the International Labour Organization and the Organization for Security and Cooperation in Europe.

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Model Law against Trafficking in Persons

Preamble

The Government of [name of State],

Concerned with the problem of trafficking in persons in [name of State],

Considering that trafficking in persons constitutes a serious offence and a violation of human rights,

Considering also that, in line with the international and/or regional conventions to which [name of State] is a party, measures must be taken to prevent trafficking in persons, to punish the traffickers and to assist and protect the victims of such trafficking, including by protecting their human rights,

Considering further the international obligations accepted by [name of State] when it ratified/acceded to [the United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,] [the ILO Convention concerning Forced or Compulsory Labour,] [the ILO Convention concerning the Abolition of Forced Labour,] [the Convention on the Rights of the Child,] [the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,] [the Slavery Convention,] [the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,] [the Convention on the Elimination of All Forms of Discrimination against Women,] [the International Convention on the Protection of the Rights of All Migrant Workers and Their Families],

Considering that all actions and initiatives against trafficking in persons must be non-discriminatory and take gender equality into account, as well as a child-sensitive approach,

Recognizing that, in order to deter traffickers and bring them to justice, it is necessary to appropriately criminalize trafficking in persons and related offences, prescribe appropriate punishment, give priority to the investigation and prosecution of trafficking offences and assist and protect the victims of such offences,

Recognizing also that advocacy, awareness-raising, education, research, training, counselling and other measures are necessary to help families, local communities and governmental and civil society institutions to fulfil their responsibilities in preventing trafficking in persons, in protecting and assisting the victims of such trafficking and in law enforcement,

Recognizing further that children who are victims or witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, gender, level of maturity and special needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process,

Believing that effective measures against trafficking in persons require national coordination and cooperation between government agencies as well as between government agencies and civil society, including non-governmental organizations,

Believing also that trafficking in persons is a national as well as a transnational crime, where criminals work across boundaries, and that therefore the response to human trafficking also has to rise above jurisdictional limitations, and that States must cooperate bilaterally and multilaterally to effectively suppress this crime,

Be it enacted by the [National Assembly/Parliament/other] of [name of State] during its [number] session on [date]:

Commentary

Optional provision

The preamble, if any, will vary according to the legal culture and the local context.

Chapter I. General provisions

Article 1. [Title]

The present Law may be cited as the [Law against Trafficking in Persons] of [name of State] [year of adoption].

Commentary

Article 1 is redundant when there is a separate law promulgating the present law on trafficking in persons. In such a case the title of the law will be mentioned in the promulgation law. Examples of titles are:

- Combating Trafficking in Persons Act;
- Countering Trafficking in Persons Act;
- Act to Prevent and Suppress Trafficking in Persons and to Protect and Assist Victims of Trafficking.

Article 2. Commencement

The present Law shall come into force on the [date].

Article 3. General principles

1. The purposes of this Law are:
 - (a) To prevent and combat trafficking in persons in [name of State];
 - (b) To protect and assist the victims of such trafficking, while maintaining full respect for their human rights [protecting their human rights];
 - (c) To ensure just and effective punishment of traffickers [effective investigation and prosecution of traffickers]; and
 - (d) To promote and facilitate national and international cooperation in order to meet these objectives.

Commentary

Source: Protocol, article 2.

Paragraph 1 slightly modifies article 2 of the Protocol, by adding subparagraph (c).

2. The measures set forth in this Law [in particular the identification of victims and the measures to protect and promote the rights of victims] shall be interpreted and applied in a way that is not discriminatory on any ground, such as race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status.

Commentary

Source: Protocol, article 14.

According to article 14, paragraph 1, of the Protocol, nothing in the Protocol “shall affect the rights, obligations and responsibilities of States and individuals under international law, including humanitarian and international human rights law”.

The same article (paragraph 2) also provides that the measures set forth in the Protocol “shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent

with internationally recognized principles of non-discrimination” as, for example, contained in the International Covenant on Civil and Political Rights (article 2, paragraph 1).

At a minimum, the wording of article 14 should be included if a similar provision is not already included in the law as a general principle. An example is:

“The measures set forth in this law shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking and shall be consistent with the principle of non-discrimination.”

3. Child victims shall be treated fairly and equally, regardless of their or their parents’ or the legal guardian’s race, colour, religion, belief, age, family status, culture, language, ethnicity, national or social origin, citizenship, gender, sexual orientation, political or other opinion, disability, property, birth, immigration status, the fact that the person has been trafficked or has participated in the sex industry, or other status.

Commentary

Source: Protocol, article 14.

As the Protocol itself addresses the special needs of children (Protocol, article 6, paragraph 4), and should be consistent with existing human rights law (Protocol, article 14, paragraph 2), such as the Convention on the Rights of the Child, the provisions of the Model Law contain child-specific wording, where appropriate.

Paragraph 3 is based on article 14 of the Protocol, and the internationally recognized principle of non-discrimination, as, for example, contained in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

Article 4. Scope of application

This Law shall apply to all forms of trafficking in persons, whether national or transnational and whether or not connected with organized crime.

Commentary

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, should be interpreted together with the Convention (Protocol, article 1). Article 4 of the Protocol limits its applicability to the prevention, investigation and prosecution of offences that are transnational in nature and involve an organized criminal group, except as otherwise stated.

These requirements are not part of the definition of the offence (see the Protocol, article 3 and article 5, paragraph 1) and national laws should establish trafficking in persons as a criminal offence, independently of the transnational nature or the involvement of an organized criminal group (see the Convention, article 34). The Model Law does not distinguish between provisions that require these elements and provisions that do not, in order to ensure equal treatment by national authorities of all cases of trafficking in persons within their territory.

Chapter II. Definitions

Article 5. Definitions

Commentary

Some jurisdictions prefer to include a chapter on definitions in the law, either at the beginning or at the end of the law. In other jurisdictions the criminal code or law contains a general chapter with definitions, in which case some or all of the below-mentioned definitions can be included. In some cases, States may find it advisable to leave the interpretation to the courts. The definitions here should be read in conjunction with the definitions of crime in chapter IV, Criminal provisions: basic criminal offences as a foundation for trafficking offences.

Where possible, definitions are derived from the Protocol, the Convention or other existing international instruments. In some cases examples are given from existing national laws from various countries. In general it is advisable for the definitions used in this law to be in line with already existing definitions provided in domestic law.

This chapter only contains definitions of terms that are specific to trafficking in persons. General terms are not included, as they should already be incorporated in the national law (with all national variations possible). These terms include “accomplice”, “aiding and abetting”, “attempt”, “conspiracy”, “falsified identity document”, “legal person” and “structured group”.

1. For the purposes of this Law the following definitions shall apply:

- (a) “Abuse of a position of vulnerability” shall refer to any situation in which the person involved believes he or she has no real and acceptable alternative but to submit;

or

“Abuse of a position of vulnerability” shall mean taking advantage of the vulnerable position a person is placed in as a result of [provide a relevant list]:

- [(i) Having entered the country illegally or without proper documentation;] or
- [(ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;] or
- [(iii) Reduced capacity to form judgements by virtue of being a child, illness, infirmity or a physical or mental disability;] or
- [(iv) Promises or giving sums of money or other advantages to those having authority over a person;] or
- [(v) Being in a precarious situation from the standpoint of social survival;] or
- [(vi) Other relevant factors.]

Commentary

Source: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1), para. 63 (hereinafter “interpretative notes ... (A/55/383/Add.1)”).

Many other definitions of abuse of a position of vulnerability are possible, including elements such as abuse of the economic situation of the victim or of dependency on any substance, as well as definitions focusing on the objective situation or on the situation as perceived by the victim.

It is recommended to include a definition of this crime element in the law, as in practice it appears to pose many problems.

In order to better protect the victims, Governments may consider adopting a definition focusing on the offender and his intention to take advantage of the situation of the victim. These may also be easier to prove, as it will not require an inquiry into the state of mind of the victim but only that the offender was aware of the vulnerability of the victim and had the intention to take advantage of it.

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Examples:

“Abuse of a position of vulnerability means such abuse that the person believes he or she has no reasonable alternative but to submit to the labour or services demanded of the person, and includes but is not limited to taking advantage of the vulnerabilities resulting from the person having entered the country illegally or without proper documentation, pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance, or reduced capacity to form judgments by virtue of being a child.”

(Source: US State Department Model Law to Combat Trafficking in Persons, 2003)

“Taking advantage of the particularly vulnerable position in which the alien is placed as a result of illegal or insecure administrative status, pregnancy, illness, infirmity or a physical or mental disability.”

(Source: Belgium, Law containing Provisions to Combat Trafficking in Human Beings and Child Pornography, 13 April 1995, article 77 bis (1)2)

“Profiting from a situation of physical or psychological inferiority or from a situation of necessity, or through promises or giving sums of money or other advantages to those having authority over a person.”

(Source: Italy, Criminal Code, article 601)

“State of vulnerability – special state in which a person is found such that he/she is inclined to be abused or exploited, especially due to:

- “a) his/her precarious situation from the standpoint of social survival;
- “b) situation conditioned upon age, pregnancy, illness, infirmity, physical or mental deficiency;
- “c) his/her precarious situation due to illegal entry or stay in a country of transit or destination.”

(Source: Republic of Moldova, Law on Preventing and Combating Trafficking in Human Beings No. 241-XVI, 20 October 2005, article 2, paragraph 10)

- (b) “Accompanying dependants” shall mean any family member [and/or] close relative, whom the trafficked person [is bound by law to support] [is legally obligated to provide support], and was present with the victim of trafficking in persons at the time of the offence, as well as any child born during or after

the time of the offence;

- (c) “Child” shall mean any person below the age of eighteen;

Commentary

Source: Protocol, article 3 (d); Convention on the Rights of the Child, article 1; ILO Convention No. 182 on the Worst Forms of Child Labour, article 2.

- (d) “Commercial carrier” shall mean a legal or a natural person who engages in the transportation of goods or people for commercial gain;
- (e) “Coercion” shall mean use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to:
- (i) Threats of harm or physical restraint of any person;
 - (ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
 - (iii) Abuse or any threat linked to the legal status of a person;
 - (iv) Psychological pressure;

Commentary

Source: US State Department Model Law to Combat Trafficking in Persons, 2003.

This is one example of how to define “coercion”. Many variations are possible, focusing on the objective situation or on the situation as perceived by the coerced person.

Another example of a criminal law definition is:

“Force or coercion includes obtaining or maintaining through acts of threat the labour, service or other activities of a person by physical, legal, psychological or mental coercion, or abuse of authority.”

(Source: Nigeria, Harmonised Trafficking in Persons (Prohibition) Law Enforcement and Administration Acts 2005, article 64)

- (f) “Deception” shall mean any conduct that is intended to deceive a person;

or

“Deception” shall mean any deception by words or by conduct [as to fact

or as to law], [as to]:

- (i) The nature of work or services to be provided;
- (ii) The conditions of work;
- (iii) The extent to which the person will be free to leave his or her place of residence; or
- [(iv) Other circumstances involving exploitation of the person.]

Commentary

Deception or fraud can refer to the nature of the work or services that the trafficked person will engage in (for example the person is promised a job as a domestic worker but forced to work as a prostitute), as well as to the conditions under which the person will be forced to perform this work or services (for instance the person is promised the possibility of a legal work and residence permit, proper payment and regular working conditions, but ends up not being paid, is forced to work extremely long hours, is deprived of his or her travel or identity documents, has no freedom of movement and/or is threatened with reprisals if he or she tries to escape), or both.

Under the United Kingdom Theft Act 1968, s15(4), the statutory definition provides that “deception” means “any deception (whether deliberate or reckless) by words or by conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.”

An alternative approach is to define deception in the context of trafficking in persons. The law in Australia defines a specific offence of “deceptive recruiting for sexual services” as:

- “(1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about:
- “(a) the fact that the engagement will involve the provision of sexual services;
or
 - “(aa) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
 - “(b) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
 - “(c) the extent to which the person will be free to cease providing sexual services; or
 - “(d) the extent to which the person will be free to leave his or her place of residence; or
 - “(da) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
 - “(e) the fact that the engagement will involve exploitation, debt bondage or

the confiscation of the person's travel or identity documents; is guilty of an offence."

(Source: Australia, Criminal Code Act 1995, chapter 8/270, section 270.7)

- (g) "Debt bondage" shall mean the status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or if the length of those services is not limited and defined;

Commentary

Source: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, article 1.

"Debt bondage" refers to the system by which a person is kept in bondage by making it impossible for him or her to pay off his or her real, imposed or imagined debts.

An example of a criminal law definition of "debt bondage" is:

"Debt bondage means the status or condition that arises from a pledge by a person:

"(a) of his or her personal services; or

"(b) of the personal services of another person under his or her control; as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if:

"(a) the debt owed or claimed to be owed is manifestly excessive; or

"(b) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or

"(c) the length and nature of those services are not respectively limited and defined."

(Source: Australia, Criminal Code Act 1995, section 271.8)

- (h) "Exploitation of prostitution of others" shall mean the unlawful obtaining of financial or other material benefit from the prostitution of another person;

Commentary

Source: Trafficking in Human Beings and Peace Support Operations: Trainers Guide, United Nations Interregional Crime and Justice Research Institute, 2006, p. 153.

This is one example of a definition, but many other definitions are possible.

Exploitation of prostitution of others and sexual exploitation. The terms “exploitation of prostitution of others” and “sexual exploitation” have been intentionally left undefined in the Protocol in order to allow all States, independent of their domestic policies on prostitution, to ratify the Protocol. The Protocol addresses the exploitation of prostitution only in the context of trafficking (interpretative notes ... (A/55/383/Add.1), para. 64). There is no obligation under the Protocol to criminalize prostitution. Different legal systems—whether or not they legalize, regulate, tolerate or criminalize (the exploitation of the prostitution of others) non-coerced adult prostitution—comply with the Protocol. The term “unlawful” was added to indicate that this has to be unlawful in accordance with the national laws on prostitution. If using these terms in the law, it is advisable to define them.

- (i) “Forced labour or services” shall mean all work or service that is exacted from any person under the threat of any penalty and for which the person concerned has not offered him- or herself voluntarily;

Commentary

Source: ILO Convention No. 29 concerning Forced or Compulsory Labour of 1930, articles 2, paragraph 1, and 25.

Forced labour, slavery, practices similar to slavery and servitude. Article 14 of the Protocol takes note of the existence of other international instruments in interpreting the Protocol. The concepts of forced labour, slavery, practices similar to slavery and servitude are elaborated upon in a number of international conventions and should, where applicable to States concerned, guide the interpretation and application of the Protocol.

Forced labour and services. The notion of exploitation of labour in the definition allows for a link to be established between the Protocol and ILO Convention concerning Forced Labour and makes clear that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour of the Convention. Article 2, paragraph 1, of the Convention defines “forced labour or services” as:

“All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

While the Protocol draws a distinction between exploitation for forced labour or services and sexual exploitation, this should not lead to the conclusion that coercive sexual exploitation does not amount to forced labour or services, particularly in the context of trafficking. Coercive sexual exploitation and forced prostitution fall within the scope of the definition of forced labour or compulsory labour (ILO, *Eradication of Forced Labour*, International Labour Conference, 2007, p. 42). Since the coming into force of Convention No. 29, the ILO Committee of Experts has treated trafficking for the purpose of commercial sexual exploitation as one of the forms of forced labour.

Work or service. A forced labour situation is determined by the nature of the relationship between a person and an “employer”, and not by the type of activity performed, the legality or illegality of the activity under national law, or its recognition as an “economic activity” (ILO, *Global Report 2005*, p. 6). Forced labour thus includes forced factory work as well as forced prostitution or other forced sexual services (also when prostitution is illegal under national law) or forced begging.

