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CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE  
(CEELI)**



**AN INTRODUCTION TO THE HUMAN TRAFFICKING ASSESSMENT TOOL:**

***AN ASSESSMENT TOOL BASED ON THE PROTOCOL TO PREVENT, SUPPRESS AND  
PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN  
SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL  
ORGANIZED CRIME***

**DECEMBER 2005**

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## PROJECT DESCRIPTION

### A. Introduction

Trafficking in persons is one of the most prevalent crimes today involving severe human rights violations.<sup>1</sup> Governments, non-governmental groups, and international organizations have recognized trafficking as a contemporary form of slavery and have initiated a campaign encouraging states to criminalize such conduct, protect affected victims, and develop measures to prevent this phenomenon. Traffickers may be individuals, organized crime groups, or public officials who exploit people as commodities, buying and selling them for profit. Their victims are men, women, and children of various ages and backgrounds, all of whom have one characteristic in common: they are vulnerable to exploitation due to poverty, lack of education, discrimination, or other socio-economic factors. Although trafficking is a crime and a human rights violation regardless of the victim's gender or age, the problem has a disproportionate impact on women and girls.<sup>2</sup> The exploitative purposes of trafficking include *but are not limited to*:

- prostitution
- forced labor or services
- slavery or slave-like practices
- servitude
- removal of organs.<sup>3</sup>

Within the context of inter-state and internal conflict, trafficking in persons is a form of enslavement that qualifies as a crime against humanity.<sup>4</sup> It should be emphasized that trafficking in persons rises to the level of a crime against humanity solely during wartime. During peacetime, trafficking is an independent crime involving various human rights violations.

The United States Department of State, in its 2005 Trafficking in Persons Report, estimates that approximately 600,000 to 800,000 people are trafficked annually across international borders. This

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<sup>1</sup> See John Cerone, *The Human Rights Framework Applicable to Trafficking in Persons and Its Incorporation into UNMIK Regulation 2001/4*, 7 Y.B. INT'L PEACE OPERATIONS 42 (2002), reprinted in 11 HUM. RTS. BRIEF 20 (2003) (summary).

<sup>2</sup> See Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, CENTER FOR THE STUDY OF INTELLIGENCE 1, 3, 13-16, 21 (1999), available at <http://www.cia.gov/csi/monograph/women/trafficking.pdf> [hereinafter Intelligence Monograph].

<sup>3</sup> See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a), G.A. Res. 55/25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/383 (2001), available at

[http://www.unodc.org/unodc/en/crime\\_cicp\\_resolutions.html](http://www.unodc.org/unodc/en/crime_cicp_resolutions.html) [hereinafter Trafficking Protocol]. It should be noted that the Trafficking Protocol sets forth standards that are to be applied "at a minimum" in order to establish effective anti-trafficking legislation as well as hands-on campaigns. Thus, according to the Protocol's definition of trafficking in persons, which will be discussed in further detail below, "[e]xploitation 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." See *id.* art. 3(a) (emphasis added). The Protocol is a "floor," not a "ceiling," allowing States Parties to not only incorporate the standards set forth within its text but to also add to those standards in order to properly address the specific trafficking situation within and across their borders. See James Puleo, Senior Advisor on Migration Policies and Migration Management, Address at the MIDSA Workshop on Extra-Regional Irregular Migration and Migrant Smuggling To, Through, and From the SADC Region in Johannesburg, South Africa (June 25-27 2003), in Preliminary Report and Recommendations on the MIDSA Workshop on Extra-Regional Irregular Migration and Migrant Smuggling To, Through, and From the SADC Region, available at <http://www.sarpn.org.za/documents/d0000735/index.php> [hereinafter Puleo Speech].

<sup>4</sup> See Rome Statute of the International Criminal Court, July 17, 1998, art. 7(2)(c), 2187 U.N.T.S. 3 ("Enslavement means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.") (emphasis added), available at <http://www.icc-cpi.int/about.html> [hereinafter ICC Statute].

number excludes the millions who are potentially trafficked within the borders of their own countries (i.e. victims of internal trafficking).<sup>5</sup> This large-scale phenomenon has erupted as a result of a combination of the following factors endemic to the post-Cold War Era:

- globalization
- increased movement of people
- economic exploitation
- advancements in technology and communication
- economic crises
- regional armed conflicts
- gender discrimination and gender stereotypes
- rise in organized crime.<sup>6</sup>

Traffickers, who are often times part of international criminal organizations of varying size and sophistication, have capitalized on the economic as well as political instability of certain regions, such as Asia, Central and Eastern Europe, and Eurasia. Furthermore, traffickers have taken advantage of the recent increase in trans-border labor flows and have effectively used technology (especially the Internet) to facilitate this illicit trade.<sup>7</sup> Women are overwhelmingly susceptible to trafficking given their unequal status in many countries, the demand for cheap and unprotected labor, and the increase in sex tourism.<sup>8</sup>

In addition, perpetrators are constantly employing creative strategies in order to elude or thwart the anti-trafficking efforts of governments and non-governmental organizations (“NGOs”). For example, attorneys representing the interests of alleged traffickers have been suspected of attending anti-trafficking seminars, organized by governments and NGOs, in order to keep informed of the latest measures and activities.<sup>9</sup> Traffickers have been known to use children as instruments of their crime by forcing them to act as “look-outs” or “runners.”<sup>10</sup> Traffickers throughout Latin America are known to utilize independent contractors, or coyotes, in order to illicitly transport their victims.<sup>11</sup> An NGO from Romania reported that alleged traffickers have called a recently established hotline for trafficked victims and threatened its staff.<sup>12</sup>

The main incentive for traffickers is the high profit involved. One observer explains:

To the traffickers, people are highly profitable, low risk, expendable, reusable, and resellable commodities. Whereas alien smuggling usually involves short-term monetary profit, trafficking usually involves long-term exploitation for economic gain. Organized crime groups profit from both the trafficking fees and the trafficked person’s labor. In some cases, the traffickers may profit

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<sup>5</sup> See U.S. DEPARTMENT OF STATE, 2005 TRAFFICKING IN PERSONS REPORT 6, 19 (2005), available at <http://www.state.gov/g/tip/rls/tiprpt/2005/> [hereinafter 2005 TIP Report].

