



UNODC

United Nations Office on Drugs and Crime

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Global Initiative to Fight Human Trafficking

Model Law against Trafficking in Persons

UNITED NATIONS OFFICE ON DRUGS AND CRIME

Model Law against Trafficking in Persons



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Contents

	<i>Page</i>
Introduction.	1

Model Law against Trafficking in Persons

Preamble	3
Chapter I. General provisions	5
Article 1. [Title].	5
Article 2. Commencement.	5
Article 3. General principles.	5
Article 4. Scope of application.	7
Chapter II. Definitions	9
Article 5. Definitions	9
Chapter III. Jurisdiction.	25
Article 6. Application of this Law within the territory.	25
Article 7. Application of this Law outside the territory	26
Chapter IV. Criminal provisions: basic criminal offences as a foundation for trafficking offences.	29
Chapter V. Criminal provisions: provisions specific to trafficking.	31
Article 8. Trafficking in persons	31
Article 9. Aggravating circumstances.	38
Article 10. Non-liability [non-punishment] [non-prosecution] of victims of trafficking in persons	40
Article 11. Use of forced labour and services.	42
Chapter VI. Criminal provisions: ancillary offences and offences related to trafficking	45
Article 12. Accomplice	45
Article 13. Organizing and directing to commit an offence.	46
Article 14. Attempt	46

	<i>Page</i>
Article 15. Unlawful handling of travel or identity documents . .	47
Article 16. Unlawful disclosure of the identity of victims and/or witnesses	48
Article 17. Duty of, and offence by, commercial carriers	49
Chapter VII. Victim and witness protection, assistance and compensation	53
Article 18. Identification of victims of trafficking in persons . . .	53
Article 19. Information to victims	54
Article 20. Provision of basic benefits and services to victims of trafficking in persons.	55
Article 21. General protection of victims and witnesses	58
Article 22. Child victims and witnesses.	59
Article 23. Protection of victims and witnesses in court	62
Article 24. Participation in the criminal justice process.	64
Article 25. Protection of data and privacy.	64
Article 26. Relocation of victims and/or witnesses.	66
Article 27. Right to initiate civil action.	66
Article 28. Court-ordered compensation.	67
Article 29. Compensation for victims of trafficking in persons. .	69
Chapter VIII. Immigration and return	73
Article 30. Recovery and reflection period	73
Article 31. Temporary or permanent residence permit	75
Article 32. Return of victims of trafficking in persons to [name of State].	77
Article 33. Repatriation of victims of trafficking in persons to another State	78
Article 34. Verification of legitimacy and validity of documents upon request	80
Chapter IX. Prevention, training and cooperation	83
Article 35. Establishment of a national anti-trafficking coordinating body [inter-agency anti-trafficking task force].	84
Article 36. Establishment of the office of a national rapporteur [national monitoring and reporting mechanism].	87
Article 37. Cooperation.	88
Chapter X. Regulatory power	91
Article 38. Rules and regulations	91

Introduction¹

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 Crime² 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 Protocol⁴ and the legislative guides for the

¹The 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.

²United Nations, *Treaty Series*, vol. 2225, No. 39574.

³*Ibid.*, vol. 2237, No. 39574.

⁴A/55/383/Add.1.

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 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 experts⁵ 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.

⁵Experts 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.

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.

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:* United States 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: United States 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 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;

“(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) “Revictimization” 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 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, revictimization 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.

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 five to ten 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.”

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.

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 18 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:

“(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 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.

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: United States 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 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 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 pretrial 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 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 pretrial 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: United States 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 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 revictimization 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;

“(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;
- (e) 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 revictimization. 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 [inter-agency 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 revictimized;

(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, under-development, 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

(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 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 revictimized 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.

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