Voluntarily. Legislatures and law enforcement have to take into account that the seemingly “voluntary offer” of a worker/victim may have been manipulated or was not based on an informed decision. Also, the initial recruitment can be voluntary and the coercive mechanisms to keep a person in an exploitative situation may come into play later. Where (migrant) workers were induced by deceit, false promises, the retention of travel or identity documents or use of force to remain at the disposal of the employer, the ILO supervisory bodies noted a violation of the Convention. This means that also in cases where an employment relationship was originally the result of a freely concluded agreement, the worker’s right to free choice of employment remains inalienable, that is, a restriction on leaving a job, even when the worker freely agreed to enter into it, can be considered forced labour (ILO *Guidelines on Human Trafficking and Forced Labour Exploitation*, 2005; ILO, *Eradication of Forced Labour*, International Labour Conference, 2007, pp. 20-21).

One way to deal with the difficulty the use of the term may cause is to include in the definition the use of means such as force or threat. This has been the approach taken by several national legislators (see below). The Model Law includes an optional definition that refers back to the “means” element.

Any penalty. The threat of a penalty can take multiple forms ranging from (the threat of) physical violence or restraint, (threats of) violence to the victim or his or her relatives, threats to denounce the victim to the police or immigration

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authorities when his or her employment or residence status is illegal, threats of denunciation to village elders or family members in the case of girls or women forced into prostitution, (threat of) confiscation of travel or identity papers, economic penalties linked to debts, the non-payment of wages, or the loss of wages accompanied by threats of dismissal if workers refuse to work overtime beyond the scope of their contract or national law. (ILO, Global Report 2005, pp. 5-6; ILO, Eradication of Forced Labour, International Labour Conference, 2007, p. 20).

In its report “Human trafficking and forced labour exploitation – guidance for legislation and law enforcement”, ILO identifies five major elements that can point to a forced labour situation:

- (Threat of) physical or sexual violence; this may also include emotional torture like blackmail, condemnation, using abusive language and so on;
- Restriction of movement and/or confinement to the workplace or to a limited area;
- Debt bondage/bonded labour; withholding of wages or refusal of payment;
- Retention of passport and identity papers so that the worker cannot leave or prove his or her identity and status;
- Threat of denunciation to the authorities.

Examples of criminal law definitions of forced labour are:

“Anyone who unlawfully forces a person to work, by using force or other means of pressure or by threat of one of these, or by consent elicited by means of fraud, whether or not for consideration, shall be liable to ... imprisonment.”

(Source: Israel, Criminal Code)

- “(1) Forced labour or services means labour or services that are performed or provided by another person and are obtained or maintained through an actor:
- “(a) causing or threatening to cause serious harm to any person;
 - “(b) physically restraining or threatening to physically restrain any person;
 - “(c) abusing or threatening to abuse the law or legal process;
 - “(d) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;
 - “(e) using blackmail;

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“(f) causing or threatening to cause financial harm to any person or using financial control over any person; or

“(g) using any scheme, plan, or pattern intended to cause any person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm or physical restraint.

“(2) ‘Labour’ means work of economic or financial value.

“(3) ‘Services’ means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor or a third party. Commercial sexual activity and sexually explicit performances shall be considered ‘services’ under this Act.

“(4) ‘Maintain’ means, in relation to labour or services, to secure continued performance thereof, regardless of any initial agreement on the part of the trafficked person to perform such labour or service.”

(Source: State Model Law on Protection for Victims of Human Trafficking, Global Rights 2005, drafted for the states of the United States of America)

“Forced labour means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

“(a) is not free to cease providing labour or services; or

“(b) is not free to leave the place or area where the person provides labour or services.”

(Source: Australia, Criminal Code Act 1995, S73.2(3))

- (j) “Forced or servile marriages” shall mean any institution or practice in which:
- (i) A woman [person] or child without the right to refuse is promised or given in marriage on payment of a consideration in money or in kind to her [his] parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family or his clan has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;

Commentary

Source: Supplementary Convention on the Abolition of Slavery, article 1.

The definition derived from the above-mentioned Convention refers solely to the practice of forced or servile marriages in relation to women. Legislators may consider updating this definition to include practices in which both women/girls and men/boys can be the subject of forced or servile marriages. This may cover trafficking for marriage and certain forms of “mail order bride” practices.

- (k) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more offences established under chapters V and VI of this Law, in order to obtain, directly or indirectly, a financial or other material benefit;

Commentary

Source: Convention, article 2 (a).

- (L) “Practices similar to slavery” shall include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents;

Commentary

The Supplementary Convention on the Abolition of Slavery does not contain a definition, but specifically prohibits debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.

Another definition could be:

“Practices similar to slavery shall mean the economic exploitation of another person on the basis of an actual relationship of dependency or coercion, in combination with a serious and far-reaching deprivation of fundamental civil rights, and shall include debt bondage, serfdom, forced or servile marriages and the exploitation of children and adolescents.”

- (m) “Prostitution” shall have the same definition as defined in [refer to the relevant national legislation];

Commentary

See the commentary on article 5, paragraph 1 (h).

- (n) “Public official” shall mean:
- (i) Any person holding a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
 - (ii) Any other person who performs a public function, including for a public agency or public enterprise, or provides a public service;

Commentary

Source: United Nations Convention against Corruption, article 2.

If the national legislation includes a broader definition of “public official”, such a definition can be used for the purpose of this law.

- (o) “Re-victimization” shall mean a situation in which the same person suffers from more than one criminal incident over a specific period of time;

Commentary

Source: UNODC Model Law on Justice in Matters involving Child Victims and Witnesses of Crime.

- (p) “Secondary victimization” shall mean victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim;

Commentary

Source: UNODC Model Law on Justice in Matters involving Child Victims and Witnesses of Crime.

- (q) “Serfdom” shall mean the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his or her status;

Commentary

Source: Supplementary Convention on the Abolition of Slavery, article 1.

- (r) “Servitude” shall mean the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change;

Commentary

Servitude is prohibited by, among other instruments, the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). Neither of these international instruments contains an explicit definition of servitude. The definition given is based on an interpretation of the Universal Declaration and the Covenant listed.

In its 2005 judgement in the case of *Siliadin v. France* the European Court of Human Rights defined servitude as:

“An obligation to provide one’s services that is imposed by the use of coercion, and is to be linked to the concept of slavery.”

(ECHR, 26 July 2005, No. 73316/01)

An example of a criminal law definition of servitude is:

“Servitude means a condition of dependency in which the labor or services of a person are provided or obtained by threats of serious harm to that person or another person, or through any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm.”

(Source: US State Department Model Law to Combat Trafficking in Persons)

- (s) “Sexual exploitation” shall mean the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials;

Commentary

See the commentary on article 5, paragraph 1 (h).

- (t) “Slavery” shall mean the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised;

or

“Slavery” shall mean the status or condition of a person over whom control is exercised to the extent that the person is treated like property;

Commentary

Source: Slavery Convention of 1926 as amended by the 1953 Protocol, article 1, paragraph 1.

The definition in the Slavery Convention may cause some difficulties today, as there could be no rights of ownership for one person over another. In order to solve this difficulty, an alternative definition is included here, which instead requires that the person is “treated like property”.

Another definition of slavery, which focuses on the core of the crime—that is, the objectification of human beings—is “reducing a person to a status or condition in which any or all of the powers attaching to the right of property are exercised”.

Examples of contemporary criminal law definitions of slavery are:

“Slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or a contract made by the person.”

(Australia, Criminal Code, section 270.1, as amended in 1999)

“There is no settled exhaustive list of all the rights of ownership. However, some of the more ‘standard’ rights are ... the right to possess, the right to manage (i.e. the right to decide how and by whom a thing owned shall be used), the right to the income and capital derived from the thing owned, the right to security (i.e. to retain the thing whilst ever the owner is solvent) and the right to transmit your interest to successors. Therefore if, for example, a person is forced to work for another without receiving any reward for her or his labour, it is likely that the court would find that the person is a slave.”

(Explanatory notes to the Australian legislation)

“Placing a person in conditions of contemporary slavery shall mean the deprivation of identification documents, restriction of freedom of movement, restriction of communication with his/her family, including correspondence and telephone conversation, cultural isolation as well as forced labour in a situation where human honour and dignity are violated and/or without remuneration or with inadequate remuneration.”

(Source: Georgia, Criminal Code, article 143)

“Whoever exerts on any other person powers and rights corresponding to

Part One: International Conventions

ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way shall be punished

“Placement or maintenance in a position of slavery occurs when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question.”

(Source: Italy, Penal Code, article 600)

“‘Slavery’ means a situation under which powers generally exercised towards property are exercised over a person; in this matter, substantive control over the life of a person or denial of his liberty shall be deemed use of powers as stated.”

(Source: Israel, Penal Code, article 375A(c))

“‘Slave’ means a person who is held in bondage whose life, liberty, freedom and property are under absolute control of someone.”

(Source: Nigeria, Trafficking In Persons (Prohibition) Law, Enforcement And Administration Act, 2003, article 50)

“(1) Slavery—the partial or full possession of rights of other person treated like property—shall be punished by imprisonment of from 5 to 10 years.

“(2) If the subject of the deeds described above is a child or it has been done with a view to trafficking it shall be punished by imprisonment of from 7 to 10 years.

“(3) Slave trade, i.e. forcing into slavery or treatment like a slave, slave keeping with a view to sale or exchange, disposal of a slave, any deed related to the slave trading or trafficking, as well as sexual slavery or divestment of sexual freedom through slavery, shall be punished by imprisonment of from 5 to 10 years.”

(Source: Azerbaijan, Criminal Code, article 106)

(u) “Support person” shall mean a specially trained person designated to assist the child throughout the justice process to prevent risks of duress, re-victimization and secondary victimization;

Commentary

Source: UNODC Model Law on Justice in Matters Involving Child Victims and Witnesses of Crime.

- (v) “Victim of trafficking”, for the purposes of articles 19-22, 25, 26 and 30-34 of this Law, shall mean any natural person who has been subject to trafficking in persons, or whom [the competent authorities, including the designated non-governmental organizations where applicable] reasonably believe is a victim of trafficking in persons, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. For all other articles, a victim of trafficking shall be any person or persons identified in accordance with article 18, paragraph 1, of this Law.

Commentary

A two-pronged definition of “victim of trafficking” will be used throughout this law. The first definition/determination of status included here is a relatively low threshold and entitles one to basic services and assistance. The higher threshold status determination will be made in accordance with government-established guidelines. This two-pronged definition attempts to strike a balance between fulfilling victims’ basic and immediate needs upon fleeing a situation of exploitation and a Government’s need to regulate the dispensation of services and benefits.

A more extensive definition of “victim” is found in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:

- “1. ‘Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
- “2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

Another option is the definition in the Council of Europe Convention on Action against Trafficking in Human Beings: “any natural person who is subject to trafficking in human beings as defined in this article” (article 4 (e)).

In order to make the process simple, we recommend that the definition be linked to the mechanism for identification of victims in each national system.

In some countries, this is done by non-governmental organizations (for example, in India).

2. Terms not defined in this article shall be interpreted consistently with their use elsewhere in national law.

Chapter III. Jurisdiction

Commentary

Jurisdiction may already have been provided for in other laws. If not, articles 6 and 7 should be incorporated into the anti-trafficking law.

Article 6. Application of this Law within the territory

Commentary

Mandatory provision

This Law shall apply to any offence established under chapters IV and V of this Law when:

- (a) The offence is committed within the territory of [name of State];
- (b) The offence is committed on board a vessel or aircraft that is registered under the laws of [name of State] at the time the offence was committed;

Commentary

Source: Convention, article 15, paragraph 1 (a) and (b).

Territorial jurisdiction and jurisdiction on board a vessel or aircraft that is registered in the State (the so-called flag State principle) exists in all States. In common law countries this may even be the only basis for jurisdiction. The criterion is the place where the criminal act has been committed (i.e. the locus delicti is in the territory of the State).

According to the United Nations Convention on the Law of the Sea of 1982, jurisdiction may be extended to permanent installations on the continental shelf as part of the territory (optional).

- (c) The offence is committed by a [name of State] national whose extradition is refused on the grounds of nationality.

Commentary

Source: Convention, articles 15, paragraph 3, and 16, paragraph 10.

Article 7. Application of this Law outside the territory

Commentary

Mandatory provision

Source: Convention, articles 15, paragraph 3, and 16, paragraph 10.

1. This Law shall apply to any offence established under chapters V and VI of this Law committed outside the territory of [name of State] when:
 - (a) The offence is committed by a [name of State] national;
 - (b) The offence is committed by a stateless person who has his or her habitual residence in [name of State] at the time of the commission of the offence; or
 - (c) The offence is committed against a victim who is a [name of State] national;

Commentary

Note that establishment of jurisdiction over a national is compulsory in the framework of the principle *aut dedere aut judicare*. Article 15, paragraph 3, of the Convention provides the jurisdictional basis for prosecution of a national for crimes he or she committed abroad, in cases where the State does not extradite him or her on the ground of nationality. According to the Convention, in such cases of refusal of extradition, submission of the case without undue delay to the competent authorities for the purpose of prosecution is mandatory.

Extension of jurisdiction over acts committed by a citizen of a State in the territory of another State (active personality principle) is mostly done with regard to specific crimes of particular gravity. In some jurisdictions the active personality principle is restricted to those acts which are not only a crime according to the law of the State whose national commits the act, but also according to the law of the State on whose territory the act is committed.

2. This Law shall also apply to acts with a view to the commission of an offence under this Law within [name of State].

Commentary

Paragraph 2 is a further extension of jurisdiction in line with the previous one. It extends jurisdiction to cases in which the acts have not led to a completed crime, but where an attempt has been made in the territory of another State to commit a crime in the territory of the jurisdictional State.

Chapter IV. Criminal provisions: basic criminal offences as a foundation for trafficking offences

Commentary

It is essential while establishing trafficking offences to ensure that national legislation adequately criminalizes participation in an organized criminal group (Convention, article 5); laundering of the proceeds of crime (article 6); corruption (article 8); and obstruction of justice (article 23). In addition, measures to establish the liability of legal persons must be adopted (article 10). UNODC is currently developing best practices and model provisions for the implementation of these articles.

Chapter V. Criminal provisions: provisions specific to trafficking

Commentary

This chapter contains the criminal offences related to trafficking in persons.

Article 8. Trafficking in persons

Commentary

Mandatory provision

Source: Protocol, articles 3 and 5; interpretative notes ... (A/55/383/Add.1); Convention, articles 2 (b) and 34.

1. Any person who:
 - (a) Recruits, transports, transfers, harbours or receives another person;
 - (b) 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;
 - (c) For the purpose of exploitation of that person;

shall be guilty of an offence of trafficking in persons and upon conviction shall be subject to imprisonment for ... and/or a fine of/ up to ... [a fine of the ... category].

Commentary

This definition closely follows the definition of trafficking in persons in article 3 (a) of the Protocol:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power or of a position of vulnerability, or by 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.”

Means. The inclusion of fraud, deception and the abuse of power or of a position of vulnerability recognizes that trafficking can occur without the use of any overt (physical) force.

Example:

“(Trafficking in human beings). – Whoever carries out trafficking in persons who are in the conditions referred to in article 600, that is, with a view to perpetrating the crimes referred to in the first paragraph of said article; or whoever leads any of the aforesaid persons through deceit or obliges such person by making use of violence, threats, or abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who are responsible for the person in question, to enter the national territory, stay, leave it or migrate to said territory, shall be punished with imprisonment from eight to twenty years.”

(Source: Italy, Penal Code, article 601)

In some national legislations, trafficking is defined without reference to the use of means (coercion, fraud, deception, etc.), taking into account that some forms of exploitation are coercive by nature. In such cases, the definition includes reference to the acts (recruitment, transportation, transfer harbouring and receipt) and the purpose of exploitation. This facilitates the prosecution of crimes of trafficking and has proved efficient in that context.

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Forms of exploitation. See the definitions above under article 5 (g)-(j), (l), (m) and (q)-(t).

Some national examples are:

“377A. Trafficking in Persons

“Anyone who carries on a transaction in a person for one of the following purposes or in so acting places the person in danger of one of the following, shall be liable to sixteen years imprisonment:

- “1. removing an organ from the person’s body;
- “2. giving birth to a child and taking the child away;
- “3. subjecting the person to slavery;
- “4. subjecting the person to forced labor;
- “5. instigating the person to commit an act of prostitution;
- “6. instigating the person to take part in an obscene publication or obscene display;
- “7. committing a sexual offense against the person.”

(Source: Israel, Penal Code, article 377A)

“Trafficking in persons

- “1. Actions intended to sell or purchase or undertake other types of activities regarding turning over or obtaining a dependent person (trafficking in persons), shall be subject to arrest—up to six months; or to restriction of freedom—up to three years; or to imprisonment—up to six years.
- “2. The same actions committed:
 - knowingly against a juvenile;
 - against two or more persons;
 - with the goal of sexploitation or other type of exploitation;
 - with the goal of using the victim’s organs or tissue for purposes of transplantation;
 - by a group of people based on foregoing planning, or by an organized group;
 - by public official at the hand of power abuse
 - shall be penalized by imprisonment for a term of from 5 to 10 years with seizure of property or without.
- “3. Aforementioned actions that carelessly caused the death or heavy bodily injury of a victim shall be subject to imprisonment for a term of from 8 to 15 years with seizure of property or without.”

(Source: Belarus, article 181 of the Criminal Code, as amended by Law No. 227-3 on Changes to the Criminal Code and Criminal Procedure Code, 22 July 2003)

“1) Persons who select, transport, hide, or receive individuals or groups of persons for the purpose of using them for acts of debauchery, compulsory labour, removing their organs, or keeping them in forceful subordination, irrespective of their consent, shall be punished with imprisonment of one to eight years and a fine not exceeding eight thousand levs.”

(Source: Bulgaria, Criminal Code, article 159a)

Consent. The inclusion of means of coercion in the definition excludes consent of the victim. This is reaffirmed in article 3 (b) of the Protocol, which reads:

“The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”

This means that, once the elements of the crime of trafficking, including the use of one of the identified means (coercion, deception, etc.), are proven, any defence or allegation that the victim “consented” is irrelevant. It also means, for example, that a person’s awareness of being employed in the sex industry or in prostitution does not exclude such person from becoming a victim of trafficking. While being aware of the nature of the work, the person may have been misled as to the conditions of work, which have turned out to be exploitative or coercive.

This provision restates existing international legal norms. It is logically and legally impossible to “consent” when one of the means listed in the definition is used. Genuine consent is only possible and legally recognized when all the relevant facts are known and a person exercises free will.

However, if there is any doubt about the issue of consent in national domestic law, a separate paragraph should be included in the law. For example:

“The consent of the trafficked person to the (intended) exploitation set forth in article 8, paragraph 2, shall be irrelevant if one of the means listed in article 8, paragraph 1 (b), is used.”

or

“In a prosecution for trafficking in persons under article 8, the alleged consent of a person to the intended exploitation is irrelevant once any of the means or circumstances set forth in article 8, paragraph 2, is established.”

Part One: International Conventions

The above does not remove the right to a defence. According to paragraph 68 of the interpretative notes ... (A/55/383/Add.1), the irrelevance of consent if one of the means is used should not be interpreted as imposing any restriction on the right of the accused to a full defence and to the presumption of innocence. It should also not be interpreted as imposing on the defendant the burden of proof. As in any criminal case, the burden of proof is always on the prosecution, in accordance with domestic law, except where the national law provides for specific exceptions to this rule. Furthermore, article 11, paragraph 6, of the Convention reserves applicable legal defences and other related principles of domestic law to the domestic law of the State party.

Criminalization of trafficking offences within national boundaries and offences that are transnational in nature. The Convention (article 34, paragraph 2) requires the criminalization under the domestic law of each State party of the offences established in accordance with the Convention, independently of the transnational nature or the involvement of an organized criminal group. This is in line with article 1, paragraph 3, of the Protocol, which states that offences established under the Protocol shall be regarded as offences established in accordance with the Convention (see also the commentary on article 4).

Sanctions. Sanctions should fulfil at least the threshold set for trafficking in persons to constitute a serious crime as defined in the Convention, that is, punishable by a maximum deprivation of liberty of at least four years or a more serious penalty (article 2 (b) of the Convention). Regarding fines, comparative law and practice suggest avoiding setting monetary amounts in the legislative text, as during periods of rapid inflation the fines might quickly become insufficient and lose their deterrent effect. Fines may be referred to in the form of “units” or “categories” and listed in monetary terms in regulations under the principal statute. This drafting method makes it possible for them to be easily and rapidly updated.

2. Exploitation shall include:
 - (a) The exploitation of the prostitution of others or other forms of sexual exploitation;
 - (b) Forced or coerced labour or services [including bonded labour and debt bondage];
 - (c) Slavery or practices similar to slavery;
 - (d) Servitude [including sexual servitude];
 - (e) The removal of organs;
 - (f) [Other forms of exploitation defined in national law].

Commentary

Mandatory provision

Source: Protocol, articles 3 and 5; interpretative notes ... (A/55/383/Add.1).

The definition of exploitation covers the forms of exploitation that, according to the Protocol, shall be included “at a minimum”. The list is therefore not exhaustive. The principle of legality, however, requires crimes to be clearly defined. Additional forms of exploitation will have to be spelled out in the law.

Other forms of exploitation. States may consider including also other forms of exploitation in their criminal law. In that case these should be well defined. Other forms of exploitation that, for example, may be included are:

- “(a) Forced or servile marriage;
- “(b) Forced or coerced begging;
- “(c) The use in illicit or criminal activities [including the trafficking or production of drugs];
- “(d) The use in armed conflict;
- “(e) Ritual or customary servitude [any form of forced labour related to customary ritual] [exploitative and abusive religious or cultural practices that dehumanize, degrade or cause physical or psychological harm];
- “(f) The use of women as surrogate mothers;
- “(g) Forced pregnancy;
- “(h) Illicit conduct of biomedical research on a person.”

The list of forms of exploitation can be adapted taking into account the national experience with specific forms of exploitation and existing legislation.

Exploitation. The term “exploitation” is not defined in the Protocol. However, it is generally associated with particularly harsh and abusive conditions of work, or “conditions of work inconsistent with human dignity”. The Belgian Penal Code, for example, specifies exploitation in its definition of trafficking in persons as:

“the intent to put somebody to work or permitting the person to be put into work where conditions are contrary to human dignity.”

(Source: Belgium, Act to Amend Several Provisions with a View to Combating More Effectively Trafficking of Human Beings and the Practices of Abusive Landlords, August 2005, article 433 quinquies)

The French Penal Code specifies as one of the purposes of trafficking “the imposition of living or working conditions inconsistent with human dignity” (Penal Code, as amended in 2003, section 225-4-1).

The Penal Code of Germany defines trafficking for labour exploitation by referring to “working conditions that show a crass disparity to the working

conditions of other employees performing the same or comparable tasks” (Penal Code, section 231).

3. If the other person mentioned in paragraph 1 (a) is a child, exploitation shall also include:
 - (a) The use [procuring or offering of a child] for illicit or criminal activities [including the trafficking or production of drugs and begging];
 - (b) The use in armed conflict;
 - (c) Work that, by its nature or by the circumstances in which it is carried out, is likely to harm the health or safety of children, as determined by [quote the name of the national (labour) legislation or authority, e.g. the Ministry of Labour];
 - (d) The employment or use in work, where the said child has not reached the applicable minimum working age for the said employment or work;
 - (e) [Other forms of exploitation].

Commentary

Optional provision

All forms of exploitation listed in article 8, paragraph 2, apply to children. Additionally, States may consider including forms of exploitation specific to children, taking into account their national experiences. Article 8, paragraph 3, lists a number of forms of exploitation specific to children, which may be included in domestic criminal law. The list is based on the internationally accepted meaning of child labour and extends the forms of exploitation listed in the Protocol to those covered by the Worst Forms of Child Labour Convention, the Convention concerning Minimum Age for Admission to Employment (ILO Convention No. 138) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2002).

Article 3 of the Worst Forms of Child Labour Convention defines as “worst forms of child labour”:

- “(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- “(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- “(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international

treaties;

“(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Subparagraph (a) above refers explicitly to “forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”. Thus, the issue of child soldiers is a special subcategory of forced labour, while article 2, paragraph 2 (a), of ILO Convention No. 29 concerning Forced or Compulsory Labour excludes from the definition of forced labour legal conscription by virtue of military service laws of adults 18 years or above.

Paragraph 3 (b). If such hazardous work is not determined by national labour legislation, at least some specific types of occupation or sector may be explicitly enumerated for the purpose of defining trafficking in children, taking into account the prevailing problems in the country, for instance, in mining, cotton plantations, carpet making and so on. Alternatively such enumeration could be left to the regulations or a decision by a minister, given the need to be adaptable to the changes in practice.

Paragraph 3 (c). If no minimum age is set or no special protective provisions for children at work are in place, at least a threshold age may be set for the purpose of defining trafficking in children here, taking into consideration the age for ending compulsory schooling, for instance.

4. 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 paragraph 1 (b).

Commentary

Mandatory provision

Source: Protocol, article 3 (c); interpretative notes ... (A/55/383/Add.1).

This provision follows the Protocol, which states that any recruitment and so on of a child for the purpose of exploitation shall be considered trafficking in persons, even if it does not involve any of the means listed in article 3 (a) of the Protocol.

According to the interpretative notes (para. 66), illegal adoption will also fall within the scope of the Protocol, where it amounts to a practice as described above.

Part One: International Conventions

Concerning the removal of organs (article 8, paragraph 2 (e) above), it should be noted that, as specified in the interpretative notes (para. 65), the removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.

Child. According to article 3 (d) of the Protocol, “child” shall mean any person below the age of 18. A higher age limit may be prescribed; however, a lower age limit is not allowed as this gives less protection to children than the Protocol requires.

Consent. The issue of consent is not relevant in relation to the trafficking of children as the use of one of the means listed in the Protocol is not required in the case of persons below the age of 18. If there is any doubt concerning the issue of consent, a specific paragraph should be included stating that:

“The consent of the victim or the parent or a person having legal or de facto control of a child victim of trafficking to the intended exploitation set forth in article 8, paragraph 2, shall be irrelevant.”

Exploitation of children and adolescents is defined as:

“Any institution or practice whereby a child or young person under the age of eighteen years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

(Source: Supplementary Convention on the Abolition of Slavery, articles 1 and 7 (b))

Article 9. Aggravating circumstances

Commentary

Optional provision

This provision may be included if it is in conformity with domestic law. The use of aggravating circumstances is optional. Article 9 can be added to the law, if and in as far as this is in line with existing aggravating circumstances with regard to other crimes.

All aggravating circumstances are linked to the offender who knowingly committed the crime of trafficking in persons.

It is possible to differentiate between sanctions taking into account the

nature and number of aggravating circumstances. For example:

“If two or more of the above circumstances are present, the offences under article 8 shall be punished by imprisonment for ... and/or a fine of/up to ... [a fine of the ... category].”

If any of the following circumstances are present, the offences under article 8 shall be punishable by imprisonment for ... and/or a fine of/up to ... [a fine of the ... category]:

- (a) Where the offence involves serious injury or death of the victim or another person, including death as a result of suicide;
- (b) Where the offence involves a victim who is particularly vulnerable, including a pregnant woman;
- (c) Where the offence exposed the victim to a life-threatening illness, including HIV/AIDS;
- (d) Where the victim is physically or mentally handicapped;
- (e) Where the victim is a child;
- (f) Where the offence involves more than one victim;
- (g) Where the crime was committed as part of the activity of an organized criminal group;

Commentary

See the definition in article 2 (a) of the Transnational Organized Crime Convention.

- (h) Where drugs, medications or weapons were used in the commission of the crime;
- (i) Where a child has been adopted for the purpose of trafficking;
- (j) Where the offender has been previously convicted for the same or similar offences;
- (k) Where the offender is a [public official] [civil servant];
- (l) Where the offender is a spouse or the conjugal partner of the victim;

(m) Where the offender is in a position of responsibility or trust in relation to the victim;

Commentary

Examples are a parent or a person having legal or de facto control over the victim, such as a social worker who is responsible for the minor in the course of his or her functions or responsibilities. This aggravating circumstance clearly does not intend to punish a parent who in good faith sends his or her child(ren) abroad or to family members or another person (for example, to ensure that they get a better education), for what in the end turns into a case of trafficking. To be punishable it must be proved under article 9 that the parent knew that the purpose was the exploitation of the child. Only then can the fact that it concerns a parent act as an aggravating circumstance.

(n) Where the offender is in a position of authority concerning the child victim.

Article 10. Non-liability [non-punishment] [non-prosecution] of victims of trafficking in persons

Commentary

Optional provision

The Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1) offer considerations on non-punishment of trafficked persons. Recommended principle 7, concerning protection and assistance, states:

“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”

Further, recommended guideline 8 recommends that States consider “ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons”.

The Council of Europe Convention on Action against Trafficking in Human Beings states:

“Each Party shall, in accordance with the basic principles of its legal

system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

(Source: Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series, No. 197, article 26)

The Organization for Security and Cooperation in Europe (OSCE) Action Plan to Combat Trafficking in Human Beings recommends “ensuring that victims of trafficking are not subjected to criminal proceedings solely as a direct result of them having been trafficked”.

(Source: OSCE Action Plan to Combat Trafficking in Human Beings, decision 557/Rev.1, 7 July 2005)

In paragraph 13 of its resolution 55/67, the General Assembly invited Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation.

The suggested provision ensures that victims of trafficking in persons are not prosecuted or otherwise held responsible for offences, be it criminal or other, committed by them as part of the crime of trafficking, such as, in appropriate cases, working in or violating regulations on prostitution, illegally crossing borders, the use of fraudulent documents and so on.

Two different criteria are used here: causation (the offence is directly connected/related to the trafficking) and duress (the person was compelled to commit the offences). The proposed provision is without prejudice to general defences such as duress in cases in which the victim was compelled to commit a crime.

The proposed provision is possible in legal systems with or without prosecutorial discretion (i.e. whether or not the public prosecutor has the discretionary power to prosecute or not).

In legal systems that have prosecutorial discretion, a similar provision could be included in guidelines for prosecutors. For example:

“A victim of trafficking should not be detained, imprisoned or held liable for criminal prosecution or administrative sanctions for offences committed by him or her as a direct result of the crime of trafficking in persons, including:

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“(a) The person’s illegal entry into, exit out of or stay in [State];

“(b) The person’s procurement or possession of any fraudulent travel or identity documents that he or she obtained, or with which he or she was supplied, for the purpose of entering or leaving the country in connection with the act of trafficking in persons;

“(c) The person’s involvement in unlawful activities to the extent that he or she was compelled to do so.”

A good practice is not to detain the victims in any case, regardless of their willingness to cooperate with authorities. This may be adopted in regulations on treatment of victims, for example:

“Victims of trafficking in persons shall not be held in a detention centre, jail or prison at any time prior to, during or after all civil, criminal or other legal or administrative proceedings.”

(See below, article 25, paragraph 4, on victim assistance)

Some national examples include:

United Nations Interim Administration in Kosovo regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, which states that “a person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking”.

The United States Trafficking Victims Protection Act acknowledges that victims of trafficking should not be “penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation”.

(Source: Trafficking Victims Protection Act of 2000, 18 U.S.C. § 7101(17), (19)).

1. A victim of trafficking in persons shall not be held criminally or administratively liable [punished] [inappropriately incarcerated, fined or otherwise penalized] for offences [unlawful acts] committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.
2. A victim of trafficking in persons shall not be held criminally or administratively liable for immigration offences established under national law.
3. The provisions of this article shall be without prejudice to general defences

available at law to the victim.

4. The provisions of this article shall not apply where the crime is of a particularly serious nature as defined under national law.

Article 11. Use of forced labour and services

Anyone who makes use of the services or labour of a person or profits in any form from the services or labour of a person with the prior knowledge that such labour or services are performed or rendered under one or more of the conditions described in article 8, paragraph 1, shall be guilty of an offence and, upon conviction, shall be liable to imprisonment for ... and/or a fine of/up to ...

Commentary

Optional provision

Article 9, paragraph 5, of the Protocol requires Governments to take measures to discourage the demand for exploitation.

Discouraging the demand for exploitation may include measures such as carrying out awareness-raising campaigns and increasing transparency of enterprises' supply chains. In addition, the use of the services of a victim of trafficking and/or forced labour or services may be penalized in order to deter "users" of services of trafficked victims.

The mens rea required here is "knowingly" to ensure that once a person learns that he or she will be using the services of a victim of trafficking, and nevertheless decides to go ahead and benefit from the exploitation of another person, he or she will be punished. Potential clients of victims should be encouraged to report suspicious cases to the police, without facing threat of prosecution.

Alternative suggestions for drafting such a provision are:

"Anyone who knowingly makes use of or profits from labour or services performed or rendered under conditions of exploitation as defined in article 8, paragraph 2, [labour or services performed or rendered by a victim of trafficking in persons] shall be guilty of an offence and, upon conviction, shall be liable to imprisonment for ... and/or a fine of/up to ... [a fine of the ... category]."

or

"Anyone who makes use of labour or services that are the object of

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exploitation as defined in article 8, paragraph 2, with the knowledge that the person is a victim of trafficking shall be guilty of an offence and, upon conviction, shall be liable to imprisonment for ... and/or a fine of/up to ... [a fine of the ... category].”

The Protocol does not require that the exploitation be made a criminal offence in and of itself (to criminalize forced labour, servitude and slavery-like practices), therefore these were included in this Model Law only in the context of their being a purpose of the trafficking offence. However, many human rights conventions do require criminalization of these acts. Governments may therefore wish to ensure that “exploitation” is always punishable under domestic law even if the other elements of trafficking were not committed.

In this context it should be noted that not all forced labour results from trafficking in persons: according to ILO, about 20 per cent of all forced labour results from trafficking. Legislation against any exploitation of human beings under forced and/or slavery-like conditions as a specific offence will therefore be needed no matter how people arrive in these conditions, that is, independently of the presence of the other elements (acts and means) in the definition of trafficking. This would be in line with the major human rights treaties, which clearly prohibit the use of forced labour, slavery, servitude and the like.

Example of such a definition:

“Anyone who subjects another person to forced labor or services [provides or obtains the labor or services of that person]:

“(1) by causing or threatening to cause serious harm to a person, or

“(2) by physically restraining or threatening to physically restrain a person or another person related to that person, or

“(3) by abusing or threatening to abuse the law or legal process, or

“(4) by knowingly destroying, concealing, removing, confiscating, or possessing any travel or identity document of that person, or

“(5) by using blackmail, or

“(6) by causing or threatening to cause financial harm to that person or by using his or her financial control over that person or to any other person related to that person, or

“(7) by means of any scheme, plan, or pattern intended to cause a person to

believe that, if the person did not perform such labor or services, that person or another person related to that person would suffer serious harm or physical restraint;

“shall be guilty of an offence and upon conviction, shall be liable to imprisonment for ... and/or a fine of/up to ... [a fine of the ... category].”

(Source: State Model Law on Protection for Victims of Human Trafficking, Global Rights, 2005)

Chapter VI. Criminal provisions: ancillary offences and offences related to trafficking

Commentary

This chapter contains general provisions not specific to trafficking that only need to be included if not already covered by general provisions in the national criminal code or law that are applicable to all crimes.

In some cases, alternatives are given in the explanatory section.

Article 12. Accomplice

Any person who participates as an accomplice in the crime of trafficking is subject to imprisonment for ... and/or a fine of/up to

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 2 (b).

This provision need only be included if it is not already included in the national criminal code or law. In some jurisdictions the penalty for an accomplice is less than for the basic crime, while in others it is the same.

The mens rea of the accomplice is an essential element of the crime. It requires intention to assist in the commission of a crime.

Examples of alternative formulations are:

“A person who participates as an accomplice in any of the offences under this Law is considered to have committed the offence and is punishable as if the offence had been committed by that person.”

or

“A person who aids, abets, counsels, procures or otherwise participates in an offence under this Law is considered to have committed the offence and is punishable as if the offence had been committed by that person.”

In some jurisdictions “accomplice” is further defined. This depends entirely upon national criminal practice. An example of a further differentiation that allows for repentance is:

“A person does not commit an offence under paragraph 1 if, before the offence was committed, he or she:

“(a) Terminated his or her involvement; and

“(b) Took reasonable steps to prevent the commission of the offence.”

Article 13. Organizing and directing to commit an offence

Any person who organizes or directs [another person] [other persons] to commit the crime of trafficking is subject to imprisonment for ... and/or a fine of/ up to

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 2 (c).

This provision need only be included if it is not already included in the national criminal code or law.

Article 14. Attempt

Any attempt to commit the crime of trafficking in persons is subject to imprisonment for ... and/or a fine of/up to

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 2 (a).

This provision need only be included if it is not already included in the

national criminal code or law. In some jurisdictions the penalty for an attempt is less than for the basic crime; in others it is the same.

According to the interpretative notes ... (A/55/383/Add.1, para. 70), references to attempting to commit the offences established under domestic law in accordance with article 5, paragraph 2, of the Protocol are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also punishable under domestic law.

Examples of alternative formulations are:

“A person who attempts to commit any of the offences under this Law shall be punished as if the offence attempted had been committed. An attempted offence is punishable by the same penalty as is prescribed for the commission of the offence.”

or

“A person who attempts to commit an offence under this Law commits an offence and is punishable as if the offence attempted had been committed, provided that the person’s conduct is more than merely preparatory to the commission of the offence. An attempted offence is punishable by the same penalty as is prescribed for the commission of the offence.”

In some jurisdictions “attempt” is further defined. This depends entirely upon national criminal practice.

Examples of additional provisions are:

“2. A person is not guilty of attempting to commit an offence under paragraph 1 if the facts are such that the commission of the offence is impossible.

“3. A person does not commit an offence under paragraph 1 if, before the offence was committed, he or she:

“(a) Terminated his or her involvement;

“(b) Took reasonable steps to prevent the commission of the offence; and

“(c) Has no mens rea, that is, the intention/knowledge that the act he or she is committing is part of an offence, or has no intention to commit the act that constitutes an offence.”

Article 15. Unlawful handling of travel or identity documents

Commentary

Optional provision

Source: Protocol, article 12.

Article 12 (b) of the Protocol obliges States parties to take measures to ensure that travel and identity documents are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued, and to prevent their unlawful creation, issuance and use. According to paragraph 82 of the interpretative notes ... (A/55/383/Add.1), the words “falsified or unlawfully altered, replicated or issued” should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. The intention is to cover both documents that have been forged and genuine documents that have been validly issued but are being used by a person other than the lawful holder.

One way to meet this obligation is to include a provision in criminal law, but there are other ways also.

The proposed article is an example of criminalizing the practices at hand, should a similar provision not already be included in the national criminal code or law or the immigration laws.

1. Any person who without lawful authority makes, produces or alters any identity or travel document, whether actual or purported, in the course or furtherance of an offence under this Law, shall be guilty of an offence and, upon conviction, shall be liable to imprisonment ... [and/or] a fine of ...
2. Any person who obtains, procures, destroys, conceals, removes, confiscates, withholds, alters, replicates, possesses or facilitates the fraudulent use of another person’s travel or identity document, with the intent to commit or to facilitate the commission of an offence under this Law, shall be guilty of an offence and, upon conviction, shall be liable to imprisonment of ... [and/or] a fine of

Commentary

Paragraph 2 is particularly relevant for trafficking as the withholding of documents is a prevalent method of control used by traffickers. It is advisable, in any case, to include paragraph 2 or a similar provision in the criminal law, if not already included.

Article 16. Unlawful disclosure of the identity of victims and/or witnesses

Any person who discloses without lawful authority to another person any information acquired in the course of his or her official duties that enables or leads to the identification of a victim and/or witness of trafficking in persons shall be guilty of an offence and, upon conviction, shall be liable to punishment of

Commentary

Optional provision

Source: Protocol, article 6, paragraph 1; Convention, article 24.

Article 17. Duty of, and offence by, commercial carriers

Commentary

Optional provision

Source: Protocol, article 11.

Article 11 of the Protocol obliges States parties to adopt legislative or other measures to prevent commercial carriers from being used in the commission of trafficking offences, including, where appropriate, establishing the obligation of commercial carriers to ascertain that all passengers are in possession of proper travel documents, as well as to take the necessary measures to provide for sanctions in case of violation of this obligation. According to paragraph 79 of the interpretative notes ... (A/55/383/Add.1), legislative or other measures should take into account that victims of trafficking in persons may enter a State legally only to face subsequent exploitation, whereas in cases of smuggling of migrants, illegal means of entry are more generally used, which may make it more difficult for common carriers to apply preventive measures in trafficking cases than in smuggling cases.

According to paragraph 80 of the interpretative notes, measures and sanctions should take into account other international obligations of the State party concerned. It should also be noted that article 11 of the Protocol requires States parties to impose an obligation on commercial carriers only to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgement or assessment of the validity or authenticity of the documents. Moreover, the above obligation does not unduly limit the discretion of States parties not to hold carriers liable for transporting undocumented refugees.

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There are several ways to fulfil the obligation under article 11; the inclusion of a provision in criminal law is just one way.

The proposed article is an example of criminalizing the practices at hand, should a similar provision not already be included in the national criminal code or law or the immigration laws. However, in many countries it may be more appropriate to impose such a duty with a corresponding penalty in civil regulatory law.

An example of such a regulation is:

- “1. Any [commercial carrier] [person who engages in the international transportation of goods or people for commercial gain] must verify that every passenger possesses the identity and/or travel documents required to enter the destination country and any transit countries.
- “2. A commercial carrier is liable for the costs associated with the person’s accommodation in and removal from [State].”

Another example is:

“Responsibilities of International Transportation Companies

- “(a) International transportation companies must verify that every passenger possesses the necessary travel documents, including passports and visas, to enter the destination country and any transit countries.
- “(b) The requirement in (a) applies both to staff selling or issuing tickets, boarding passes or similar travel documents and to staff collecting or checking tickets prior to or subsequent to boarding.
- “(c) Companies which fail to comply with the requirements of this section will be fined [insert appropriate amount]. Repeated failure to comply may be sanctioned by revocation of licenses to operate in accordance with [applicable law][insert reference to law governing revocation of licenses].”

(Source: US State Department, Legal Building Blocks to Combat Trafficking in Persons, §400, released by the Office to Monitor and Combat Trafficking in Persons, February 2004.)

The law of Romania includes a specific provision:

- “(1) International transportation companies have the obligation to verify, on

issuing the travel document, whether their passengers possess the required identification for entry in their transit or destination country.

“(2) The obligation stipulated in paragraph 1 is also shared by the driver of the international road transportation vehicle on admitting passengers on board, as well as in the case of staff responsible for verifying travel documents.”

(Source: Romania, Law on the Prevention and Combat of Trafficking in Human Beings, article 47.)

1. Any commercial carrier who fails to verify that every passenger possesses the identity and/or travel documents required to enter the destination country and any transit countries commits an offence and is liable to a fine of/up to ...
2. Any commercial carrier who fails to report to the competent authorities that a person has attempted to or has travelled on that carrier without the identity and/or travel documents required to enter the destination country or any transit countries, with knowledge or in reckless disregard of the fact that the person was a victim of trafficking in persons, commits an offence and [in addition to any other penalty provided in any other law or enactment] is liable to [a fine not exceeding ...].
3. A commercial carrier is not guilty of an offence under subparagraph 2 if:
 - (a) There were reasonable grounds to believe that the documents that the transported person had were the travel documents required for lawful entry into [name of State];
 - (b) The transported person possessed the lawful travel documents when he or she boarded, or last boarded, the means of transport to travel to [name of State]; or
 - (c) The entry into [name of State] occurred only because of circumstances beyond the control of the [commercial carrier] [person who engages in the transportation of goods or people for commercial gain].

Chapter VII. Victim and witness protection, assistance and compensation

Commentary

Article 6, paragraph 3, of the Protocol obliges States parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations. While this is a general requirement, the Protocol does not specify the forms this must take, leaving the matter to the discretion of States parties.

Article 18. Identification of victims of trafficking in persons

Commentary

Optional provision

The timely and proper identification of victims is of paramount importance to ensure that victims receive the assistance they are entitled to, as well as for the effective prosecution of the crime. A person should be considered and treated as a victim of trafficking in persons, irrespective of whether or not there is already a strong suspicion against an alleged trafficker or an official granting/recognition of the status of victim.

It is advisable to develop guidelines for law enforcement agencies to assist them in the identification of victims and their referral to appropriate assistance agencies. Such guidelines should include a list of indicators that could be reviewed and updated as needed at regular intervals. Part of these guidelines may concern a recovery or reflection period for all victims of trafficking, in which they can begin to recover, consider their options and take an informed decision on whether or not they want to cooperate with the authorities and/or act as witnesses.

This provision is also applicable to countries of origin, which should endeavour to identify victims among returning nationals.

An optional provision, which may be included in the guidelines:

- “4. Within [four] days of a state or local official having identified the presence of a victim of trafficking in persons within the State [having determined that there are reasonable grounds to believe that a person is a victim of trafficking in persons], the [competent authority] shall review and evaluate the case of the victim, including any attendant crime report, and issue a letter of certification of eligibility or other relevant document entitling the victim to have access to the rights, benefits and services set forth in chapters VII and VIII of this Law.”
1. The national coordinating body established in accordance with article 35 shall establish national guidelines/procedures for identification of victims of trafficking.
 2. The national coordinating body shall develop and disseminate to professionals who are likely to encounter victims of trafficking information and materials concerning trafficking in persons, including, but not limited to, a procedural manual on the identification and referral of victims of trafficking in persons.
 3. With a view to the proper identification of victims of trafficking in persons, the

[competent authorities] shall collaborate with relevant state and non-state victim assistance organizations.

Article 19. Information to victims

Commentary

Source: Protocol, articles 6 and 7; Convention, article 25, paragraph 2.

Article 6, paragraph 2 (a), of the Protocol requires States parties to ensure the provision of information to victims on relevant court and administrative proceedings. States parties may consider providing other types of information that are valuable to the victims.

The types of information to be provided to victims could be included in regulations and guidelines. One option could be:

- “2. From their first contact with the justice process and throughout that process the [competent authority] shall inform the victim about:
 - “(a) The degree and nature of the available benefits and services, the possibilities of assistance by non-governmental organizations and other victim agencies, and the way such assistance can be obtained;
 - “(b) The different stages and the role and position of the victim in court and administrative proceedings;
 - “(c) The possibilities of access to [free and/or low-cost] legal services;
 - “(d) The availability of protection for victims and witnesses [and their families] faced with threats or intimidation;
 - “(e) The right to privacy and confidentiality;
 - “(f) The right to be kept informed about the status and progress of the criminal proceedings;
 - “(g) The legal remedies available, including restitution and compensation in civil and criminal proceedings;
 - “(h) The possibilities of temporary and/or permanent residence status, including the possibilities to apply for asylum or residence on humanitarian and compassionate grounds.”
1. Victims shall be provided information on the nature of protection, assistance and support to which they are entitled and the possibilities of assistance and support by non-governmental organizations and other victim agencies, as well as information on any legal proceedings related to them.
2. Information shall be provided in a language that the victim understands. If the victim cannot read, he or she shall be briefed by the competent authority.

Article 20. Provision of basic benefits and services to victims of trafficking in persons

Commentary

Optional provision

Source: Protocol, article 6, paragraphs 2-4; Convention, article 25, paragraph 1.

Many countries already have laws, policies, regulations and guidelines in place to ensure victims of (serious) crimes the listed rights, benefits and services. If this is the case, it should be ensured that these rights, benefits and services also apply to victims of trafficking in persons. If this is not the case, it is advisable to extend the listed rights to all victims of (serious) crimes, including victims of trafficking in persons, in order to avoid creating a hierarchy of victims of certain crimes.

Some of these rights will need to be included in the law, while others may be more suitably implemented through regulations, policies or guidelines, for example, guidelines for the investigation and prosecution of trafficking in persons and the treatment of victims.

Adequate victim assistance and protection serve the interest both of the victim and of prosecution of the offenders. From a law enforcement perspective, poor victim assistance and protection may discourage victims from seeking assistance from law enforcement officials for fear of mistreatment, deportation or potential risks to their personal safety.

Article 25, paragraph 1, of the Convention obliges States parties to take appropriate measures to provide assistance and protection to victims, in particular in cases of threat of retaliation or intimidation, which in the case of victims of trafficking will often be the case. Article 6, paragraph 3, of the Protocol obliges States parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking, in cooperation with non-governmental organizations and other elements of civil society, in particular the provision of appropriate housing, counselling and information, medical, psychological and material assistance and employment, education and training opportunities.

According to the interpretative notes (A/55/383/Add.1, para. 71), the type of assistance set forth in article 6, paragraph 3, of the Protocol is applicable to both the receiving State and the State of origin of the victims of trafficking in persons, but only as regards victims who are in their respective territory. Article 6, paragraph 3, of the Protocol is applicable to the receiving State until the victim

of trafficking in persons has returned to his or her State of origin and to the State of origin thereafter.

1. Competent authorities and victim service providers shall provide the basic benefits and services described below to victims of trafficking in persons in [name of State], without regard to the immigration status of such victims or the ability or willingness of the victim to participate in the investigation or prosecution of his or her alleged trafficker.

Commentary

Referral to assistance agencies should take place at the earliest moment possible and preferably before the victim makes an official statement. It is advisable that the police and other bodies involved in the identification process establish procedures for adequate assistance to and referral of victims. Article 6, paragraph 3, of the Protocol specifically mentions cooperation with non-governmental organizations and other elements of civil society.

2. Assistance shall include:
 - (a) Safe and appropriate accommodation;
 - (b) Health care and necessary medical treatment, including, where appropriate, free optional confidential testing for HIV and other sexually transmitted diseases;
 - (c) Counselling and psychological assistance, on a confidential basis and with full respect for the privacy of the person concerned, in a language that he or she understands;

Commentary

Article 6, paragraph 3 (b), of the Protocol obliges States parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including the provision of counselling and information, in particular as regards their legal rights, in a language that the victim understands.

- (d) Information regarding [free or low-cost] legal assistance to represent his or her interests in any criminal investigation, including the obtaining of compensation, [to pursue civil actions against his or her traffickers] and [, where applicable, to assist with applications for regular immigration status]; and

Commentary

Article 6, paragraph 2 (a), of the Protocol obliges States parties to ensure

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that their domestic legal and administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases, information on relevant court and administrative proceedings. Throughout criminal and other relevant judicial and administrative proceedings, the [competent authority] shall inform the victim about:

- (a) The timing and progress of the criminal proceedings and other relevant judicial and administrative proceedings, including claims for restitution and compensation in criminal proceedings;
- (b) The disposition of the case, including any decision to stop the investigation or the prosecution, to dismiss the case or to release the suspect(s).

Article 6, paragraph 2 (b), of the Protocol obliges States parties to ensure that their domestic legal or administrative system contains measures that provide to victims of trafficking in persons assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence. Together they strongly underline the importance of legal assistance to victims of trafficking, provided for by the State. If a system of free legal aid exists, this should also apply to victims of trafficking. If free legal aid is not possible, the victim should have the possibility to be assisted by a support person of his or her choice, for example from a non-governmental organization or a legal aid institution that provides victim assistance. In addition, workers' organizations may play an important role in assisting (alleged) victims to bring complaints.

- (e) Translation and interpretation services, where applicable.
3. In appropriate cases and to the extent possible, assistance shall be provided to the accompanying dependants of the victim.

Commentary

Assistance to dependants of the victim may be deemed appropriate, for example, when the victim has children.

4. Victims of trafficking in persons shall not be held in any detention facility as a result of their status as victims or their immigration status.

Commentary

According to article 6, paragraph 3 (a) of the Protocol, holding victims of trafficking in prisons or other detention centres can by no means be considered to be appropriate housing.

5. All assistance services shall be provided on a consensual and informed basis and while taking due account of the special needs of children and other persons in a vulnerable position.
6. The assistance services set forth in paragraph 2 shall also be available for victims who are repatriated from another State to [name of State].

Commentary

It is important to ensure that all victims have access to assistance in order to enable them to recover and to make an informed decision about their options, including the decision to assist in criminal proceedings and/or to pursue legal proceedings for compensation claims. Those victims who do not want or do not dare to act as witnesses—or are not required as witnesses because they do not possess any relevant information or because the perpetrators cannot be identified or taken into custody—require adequate assistance and protection on an equal footing with victims who are willing and able to testify. Some forms of long-term assistance may be dependent on whether the victim remains in the country and assists the authorities in the investigation and prosecution of the traffickers.

Article 21. General protection of victims and witnesses

Commentary

The Model Law addresses witness protection issues only to the extent that they are unique to trafficking in persons. For general provisions on witness protection, see UNODC, Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime (available at <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>).

Optional provision

Source: Protocol, article 6, paragraph 1; Convention, article 24.

Article 6, paragraph 1, of the Protocol obliges States parties, in appropriate cases and to the extent possible under its domestic law, to protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. Article 24, paragraph

1, of the Convention pertains specifically to the protection of witnesses, stating that each State party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony and, as appropriate, for their relatives and other persons close to them. This may include establishing procedures for the physical protection of such persons, such as relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons (article 24, paragraph 2 (a)). According to article 24, paragraph 4, of the Convention, this article also applies to victims insofar as they are witnesses.

The proposed article specifically applies to pre-trial criminal investigations. The various provisions are examples of how to provide for the protection of the privacy and identity of the victim and/or witness during such investigations. The applicability of the various provisions will depend on the national legal system.

1. The [competent authority] shall take all appropriate measures to ensure that a victim or witness of trafficking in persons, and his or her family, is provided adequate protection if his or her safety is at risk, including measures to protect him or her from intimidation and retaliation by traffickers and their associates.
2. Victims and witnesses of trafficking in persons shall have access to any existing witness protection measures or programmes.

Article 22. Child victims and witnesses

Commentary

Optional provision

A statement of principle such as the following could be inserted:

“All actions undertaken in relation to child victims and witnesses shall be based on the principles set out in the Convention on the Rights of the Child and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, in particular the principle that the best interests of the child must be a primary consideration in all actions involving the child and the principle that the child’s view must be considered and taken into account in all matters affecting him or her.”

This provision addresses the special status of child victims, on the basis of article 6 of the Protocol, as well as the Convention on the Rights of the Child. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

also provide guidance on this matter.

In addition to any other guarantees provided for in this Law:

- (a) Child victims, especially infants, shall be given special care and attention;
- (b) When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;
- (c) Assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care;

Commentary

Mandatory provision

According to article 6, paragraph 4, of the Protocol, States parties shall take into account the age, gender and special needs of victims of trafficking, in particular the special needs of children.

- (d) If the victim is an unaccompanied minor the [competent authority] shall:
 - (i) Appoint a legal guardian to represent the interests of the child;
 - (ii) Take all necessary steps to establish his or her identity and nationality;
 - (iii) Make every effort to locate his or her family when this is in the best interest of the child;

Commentary

Optional provision

This in line with the obligations under the Convention on the Rights of the Child. See also General Comment No. 6 of the Committee on the Rights of the Child.

- (e) Information may be provided to child victims through their legal guardian or, in case the legal guardian is the alleged offender, a support person;

Commentary

Optional provision

This is in line with the Convention on the Rights of the Child and the

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Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

- (f) Child victims shall be provided with information in a language that they use and understand and in a manner that is understandable to them;

Commentary

Optional provision

Source: Protocol, article 6, paragraphs 3 (b) and 4; Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

Article 6, paragraph 4, of the Protocol obliges States parties to take into account the age, gender and special needs of victims of trafficking, in particular the special needs of children.

- (g) In the case of child victims or witnesses, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands and in the presence of his or her parents, legal guardian or a support person;

Commentary

Optional provision

Source: Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

A support person may be a specialist, a representative of a non-governmental organization specialized in working with children or an appropriate family member.

- (h) In the case of child victims and witnesses, court proceedings shall always be conducted in camera away from the presence of media and public. Child victims and witnesses shall always give evidence [testify] in court out of sight of the accused.

Article 23. Protection of victims and witnesses in court

Commentary

Optional provision

Source: Protocol, article 6, paragraph 1; Convention, article 24, paragraphs 1 and

2 (a); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

The proposed article applies specifically to in-court proceedings. The various provisions are examples of how to provide for the protection of the privacy and identity of the victim during court proceedings. The applicability of the various provisions will depend on the national legal system.

Some of these provisions are dependent on the criminal system or jurisprudence of the State concerned and may not be possible in jurisdictions that require the right of the accused to defend him- or herself by having all proceedings carried out/recorded in his or her presence so that he or she has the benefit of cross-examination and clarification.

* “In camera” is a legal term of art meaning “in private” and refers to a closed hearing, where the public and press are not allowed.

1. A judge may order on application, or where the judge determines it is necessary in the interest of justice, and without prejudice to the rights of the accused, that:
 - (a) Court proceedings be conducted in camera,* away from the presence of media and public;
 - (b) Records of the court proceedings be sealed;
 - (c) Evidence of a victim or a witness be heard through a video link [or the use of other communications technology] [behind a screen] or similar adequate means out of view of the accused; and/or

Commentary

Article 24, paragraphs 1 and 2 (b), of the Convention determines that measures to protect a victim or witness from retaliation or intimidation may include rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means. The victim or witness may testify in court without public disclosure of his or her name, address or other identifying information.

- (d) The victim or witness use a pseudonym. [, and/or]
- (e) The statement of a victim or a witness made during the pre-trial phase in front of a judge be admitted as evidence.]

Commentary

This is optional for legal systems that allow the submission of non-oral

evidence or allow for exceptions (e.g. when the witness is dead or incapable of giving testimony).

2. The judge shall restrict questions asked to the victim or witness, in particular, but not limited to, questions related to the personal history, previous sexual behaviour, the alleged character or the current or previous occupation of the victim.

Commentary

An additional provision may be included here to allow for in camera proceedings in order to assess the relevancy of such questions, if the judge deems appropriate.

An alternative option is the inclusion of a provision in the criminal law with regard to the inadmissibility of certain evidence in trafficking cases, for example:

“The following evidence is not admissible in any criminal proceedings:

“(a) Evidence offered to prove that the alleged victim engaged in other sexual behaviour;

“(b) Evidence offered to prove any alleged trafficking victim’s sexual predisposition.”

(Source: State Model Law on Protection for Victims of Human Trafficking, Global Rights, 2005)

or

“In a prosecution for trafficking in persons under article 8, evidence of a victim’s past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the victim engaged in other sexual behaviour, or to prove the victim’s sexual predisposition.”

(Source: US State Department Model Law to Combat Trafficking in Persons, 2003)

The competent authorities should also take all measures possible to avoid a direct confrontation of the victim with the accused inside or outside the courtroom.

Article 24. Participation in the criminal justice process

The [Ministry of Justice] [prosecutor] and/or [court] and/or [other competent

authority] shall provide the victim with the opportunity to present his or her views, needs, interests and concerns for consideration at appropriate stages of any judicial or administrative proceedings relating to the offence, either directly or through his or her representative, without prejudice to the rights of the defence.

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 2 (b); Convention, article 25, paragraph 3.

Article 25, paragraph 3, of the Convention obliges States parties, subject to their domestic law, to enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. Article 6, paragraph (2) b, of the Protocol obliges States parties to ensure that their domestic legal or administrative system contains measures that provide victims of trafficking in persons assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

Judicial and administrative proceedings may include, where applicable, proceedings before labour courts.

Participation of victims in criminal proceedings can take different forms. In some civil law countries, victims may enjoy the status of participants (and they should be informed of this possibility under article 24). In common law countries, they may be allowed to participate at certain stages (for example, to present their views on plea bargains) or give a victim impact statement.

Article 25. Protection of data and privacy

Commentary

Optional provision

Source: Protocol, article 6, paragraph 1; Convention, article 24, paragraph 2 (a).

Procedures that regulate the exchange of personalized and/or operationally sensitive information are particularly important in the case of victims of trafficking, as the misuse of information may directly endanger the life and safety of the victim and his or her relatives or lead to stigmatization or social exclusion. Moreover, it should be taken into account that trafficking in persons is a crime that is apt to lead to corruption and is often committed by organized criminal groups and

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networks. Increased cooperation and data exchange also lead to greater risk of misuse of information.

One way to protect data is the practice of so-called “restricted notes”, meaning that data of victims of trafficking are marked with a number, the identity of which is only known to selected officials. Furthermore, individuals who have access to such data should be bound by a duty of confidentiality.

1. All personal data regarding victims of trafficking shall be processed, stored and used in conformity with the conditions provided for by the [national legislation regarding the protection of personal data] and shall be used exclusively for the purposes for which they were originally compiled.
2. In accordance with [relevant national legislation], a protocol shall be established for the exchange of information between agencies concerned in victim identification and assistance and criminal investigation with full respect for the protection of the privacy and safety of victims.
3. All information exchanged between a victim and a professional [counsellor] providing medical, psychological, legal or other assistance services shall be confidential and shall not be exchanged with third persons without the consent of the victim.

Commentary

Optional provision

In order to gain access to help and support, victims of trafficking must have a protected space in which they can talk about their experiences. It is therefore crucial for regulations to be in place to ensure the confidentiality of the client-counsellor relationship and protect counsellors from any obligation to pass on information to third parties against the will and without the consent of the trafficked person. If regulations protecting the confidentiality of client-counsellor relationships are already in place, it should be ensured that counsellors of trafficking victims fall within the scope of those regulations. Counsellors should include persons employed by non-governmental organizations providing assistance services to victims of trafficking.

4. Interviews [questioning] of the victim and/or witness during criminal [judicial and administrative] proceedings shall take place with due respect for his or her privacy, and away from the presence of the public and media.
5. The results of any medical examination of a victim of trafficking in persons shall be treated confidentially and shall be used for the purpose of the

criminal investigation and prosecution only.

6. The name, address or other identifying information (including pictures) of a victim of trafficking in persons shall not be publicly disclosed or published [by the media].
7. A violation of paragraphs 3, 5 or 6 shall be punishable by a fine of [...].

Article 26. Relocation of victims and/or witnesses

The [competent authority] may, when necessary to safeguard the physical safety of a victim or witness, at the request of the victim or witness or in consultation with him or her, take all necessary measures to relocate him or her and to limit the disclosure of his or her name, address and other identifying personal information to the extent possible.

Commentary

Optional provision

Source: Protocol, article 6, paragraph 1; Convention, article 24.

Article 24, paragraph 2 (a), of the Convention provides that measures to protect a victim or witness from retaliation or intimidation may include relocating victims or witnesses and permitting non-disclosure or limitations on the disclosure of information on the identity. Article 24, paragraph 3, states that States parties shall consider entering into agreements with other States for the relocation of victims and witnesses.

Article 27. Right to initiate civil action

Commentary

This provision needs only be included if it is not already included in the national criminal code or law. If it is already included in the criminal code or law, it needs to be ensured that it also applies to victims of trafficking in persons.

See also the commentary on articles 28 and 29.

1. A victim of trafficking in persons shall have the right to initiate civil proceedings to claim material and non-material damages suffered by him or her as a result of acts specified as criminal offences by this Law.
2. The right to pursue a civil claim for material or non-material damages shall

not be affected by the existence of criminal proceedings in connection with the same acts from which the civil claim derives.

3. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.

Article 28. Court-ordered compensation

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 6.

Article 6, paragraph 6, of the Protocol obliges States parties to ensure that their domestic legal system contains measures that offer victims the possibility of obtaining compensation for damages suffered. Article 25, paragraph 2, of the Convention states that States parties shall establish appropriate procedures to provide access to compensation and restitution for victims. The proposed articles 28 and 29 are an example of such a provision.

This provision need only be included if it is not already included as a general rule in the domestic criminal code or law. If it is already included in the criminal code or law, it needs to be ensured that it also applies to victims of trafficking in persons.

Apart from the criminal procedure, in some countries and in appropriate cases, the victim may benefit from bringing the case to a labour court. Workers' organizations may play an important role here and in assisting victims to obtain restitution and/or compensation. Any civil/labour proceedings should follow criminal proceedings, since if they are started before them they will invariably be adjourned until the criminal case has concluded.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex) states, with regard to restitution and compensation:

"Restitution

- "8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the

victimization, the provision of services and the restoration of rights.

- “9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- “10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
- “11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

“Compensation

- “12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
- “(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- “(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
- “13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”
1. Where an offender is convicted of an offence under the present Law, the court may order the offender to pay compensation to the victim, in addition to, or in place of, any other punishment ordered by the court.
 2. When imposing an order for compensation, the court shall take the offender’s means and ability to pay compensation into account and shall give priority to a compensation order over a fine.
 3. The aim of an order for compensation shall be to make reparation to the victim for the injury, loss or damage caused by the offender. An order for

- compensation may include payment for or towards:
- (a) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
 - (b) Costs of physical and occupational therapy or rehabilitation required by the victim;
 - (c) Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
 - (d) Lost income and due wages according to national law and regulations regarding wages;
 - (e) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
 - (f) Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and
 - (g) Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the court.
4. An order for compensation under this article may be enforced by the State with all means available under domestic law.
5. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.
6. Where the offender is a public official whose actions constituting an offence under this Law were carried out under actual or apparent State authority, the court may order the State to pay compensation to the victim [in accordance with national legislation]. An order for State compensation under this article may include payment for or towards all or any of the items under paragraph 3 (a) to (g) above.

Article 29. Compensation for victims of trafficking in persons

Commentary

Mandatory provision

One way to ensure compensation to the victim for damages caused, independently of a criminal case and whether or not the offender can be identified, sentenced and punished, is the establishment of a victim fund, to which victims can apply for compensation for the damages suffered by them.

Paragraphs 12 and 13 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power state:

- “12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
- “(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
 - “(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
- “13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”

A victim fund can be established specifically for victims of trafficking or (as is the case in a number of countries) for victims of serious crimes in general (see, for example, article 11 of the Victim Support Act (1991, last amended in 2005) of Switzerland). The latter option is preferable as it will be easier to administer a single fund than several different funds for different types of crime. Its objectives can be limited to assistance to and compensation of victims or to wider costs related to the prevention and combating of trafficking in persons.

The administration of the fund should be established in accordance with existing structures, for example, in regulations or secondary legislation.

Regulations may include detailed provisions for the management of the fund, for example:

“The moneys and assets of the Fund shall be applied as follows [options to be chosen by the State]:

- “(a) For compensation for material and non-material damages suffered by victims of trafficking in persons;
- “(b) For any matter connected to the protection of, assistance to and reintegration and prevention of re-victimization and/or compensation for damages to victims of trafficking in persons;
- “(c) Towards the basic material support of victims of trafficking in persons;
- “(d) For the education and vocational training of victims of trafficking in persons;

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- “(e) For the establishment of shelters and other assistance services for victims of trafficking in persons;
- “(f) For training and capacity-building of persons connected with the protection of, assistance to and reintegration of victims of trafficking in persons;
- “(g) For any act relating to the victims’ participation in criminal proceedings against the offenders (such as travel costs, residential costs if the victim has to stay in a place other than his or her normal residence, incidental costs thereto and so on).

“The Fund shall be administered by a board of trustees appointed by the [Minister].

“The Board of Trustees shall organize its own procedures by regulations, including for the consideration and approval of applications for assistance from victims of trafficking in persons, which shall be approved by governmental decree.”

One example for including such a fund in the criminal code or law is:

“Special Fund.

- “(a) The decision of the court on forfeiture according to section 377D shall serve as a basis for the Administrator General to seize the forfeited property; property that has been forfeited, or the consideration thereof, shall be transferred to the Administrator General and deposited by him in a special fund that shall be administered in accordance with the regulations that shall be promulgated according to subsection (d) (in this section – the Fund).
- “(b) A fine imposed by the court for an offence shall be deposited in the Fund.
- “(c) Where a victim of an offence presents, to an entity determined by the Minister of Justice for this purpose, a judgment for compensation and shows that he has no reasonable possibility to realize all or part of the judgment, according to any law, the victim of the offence shall be paid from the Fund the compensation set forth in the judgment that has not been paid, all or part thereof; for the purposes of this section, ‘judgment’ means a judgment that may no longer be appealed.
- “(d) The Minister of Justice, with the approval of the Constitution, Law and Justice Committee of the Knesset, shall promulgate in regulations the methods of administering the Fund, the use to be made of the Fund’s assets, and the manner of their distribution for these purposes:

- “(1) rehabilitation, treatment, and protection of victims of an offence; for this purpose, there shall be allocated annually an amount not less than one half of the Fund’s assets in one year;
- “(2) payment of compensation awarded in a judgment to a victim of an offence, in accordance with the provisions of subsection (c);
- “(3) prevention of the commission of an offence;
- “(4) carrying out the functions of law enforcement authorities in enforcing the provisions of this Law in respect to an offence.”

(Source: Israel, Penal Code, section 377E)

In Romania, compensation to victims of certain offences (not including trafficking, but including rape and assault) is regulated by the Law on Certain Measures to Ensure the Protection of Victims of Crime, chapter V, Financial compensation from the State for the victims of certain offences.

1. Without prejudice to the power of the court to order an offender to pay compensation to a victim of trafficking in persons under article 28 of this Law, the [competent authority] shall make arrangements for the payment of compensation to, or in respect of, persons who have been identified as victims of trafficking in accordance with the procedures established under article 18 of this Law. Such arrangements shall specify, inter alia:
 - (a) The circumstances under which compensation may be paid;
 - (b) The basis on which compensation is to be calculated and the amount of compensation payable taking into account any compensation received or sums recovered under article 28 of this Law;
 - (c) The fund from which payments shall be made;
 - (d) The application procedure for payment of compensation; and
 - (e) A procedure for review and appeal of decisions with respect to claims for compensation.
2. The [competent authority] shall ensure that victims of trafficking are able to apply for payment of compensation under this article even where the offender is not identified, caught or convicted.
3. [For use where a specific fund must be established] For the purpose of making compensation payments to victims of trafficking in accordance with this article, the [competent authority] shall establish a fund for victims and designate administrators of the fund. Administrators of the fund shall accept payments to the fund from:
 - (a) Moneys allocated to the fund in accordance with [relevant fiscal law];

- (b) Moneys confiscated and proceeds from the sale of goods or assets confiscated under the provisions of national law;
 - (c) Voluntary payments, grants or gifts to the fund;
 - (d) Income, interest or benefits deriving from investments of the fund; and
 - (e) Any other source designated by the administrators of the fund.
4. [For use where an appropriate victim compensation fund already exists] The [competent authority] shall ensure that the administrators responsible for [the fund] have authority to make payments to victims of trafficking in accordance with this article.
5. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.

Chapter VIII. Immigration and return

Commentary

The provisions on immigration and repatriation of victims of trafficking in persons derive from articles 7 and 8 of the Protocol. The manner in which these articles may be implemented much depends upon the specific migration laws and regulations of the particular State. In some cases they may be included in the law, while in others it may be more appropriate to implement them through guidelines and regulations.

Article 30. Recovery and reflection period

Commentary

Optional provision

Source: Protocol, articles 6 and 7.

Article 7 of the Protocol obliges States parties to consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases, and with appropriate consideration being given to humanitarian and compassionate factors. Article 7 should be read in conjunction with article 6.

It is important that States strike a balance between their need to properly identify victims of trafficking in persons and the burden that lengthy bureaucratic procedures of identification and adjudication of status will place on a victim of trafficking in persons.

Although optional, it is important that States recognize that trafficked persons who face immediate deportation or arrest will not be encouraged to come forward, report the crime or cooperate with the competent authorities. Granting a recovery and reflection period, including corresponding rights, and regardless of whether or not there is prior agreement to give evidence as a witness, assists States in the protection of the human rights of trafficked persons. The protection of basic rights also serves to raise the victim's confidence in the State and its ability to protect his or her interests. A victim with confidence in the State is more likely to make an informed decision and to cooperate with the authorities in the prosecution of traffickers. If a victim is put under pressure to press charges immediately, the risk increases that he or she will withdraw the statement at a later stage. A recovery and reflection period is in the interest of both the victim and the authorities to enable proper identification and to start or proceed with investigations.

1. A victim of trafficking in persons shall, where applicable, not be removed from the territory of [name of State] until the identification process established in accordance with article 18, paragraph 1, has been completed by the [competent authority].
2. The [competent authority] shall, within [...] days of having reasonable grounds to believe, based on the national guidelines/procedures established pursuant to article 18, paragraph 1, of this Law, that a person is a victim of trafficking in persons, submit a written request to the [competent immigration authority] that the victim be granted a recovery and reflection period of not less than ninety days in order to make an informed decision on whether to cooperate with the competent authorities.
3. Any [natural] person who believes he or she is a victim of trafficking in persons shall have the right to submit a written request to the [competent immigration authority] to be granted a recovery and reflection period of not less than 90 days in order to make an informed decision on whether to cooperate with the competent authorities.
4. The [competent immigration authority] shall grant a recovery and reflection period where it has established that there are reasonable grounds to believe a person is a victim of trafficking in persons within [...] days of the submission of a written request.
5. The decision of the [competent immigration authority] regarding the granting of a recovery and reflection period shall be appealable by the [competent authority] or any natural person who believes he or she has been a victim of trafficking in persons.

6. Until the [competent immigration authority] decides whether to grant a recovery and reflection period, a victim of trafficking in persons shall not be deported from [name of State] (and shall be entitled to the rights, benefits, services and protection measures set forth in chapter VII). Where deportation proceedings have been initiated, they shall be stayed, or where an order of deportation has been made, it shall be suspended.
7. Paragraph 1 shall not prevent or prejudice the competent authorities from carrying out any relevant investigative activities.

Article 31. Temporary or permanent residence permit

Commentary

Optional provision

Source: Protocol, article 7.

Option 1

1. If the competent authorities [name the authority] have identified a person as a victim of trafficking, he or she shall be issued a temporary residence permit for at least a period of six months, irrespective of whether he or she cooperates with the [competent authority], with the possibility of renewal.

Commentary

Relevant legal proceedings include not only criminal but also civil proceedings, for instance in order to claim damages. It is in the interest of both the victim and the prosecution to allow the victim at least a temporary residence permit during criminal proceedings. Without the presence of the victim it will be impossible or very difficult to prosecute the suspects successfully. Moreover, the victim should be enabled to initiate a civil procedure for damages or to bring his or her case before any other relevant court, for example, a labour court.

Option 2

Commentary

Trafficked persons who do not wish or do not dare to make a declaration as witnesses—or are not required as witnesses because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country—require equally adequate protection measures as trafficked persons who are willing and able to testify.

Though witnesses who are not themselves victims are not mentioned in article 7 of the Protocol, it is advisable, in order to ensure the effective prosecution of trafficking cases, to extend the possibility of a temporary residence permit to witnesses who are willing and able to testify against the suspect.

1. If the victim cooperates with the competent authorities, and upon the request of the victim, the [competent immigration authority] shall issue a [renewable] temporary residence permit to the victim [and accompanying dependants] for the duration of any relevant legal proceedings [for a period of at least six months].
2. On the basis of the temporary or permanent residence permit the victim [and accompanying dependants] shall be entitled to the assistance, benefits, services and protection measures set forth in chapter VII.
3. If the victim is a child, the [competent immigration authority] shall issue the child victim a temporary or permanent residence permit, including the corresponding rights, if this is in the best interest of the child.
4. The victim [and his or her accompanying dependants] may apply for refugee status or permanent [long-term] residence status on humanitarian [and compassionate] grounds.

Commentary

The immigration authority or immigration judge considering the application of a victim of trafficking in persons for permanent or long-term residence status on humanitarian and compassionate grounds in the light of the principle of non-refoulement and the prohibition of inhuman or degrading treatment should keep the following in mind:

- (a) The risk of retaliation against the victim or his or her family;
- (b) The risk of prosecution in the country of origin for trafficking-related offences;
- (c) The prospects for social inclusion and an independent, sustainable and humane life in the country of origin;
- (d) The availability of adequate, confidential and non-stigmatizing support services in the country of origin;
- (d) The presence of children.

Article 7, paragraph 2, of the Protocol expressly states that in implementing

the provision on temporary or permanent residence status, States parties shall give appropriate consideration to humanitarian and compassionate factors.

“Permanent residence” should be interpreted to mean long-term residence, but not necessarily indefinite residence. Moreover, the paragraph should be understood as being without prejudice to any domestic legislation regarding either the granting of the right of residence or the duration of residence (interpretative notes... (A/55/383/Add.1), para. 72).

5. The non-fulfilment of standard requirements (for the application for temporary/permanent residence status) as a consequence of the person being a victim of trafficking, such as a lack of a valid passport or other identity documents, shall not be a reason to refuse him or her temporary or permanent residence status.

Commentary

Requirements that in normal situations are necessary in order to obtain residence status, such as valid identity documents and language proficiency, but that are not fulfilled because the person has been trafficked, hence outside his or her power, shall not be considered a reason to refuse residence status, as would be the case under normal circumstances.

It is good practice for countries of origin and countries of destination to enter into bilateral or regional agreements/arrangements that provide for the reintegration of repatriated victims of trafficking in persons and minimize the risk of such victims being re-trafficked.

Article 32. Return of victims of trafficking in persons to [name of State]

1. The [competent authority] shall facilitate and accept the return of a victim of trafficking in persons, who is a national of [name of State] or had the right of permanent residence in [name of State] at the time he or she was trafficked, without undue or unreasonable delay and with due regard for his or her rights and safety [privacy, dignity and health].

Commentary

Mandatory provision

Source: Protocol, article 8, paragraphs 1 and 2; interpretative notes (A/55/383/Add.1).

Article 8, paragraph 1, of the Protocol obliges States parties to facilitate

and accept the return of a national “with due regard for the safety of that person”. This imposes a positive obligation upon Governments to ensure that there is no danger of retaliation or other harm the trafficked person could face upon returning home, such as arrest for leaving the country or working in prostitution abroad, when these are actions criminalized in the country of origin.

“Without undue or unreasonable delay” does not mean that Governments can immediately deport all trafficked persons. Governments should arrange for the return of the trafficked person only after they have had an opportunity to assess that all of their legal rights to justice and their safety upon return are assured.

2. If the victim is without proper documentation the [competent authority] shall issue, at the request of the victim or the competent authorities of the State to which the person was trafficked, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter the territory of [name of State].

Commentary

Optional provision

3. In case of the return of a victim of trafficking in persons to [name of State], no record shall be made in the identity papers of that person relating to the reason for his or her return and/or to the person having been a victim of trafficking in persons, nor shall personal data to that effect be stored in any database that may affect his or her right to leave the country or enter another country or that may have any other negative consequences.

Commentary

Optional provision

Article 33. Repatriation of victims of trafficking in persons to another State

1. When a victim of trafficking who is not a national of [name of State] requests to return to his or her country of origin or the country in which he or she had the right of permanent residence at the time he or she was trafficked, the [competent authorities] shall facilitate such return, including arranging for the necessary travel documents, without undue delay and with due regard for his or her rights and safety [privacy, dignity and health].

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 2; interpretative notes.. (A/55/383/Add.1); General Comment No. 6 of the Committee on the Rights of the Child.

Article 8, paragraph 2, of the Protocol states that if a State party returns a victim to the State of which that person is a national, this shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking. Return shall preferably be voluntary.

2. When, upon the decision of [competent authority] a victim of trafficking in persons who is not a national of [name of State], is returned [deported] to the State of which he or she is a national or in which he or she had the right of permanent residence at the time he or she was trafficked, the [competent authority] shall ensure that such return shall be with due regard for his or her safety and for the status of any legal proceedings related to the fact that the person is a victim of trafficking.

Commentary

Mandatory provision

The interpretative notes (para. 73) state that the words “and shall preferably be voluntary” must be understood not to place any obligation on the State party returning the victim, thus making it clear that returns can also be involuntary. However, this and the previous provisions also clearly limit involuntary returns to those which are safe and are carried out with due regard for legal proceedings.

3. Any decision to return a victim of trafficking in persons to his or her country shall be considered in the light of the principle of non-refoulement and of the prohibition of inhuman or degrading treatment.

Commentary

Mandatory provision

Moreover, the international principle of non-refoulement and the prohibition of inhuman or degrading treatment under international human rights law must be taken into account.

4. When a victim of trafficking raises a substantial allegation that he or she or

his or her family may face danger to life, health or personal liberty if he or she is returned to his or her country of origin, the competent authority [name authority] shall conduct a risk and security assessment before returning the victim.

Commentary

Optional provision

A risk assessment should take into consideration factors such as the risk of reprisals by the trafficking network against the victim and his or her family, the capacity and willingness of the authorities in the country of origin to protect the victim and his or her family from possible intimidation or violence, the social position of the victim on return, the risk of the victim being arrested, detained or prosecuted by the authorities in his or her home country for trafficking related offences (such as the use of false documents and prostitution), the availability of assistance and opportunities for long-term employment. Non-governmental organizations and other service agencies working with victims of trafficking should have the right to submit information on these aspects, which should be taken into account in any decision about the return or deportation of victims by the competent authorities.

5. In case of the return of a victim [or witness] of trafficking in persons to his or her country of origin, no record shall be made in the identity papers of that person relating to the reason for his or her return and/or to the person having been a victim of trafficking in persons, nor shall personal data to that effect be stored in any database that may affect his or her right to leave his or her country or enter another country or that may have any other negative consequences.
6. Child victims or witnesses shall not be returned to their country of origin if there is an indication, following a risk and security assessment, that their return would not be in their best interest.

Commentary

Optional provision

Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interest and appropriate measures for their protection have been taken. States may consider complementary forms of protection for trafficked children when return is not in their best interest (see General Comment No. 6 of the Committee on the Rights of the Child).

7. The [competent authority] shall to the extent possible, and, where appropriate, in cooperation with non-governmental organizations, make available to the victim contact information of organizations that can assist him or her in the country to which he or she is returned or repatriated, such as law enforcement offices, non-governmental organizations, legal professions able to provide counselling and social welfare agencies.

Article 34. Verification of legitimacy and validity of documents upon request

Commentary

Mandatory provision

Source: Protocol, articles 8 and 13.

1. At the request of the appropriate authority or representative of another State, the competent authorities and the diplomatic and consular authorities abroad of [name of State] shall verify without undue or unreasonable delay:
 - (a) Whether a person who is a victim of trafficking is a national of or had the right of permanent residence in [name of State] at the time of entry into the territory of the requesting State [the act of trafficking];

Commentary

Source: Protocol, article 8, paragraph 3.

According to paragraph 74 of the interpretative notes ... (A/55/383/Add.1), this provision implies that a return should not be undertaken before the nationality or right of permanent residence of the person whose return is sought has been duly verified.

- (b) The legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of [name of State] and suspected of being used for trafficking in persons.

Commentary

Source: Protocol, article 13.

2. If the victim is without proper documentation, the competent authority [name authority] shall issue such legal travel and/or identity documents as may be necessary to enable the repatriation of the victim.

Commentary

Source: Protocol, article 8, paragraph 4.

Article 8, paragraphs 5 and 6, of the Protocol clearly state that article 8 shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State party, and without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons. The interpretative notes further specify that agreements or arrangements in this paragraph include both agreements that deal specifically with the subject-matter of the Protocol and more general agreements that include provisions dealing with illegal migration, as well as that this paragraph should be understood as being without prejudice to any other obligations under customary international law regarding the return of migrants.

3. The [competent authority] is designated to coordinate responses to inquiries described in paragraph 1 and to establish procedures for responding to such inquiries in a regular and timely fashion.

Chapter IX. Prevention, training and cooperation

Commentary

The manner in which these articles may be implemented much depends upon the legal system and framework of the particular State. In some cases they may be included in the law, while in others it may be more appropriate to implement them through guidelines and regulations.

Obligation to take preventive measures

Source: Protocol, article 9.

Article 9, paragraph 1, of the Protocol obliges States parties to establish comprehensive policies, programmes and measures to prevent and combat trafficking in persons and to protect victims from re-victimization. Article 9, paragraph 2, obliges States parties to endeavour to undertake research, information and media campaigns and social and economic initiatives to prevent and combat trafficking in persons. According to article 9, paragraphs 4 and 5, States parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons vulnerable to trafficking and to discourage the demand that fosters all forms of exploitation that lead to trafficking, thus requiring Governments to take positive steps to address the underlying causes of trafficking. According to article 9, paragraph 3,

measures established on the basis of article 9 should include cooperation with non-governmental and other relevant organizations and other elements of civil society.

Examples of measures to address the demand side are measures to broaden awareness, attention and research into all forms of exploitation and forced labour, and the factors that underpin its demand; to raise public awareness on products and services that are produced by exploitative and forced labour; to regulate, register and license private recruitment agencies; to sensitize employers not to engage victims of trafficking or forced labour in their supply chain, whether through subcontracting or directly in their production; to enforce labour standards through labour inspections and other relevant means; to support the organization of workers; to increase the protection of the rights of migrant workers; and/or to criminalize the use of services of victims of trafficking or forced labour (see chapter IV). Various ministries, including those responsible for labour, and workers' and employers' organizations may play an important supportive role in addressing the demand side.

Article 35. Establishment of a national anti-trafficking coordinating body [interagency anti-trafficking task force]

Commentary

Optional provision

This provision is optional, though in line with the intention of the Protocol to develop comprehensive and coordinated policies on trafficking in persons and to promote cooperation between the relevant governmental agencies and between governmental and non-governmental agencies. A national coordinating body can enhance this. Setting up a sustainable multidisciplinary anti-trafficking structure will enhance an adequate response to trafficking and enable the development of best practices.

1. The [competent authority] shall establish a national anti-trafficking coordinating body [inter-agency anti-trafficking task force] to be comprised of officials from [name State officials responsible for justice, health and welfare, labour, social affairs, legal services and immigration affairs], officials from other relevant State agencies and representatives of local governmental and non-governmental service providers.
2. The National Anti-Trafficking Coordinating Body [Inter-agency Anti-Trafficking Task Force] shall carry out the following activities:
 - (a) Coordinate the implementation of this Law, including developing

protocols and guidelines;

- (b) Develop [within [one year] of the enactment of this Law] a national plan of action, consisting of a comprehensive set of measures for the prevention of trafficking, identification of, assistance to and protection of victims, including victims who are repatriated from another State to [name of State], the prosecution of traffickers and the training of relevant State and non-State agencies, as well as coordinate and monitor its implementation;

Commentary

States should design policies or programmes on prevention in order:

- (a) To prevent victims from being re-victimized;
- (b) To carry out information and awareness-raising campaigns, in cooperation with the media, non-governmental organizations, labour market organizations, migrants' organizations and other elements of civil society, aimed in particular at sectors and groups that are vulnerable to trafficking in persons;
- (c) To develop educational programmes, in particular for young people, to address gender discrimination and to promote gender equality and respect for the dignity and integrity of every human being;
- (d) To include trafficking in persons in human rights curricula in schools and universities;
- (e) To reduce the factors that further, maintain and facilitate the exploitation of persons, including measures to discourage the demand [for cheap, exploitative and unprotected labour or services] [that fosters all forms of exploitation that lead to trafficking], through research on best practices, methods and strategies, enforcement of labour standards, raising awareness of the responsibility and role of media and civil society, and information campaigns;
- (f) To address the underlying causes of trafficking, such as poverty, underdevelopment, unemployment, lack of equal opportunities and discrimination in all its forms, and to improve the social and economic conditions of groups at risk;
- (g) To reduce the vulnerability of children to trafficking by creating a protective environment; and

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- (h) To ensure effective action against traffickers as well as places of exploitation, because such action will be a deterrent to offenders and thus help in preventing trafficking.
- (c) Develop, coordinate and monitor the implementation of a national referral mechanism to ensure the proper identification of, referral of, assistance to and protection of victims of trafficking in persons, including child victims, and to ensure that they receive adequate assistance while protecting their human rights;

Commentary

Components of a national referral mechanism are:

- (a) Guidelines and protocols for the identification and assistance of victims of trafficking in persons, including specific guidelines and mechanisms for the treatment of children to ensure that they receive adequate assistance in accordance with their needs and rights;
- (b) A system to refer (possible) victims of trafficking in persons to specialized agencies offering protection and assistance;
- (c) The establishment of mechanisms to harmonize the assistance of (possible) victims of trafficking in persons with investigative and criminal prosecution efforts.

Paragraph 2 (e). Both police and labour inspectors play important roles in law enforcement. Labour inspectors have the power to monitor workplaces and take measures to ensure that conditions of work meet the legal requirements, whereas the police have the ability to identify victims and possible perpetrators and actively investigate cases of trafficking. Other important actors are employers' and workers' organizations, as well as non-governmental organizations engaged in the protection of human rights, assistance to victims and the prevention of trafficking.

- (d) Establish procedures to collect data and to promote research on the scale and nature of both domestic and transnational trafficking in persons and its forced labour and slavery-like outcomes, the factors that further and maintain trafficking in persons and best practices for the prevention of trafficking, for assistance to and protection of victims and the prosecution of traffickers;
- (e) Facilitate inter-agency and multidisciplinary cooperation between the various government agencies and between governmental and non-governmental agencies, including labour inspectors and other labour market actors;

- (f) Facilitate cooperation among countries of origin, transit and destination;
- (g) Act as a focal point for national institutions and other State and non-State actors, as well as international bodies and other actors, engaged in the prevention of trafficking in persons, the prosecution of traffickers and assistance to victims; and
- (h) Ensure that anti-trafficking measures comply with existing human rights norms and do not undermine or adversely affect the human rights of the groups affected. [; and]

Commentary

Measures should comply with human rights norms and standards (article 14 of the Protocol).

[(i) Monitor the victim fund.]

3. Director of the Coordinating Body [Task Force]. The [competent authority] is authorized to appoint a Governmental Coordinator [Director] of the Coordinating Body [Task Force]. The Coordinator [Director] shall have as his or her primary responsibility to assist the Coordinating Body [Task Force] in carrying out its activities and may have additional responsibilities as determined by the [competent authority]. The Coordinator [Director] shall consult with non-governmental, intergovernmental, international or any other relevant organizations, victims of trafficking in persons and other affected groups.
4. Annual report. The Coordinating Body [Task Force] shall issue an annual report on the progress of its activities, the number of victims assisted, including data on their age, sex and nationality and the services and/or benefits they received under this Law, the number of trafficking cases investigated and prosecuted, and the number of traffickers convicted.
5. All data collection under this chapter shall respect the confidentiality of personal data of victims and the protection of their privacy.

**Article 36. Establishment of the office of a national rapporteur
[national monitoring and reporting mechanism]**

Commentary

Optional provision

States are advised to establish a central place where information from different sources and actors is systematically gathered and analysed. This could be a national rapporteur or a comparable mechanism. The main task of such a mechanism would be the collection of data on trafficking in the widest possible sense, including monitoring the effects of the implementation of a national action plan. The national rapporteur should have an independent status and a clear mandate and adequate competence to use access to, and actively collect, data from all involved agencies, including law enforcement agencies, and to actively seek information from non-governmental organizations. The mandate to collect information must be clearly distinguished from executive, operational or policy coordinating tasks, which should be fulfilled by other bodies. It should further have the competence to report directly to the Government and/or parliament and to make recommendations on the development of national policies and action plans without it being itself a policymaking agency.

1. This Law hereby creates a National Rapporteur on Trafficking in Persons, which will be supported by an office.
2. The National Rapporteur [National Monitoring and Reporting Mechanism] shall be an independent body and shall report annually directly to Parliament.
3. The National Rapporteur [National Monitoring and Reporting Mechanism] shall be appointed by Parliament [other competent body] each time for a period of five years.
4. The main tasks of the National Rapporteur [National Monitoring and Reporting Mechanism] shall be to collect data on trafficking in persons, to monitor the effects of the implementation of the national action plan and other measures, policies and programmes concerned with trafficking in persons, to identify best practices and to formulate recommendations to improve responses to trafficking in persons.
5. To this end the National Rapporteur [National Monitoring and Reporting Mechanism] shall be authorized to have access to all available national data sources and to actively seek information from all State agencies and non-governmental organizations involved.

Article 37. Cooperation

Commentary

Mandatory provision

Source: Protocol, articles 6, 9, paragraph 3, and 10.

1. Law enforcement, immigration, labour and other relevant agencies shall, as appropriate, cooperate with one another to prevent and prosecute trafficking crimes and to protect the victims of trafficking in persons, without prejudice to the victims' right to privacy, by exchanging and sharing information and participating in training programmes, in order, among other things:
 - (a) To identify victims and traffickers;
 - (b) To identify (the type of) travel documents used to cross the border for the purpose of trafficking in persons;
 - (c) To identify the means and methods used by criminal groups for the purpose of trafficking in persons;
 - (d) To identify best practices on all aspects of preventing and combating trafficking in persons;
 - (e) To provide assistance and protection to victims, witnesses and victim-witnesses.

Commentary

Article 10, paragraph 1, of the Protocol obliges law enforcement, immigration and other relevant authorities to cooperate by exchanging information.

2. In the development and implementation of policies, programmes and measures to prevent and combat trafficking in persons and to assist and protect its victims, State agencies shall cooperate, as appropriate, with non-governmental organizations, other civil society institutions and international organizations.

Commentary

Various articles of the Protocol oblige States parties to cooperate, where appropriate, with non-governmental organizations, other civil society institutions and international organizations.

States should design training programmes in a child- and gender sensitive manner and involve all relevant State and non-State agencies, including law enforcement, immigration, labour and other relevant officials, judicial officers, legal services, health-care and social workers, local service providers and other

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relevant professionals and civil society partners in order:

- (a) To educate them on the phenomenon of trafficking in persons, relevant legislation and the rights and needs of victims of trafficking;
- (b) To enable them to properly identify victims of trafficking in persons;
- (c) To enable them to effectively assist and protect victims and advise them on their rights, with due regard to the specific needs of child victims and other particularly vulnerable groups;
- (d) To encourage multidisciplinary and multi-agency cooperation.

Source: Protocol, article 10, paragraph 2.

Article 10, paragraph 2, of the Protocol obliges States parties to provide or strengthen training for law enforcement, immigration and other relevant officials, including labour officials, in the prevention of trafficking and to encourage cooperation with non-governmental organizations, thus recognizing the need for State agencies to work together with non-governmental organizations.

With regard to child victims and witnesses it is important to put in place adequate training, selection and procedures to protect and meet the special needs of child victims and witnesses, as the nature of victimization affects children differently, such as sexual assault of children, especially girls. (Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime)

Chapter X. Regulatory power

Commentary

The section on regulations and the authoritative text will vary according to the legal culture and the local context, if included in the law at all.

Article 38. Rules and regulations

Commentary

Optional provision

1. Promulgating authority(ies)

- 1. The authority to promulgate regulations under this Law is vested in [name of authority(ies)] in close consultation with the National Anti-Trafficking

Coordinating Body of [name of State].

2. Issuing rules and regulations

2. Not later than one hundred eighty days after the date of the enactment of this Law, the promulgating authority shall issue rules and regulations for the effective implementation of this Law in order:
- (a) To prevent trafficking in persons;
 - (b) To raise awareness on trafficking in persons;
 - (c) To identify, protect, assist and reintegrate victims of trafficking in persons, to provide them access to counselling, educational and vocational opportunities and other relevant services, to protect their rights and to prevent them from being re-victimized or re-trafficked;
 - (d) To collect data on the scale and nature of trafficking in persons, its root causes and other relevant elements;
 - (e) To establish training programmes for the police, immigration, labour and other relevant officials, judicial officers, social workers and other relevant professionals and civil society partners;
 - (f) To address the factors that make persons vulnerable to trafficking and exploitation, such as poverty, underdevelopment, discrimination and lack of equal opportunities;
 - (g) To establish border control measures;
 - (h) To establish cooperation between State agencies, non-governmental organizations and other elements of civil society, international organizations and other relevant organizations for the prevention of trafficking in persons, the prosecution of traffickers and assistance to and protection of victims.

**Council of Europe Convention
on Action against Trafficking
in Human Beings**

Warsaw, 16.V.2005

Preamble

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Recalling the declarations by the Ministers for Foreign Affairs of the Member States at the 112th (14-15 May 2003) and the 114th (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe on trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women;

Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings, the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

Chapter I – Purposes, scope, non-discrimination principle and definitions

Article 1 – Purposes of the Convention

1. The purposes of this Convention are:
 - (a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;
 - (b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
 - (c) to promote international cooperation on action against trafficking in human beings.
2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2 – Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

Article 3 – Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 4 – Definitions

For the purposes of this Convention:

- (a) “Trafficking in human beings” 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 human beings” 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 human beings” 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 eighteen years of age;
- (e) “Victim” shall mean any natural person who is subject to trafficking in human beings as defined in this article.

Chapter II – Prevention, co-operation and other measures

Article 5 – Prevention of trafficking in human beings

1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
2. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
3. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
4. Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
5. Each Party shall take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.
6. Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

Article 6 – Measures to discourage the demand

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

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

Article 7 – Border measures

- 1. Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.
- 2. Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
- 3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
- 4. Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
- 5. Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.
- 6. Parties shall strengthen co-operation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 8 – Security and control of documents

Each Party shall adopt such measures as may be necessary:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

Article 9 – Legitimacy and validity of documents

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

Chapter III – Measures to protect and promote the rights of victims, guaranteeing gender equality

Article 10 - Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:

- (a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
- (b) take the necessary steps to establish his/her identity and nationality;
- (c) make every effort to locate his/her family when this is in the best interests of the child.

Article 11 – Protection of private life

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).
2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.
3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

Article 12 – Assistance to victims

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
 - (a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - (b) access to emergency medical treatment;
 - (c) translation and interpretation services, when appropriate;
 - (d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
 - (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
 - (f) access to education for children.
2. Each Party shall take due account of the victim's safety and protection needs.
3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate

resources and need such help.

4. Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
5. Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
7. For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

Article 13 – Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.
2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

Article 14 – Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or

other of the two following situations or in both:

- (a) the competent authority considers that their stay is necessary owing to their personal situation;
 - (b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
 3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
 4. If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
 5. Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 15 – Compensation and legal redress

1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.
2. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.
3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

Article 16 – Repatriation and return of victims

1. The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate

- and accept, his or her return without undue or unreasonable delay.
2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.
 3. At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.
 4. In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.
 5. Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.
 6. Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.
 7. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

Article 17 – Gender equality

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

Chapter IV – Substantive criminal law

Article 18 – Criminalisation of trafficking in human beings

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

Article 19 – Criminalisation of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 20 - Criminalisation of acts relating to travel or identity documents

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- (a) forging a travel or identity document;
- (b) procuring or providing such a document;
- (c) retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

Article 21 – Attempt and aiding or abetting

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.
2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph a, of this Convention.

Article 22 – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal

offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (c) an authority to exercise control within the legal person.
2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
 3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
 4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 23 – Sanctions and measures

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
2. Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.
3. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.
4. Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of bona fide third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

Article 24 – Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- (a) the offence deliberately or by gross negligence endangered the life of the victim;
- (b) the offence was committed against a child;
- (c) the offence was committed by a public official in the performance of her/his duties;
- (d) the offence was committed within the framework of a criminal organisation.

Article 25 - Previous convictions

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

Article 26 – Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

Chapter V – Investigation, prosecution and procedural law

Article 27 - Ex parte and ex officio applications

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.
2. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.
3. Each Party shall ensure, by means of legislative or other measures, in

accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities

1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
 - (a) Victims;
 - (b) As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
 - (c) witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
 - (d) when necessary, members of the family of persons referred to in subparagraphs a and c.
2. Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
3. A child victim shall be afforded special protection measures taking into account the best interests of the child.
4. Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.
5. Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

Article 29 – Specialised authorities and co-ordinating bodies

1. Each Party shall adopt such measures as may be necessary to ensure that

persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.

2. Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.
3. Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.
4. Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements._

Article 30 – Court proceedings

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- (a) the protection of victims' private life and, where appropriate, identity;
- (b) victims' safety and protection from intimidation,

in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

Article 31 – Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
 - (a) in its territory; or
 - (b) on board a ship flying the flag of that Party; or
 - (c) on board an aircraft registered under the laws of that Party; or
 - (d) by one of its nationals or by a stateless person who has his or her habitual

residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;

- (e) against one of its nationals.
2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.
 3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.
 4. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.
 5. Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

Chapter VI – International co-operation and co-operation with civil society

Article 32 – General principles and measures for international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- preventing and combating trafficking in human beings;
- protecting and providing assistance to victims;
- investigations or proceedings concerning criminal offences established in accordance with this Convention.

Article 33 - Measures relating to endangered or missing persons

1. When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.
2. The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

Article 34 – Information

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.
2. A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
3. Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.
4. All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these Articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.

Article 35 – Co-operation with civil society

Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

Chapter VII – Monitoring mechanism

Article 36 – Group of experts on action against trafficking in human beings

1. The Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”), shall monitor the implementation of this Convention by the Parties.
2. GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.
3. The election of the members of GRETA shall be based on the following principles:
 - (a) they shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;
 - (b) they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;
 - (c) no two members of GRETA may be nationals of the same State;
 - (d) they should represent the main legal systems.
4. The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

Article 37 – Committee of the Parties

1. The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.
2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the

Parties, the President of GRETA or the Secretary General so requests.

3. The Committee of the Parties shall adopt its own rules of procedure.

Article 38 – Procedure

1. The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.
2. GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.
3. GRETA may request information from civil society.
4. GRETA may subsidiarily organise, in co-operation with the national authorities and the “contact person” appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.
5. GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.
6. On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.
7. Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

Chapter VIII – Relationship with other international instruments

Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

Article 40 – Relationship with other international instruments

1. This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.
4. Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

Chapter IX – Amendments to the Convention

Article 41 – Amendments

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe

and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43.

2. Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.
4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter X – Final clauses

Article 42 – Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non member States which have participated in its elaboration and the European Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
4. In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 43 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 44 – Territorial application

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 45 – Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

Article 46 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 47 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Convention in accordance with Articles 42 and 43;
- (d) any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;
- (e) any denunciation made in pursuance of the provisions of Article 46;
- (f) any other act, notification or communication relating to this Convention
- (g) any reservation made under Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

**SAARC CONVENTION ON PREVENTING AND
COMBATING TRAFFICKING IN WOMEN AND
CHILDREN FOR PROSTITUTION**

the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (19.5% of the population).

There is a growing awareness of the need to address the needs of older people, and the Government has set out a strategy for the 21st century in the White Paper on *Ageing Better: The Government's Strategy for Older People* (Department of Health 1999). This strategy is based on the following principles:

- Older people should be able to live independently and actively in their own homes.
- Older people should be able to live in their own communities.
- Older people should be able to live in their own homes and communities for as long as possible.

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This strategy is based on the following principles: older people should be able to live independently and actively in their own homes; older people should be able to live in their own communities; older people should be able to live in their own homes and communities for as long as possible.

The White Paper also sets out a number of key objectives for the Government's strategy for older people, including:

- To ensure that older people are able to live independently and actively in their own homes.
- To ensure that older people are able to live in their own communities.
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SAARC CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN FOR PROSTITUTION

The Member States of the South Asian Association for Regional Cooperation (SAARC), parties to the present convention

Emphasizing that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights;

Recalling the decision of the Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored;

Recalling also the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989;

Giving due regard to the implementation of the recommendations of the various pertinent International Bodies and Conferences including the Fourth World Conference on Women at Beijing (1995);

Noting with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points;

Recognizing in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking;

Emphasizing the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution;

HAVE AGREED as follows:

Article I - Definitions

For the purpose of this Convention:

- 1) "Child" means a person who has not attained the age of 18 years;
- 2) "Prostitution" means the sexual exploitation or abuse of persons for commercial purposes;
- 3) "Trafficking" means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;
- 4) "Traffickers" means persons, agencies or institutions engaged in any form of trafficking
- 5) "Persons subjected to trafficking" means women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;
- 6) "Protective home" means a home established or recognized by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.
- 7) "Repatriation" means return to the country of origin of the person subjected to trafficking across international frontiers.

Article II - Scope of the convention

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

Article III – Offences

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.
2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.
3. Any attempt or abetment to commit any crime mentioned in Paras. 1 and 2 above or their financing shall also be punishable.

Article IV - Aggravating circumstances

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.
 - (a) the involvement in the offences of an organized criminal group to which the offender belongs;
 - (b) the involvement of the offender in other international organized criminal activities;
 - (c) the use of violence or arms by the offender;
 - (d) the fact that the offender holds a public office and that the offence is committed in misuse of that office;
 - (e) the victimization or trafficking of children;
 - (f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities;
 - (g) previous conviction, particularly for similar offences, whether in a Member State or any other country.

Article V- Judicial proceedings

In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counseling and legal assistance.

Article VI- Mutual legal assistance

1. The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:
 - (a) taking of evidence and obtaining of statements of persons;
 - (b) provision of information, documents and other records including criminal and judicial records;
 - (c) location of persons and objects including their identification;
 - (d) search and seizures;
 - (e) delivery of property including lending of exhibits;
 - (f) making detained persons and others available to give evidence or assist investigations;
 - (g) service of documents including documents seeking attendance of persons; and

- (h) any other assistance consistent with the objectives of this Convention.
2. Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.

Article VII - Extradition or prosecution

1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.
2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.
3. Extradition shall be granted in accordance with the laws of the State to which the request is made.
4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.
5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

Article VIII - Measures to prevent and interdict trafficking in women and children

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.
2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.
3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.
4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict

trafficking in women and children for prostitution.

5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.
6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.
7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas which are known to be source areas for trafficking.
8. The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes including the projection of negative images of women.

Article IX - Care, treatment, rehabilitation and repatriation of the victims

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.
2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.
3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.
4. The State Parties to the Convention may also authorize the recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
5. The State Parties to the Convention shall encourage recognized non-governmental organizations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

Article X – Implementation

The State Parties to the Convention shall adopt, in accordance with their respective Constitutions, the legislative and other measures necessary to ensure

the implementation of the Convention.

Article XI - Higher measures

The measures provided for in the Convention are without prejudice to higher measures of enforcement and protection accorded by relevant national laws and international agreements.

Article XII- Signature and ratification

The Convention shall be open for signature by the Member States of SAARC at the Eleventh SAARC Summit at Kathmandu and thereafter, at the SAARC Secretariat at Kathmandu. It shall be subject to ratification. The instruments of Ratification shall be deposited with the Secretary General.

Article XIII - Entry into force

This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary General.

Article XIV – Depository

The Secretary-General shall be the depository of this Convention and shall notify the Member States of signatures to this Convention and all deposits of Instruments of Ratification. The Secretary-General shall transmit certified copies of such instruments to each Member-State. The Secretary-General shall also inform Member States of the date on which this Convention will have entered into force in accordance with Article XIII.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Kathmandu on this Fifth Day of January Two Thousand and Two, in nine originals, in the English Language, all texts being equally authentic.

M. MORSHED KHAN

Minister for Foreign Affairs
People's Republic of Bangladesh

JIGMI Y. THINLEY

Minister of Foreign Affairs
Kingdom of Bhutan

JASWANT SINGH

Minister of External Affairs
Republic of India

FATHULLA JAMEEL

Minister of Foreign Affairs
Republic of Maldives

RAM SHARAN MAHAT

Minister of Finance and Leader
of the Delegation of Nepal Islamic
Kingdom of Nepal

ABDUL SATTAR

Minister of Foreign Affairs
Republic of Pakistan

TYRONNE FERNANDO

Minister of Foreign Affairs
Democratic Socialist Republic of Sri Lanka

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the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (15.5% of the population).

There is a growing awareness of the need to address the needs of older people, and the Government has set out a strategy for the 21st century in the White Paper on *Ageing Better: The Government's Strategy for Older People* (Department of Health 1999). This strategy is based on the following principles:

- (i) older people should be able to live independently in their own homes;
- (ii) older people should be able to live in the communities in which they were brought up;
- (iii) older people should be able to live in the places of their choice;
- (iv) older people should be able to live in the places of their choice.

The White Paper also sets out a number of key objectives for the Government's strategy for older people:

- (i) to ensure that older people are able to live independently in their own homes;
- (ii) to ensure that older people are able to live in the communities in which they were brought up;
- (iii) to ensure that older people are able to live in the places of their choice;
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