<sup>6</sup> See Cerone, *supra* note 1, at 42, 97.

<sup>7</sup> See Intelligence Monograph, *supra* note 2, at 1.

<sup>8</sup> See *id.*

<sup>9</sup> This information was shared in a forum held by participants in the Southeast European Communities Against Trafficking (“SECAT”) exchange program sponsored by the Bureau of Educational and Cultural Affairs of the United States Department of State and the International Research and Exchange Board (“IREX”). See SECAT, Counter-Trafficking in the Balkans: A Field Perspective (Apr. 28, 2004) [hereinafter SECAT Event].

<sup>10</sup> See INTERNATIONAL CENTRE FOR MIGRATION POLICY DEVELOPMENT & THE AUSTRIAN MINISTRY OF INTERIOR, REGIONAL STANDARD FOR ANTI-TRAFFICKING; POLICE TRAINING IN SEE 23-24 (2003), available at [http://www.undp.ro/governance/Best%20Practice%20Manuals/docs/Police\\_Manual\\_Final.pdf](http://www.undp.ro/governance/Best%20Practice%20Manuals/docs/Police_Manual_Final.pdf) [hereinafter ICMPD TRAINING MANUAL].

<sup>11</sup> See Intelligence Monograph, *supra* note 2, at 17.

<sup>12</sup> See SECAT Event, *supra* note 9.

even further by using the trafficked persons as ‘manpower’ for other criminal purposes, such as selling drugs.<sup>13</sup>

Trafficking in persons is a lucrative business bringing in substantial profits. In 1999, a government estimate indicated that “in most of the major . . . trafficking cases in the United States, the traffickers made anywhere from one to eight million [U.S. dollars] in a period ranging from one to six years.”<sup>14</sup> In 2005, the U.S. Department of State indicated that trafficking in persons “generate[ed] an estimated \$9.5 billion in annual revenue.”<sup>15</sup> Traffickers often conceal their profits by investing in seemingly legitimate businesses to appear as credible entrepreneurs.<sup>16</sup>

Trafficking can be, and is often, intertwined with other criminal activities such as:

- human smuggling
- extortion
- racketeering
- money laundering
- bribery of public officials
- drug trafficking
- gambling
- conspiracy
- document forgery
- visa, mail, and wire fraud.<sup>17</sup>

In addition, trafficking involves a series of egregious human rights violations such as:

- enslavement
- involuntary servitude
- bonded labor
- forcing minors into prostitution
- threats of violence
- torture or cruel, inhuman, or degrading treatment or punishment
- sexual, physical, and psychological abuse
- discrimination on the basis of gender, race, and other status
- forced isolation
- interference with an individual’s privacy and family life
- seizure of passports, travel, and identity documents
- violation of an individual’s right to information.<sup>18</sup>

Trafficking also poses a high threat to the border security of many nations since “traffickers in women and children, much like terrorists and narcotics traffickers, operate boldly across sovereign borders.”<sup>19</sup> However, some experts argue that trafficking goes beyond border security concerns

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<sup>13</sup> Intelligence Monograph, *supra* note 2, at 1.

<sup>14</sup> *Id.* at 19-20.

<sup>15</sup> 2005 TIP Report, *supra* note 5, at 13-14.

<sup>16</sup> *See id.* at 15-16.

<sup>17</sup> *See id.* at 14; *see also* U.S. DEPARTMENT OF STATE, 2004 TRAFFICKING IN PERSONS REPORT 14 (2004), *available at* <http://www.state.gov/g/tip/rls/tiprpt/2004/> [hereinafter 2004 TIP Report].

<sup>18</sup> *See* Intelligence Monograph, *supra* note 2, at 25; *see also* Cerone, *supra* note 1, at 45, 70-85.

<sup>19</sup> Intelligence Monograph, *supra* note 2, at 1.

and should be treated as a “human security issue.”<sup>20</sup> Such experts understand the concept of “human security” to incorporate a more comprehensive approach beyond an individual’s right to personal safety. The term encompasses other basic human rights, notions of good governance, proper access to health care, education, adequate nutrition, political security, legal security, and community or cultural security.<sup>21</sup> Trafficking in persons is fueled by infringement of many if not all of the above rights and principles.<sup>22</sup> Thus, according to such experts, governments should address this multitude of “insecurities”<sup>23</sup> in order to approach the trafficking problem in a more comprehensive manner:

A human security framework is one in which states are fully expected to maintain the security of their national borders as well as the security of the individuals living within those borders. States are held responsible for protecting their citizens from external conflict and harm; states are also expected to ensure that their citizens enjoy a wide range of rights and are able to live their lives with a sense of dignity and an absence of fear. A human security framework will therefore provide a basis for specific policy and institutional changes necessary to protect vulnerable populations from the risk of being trafficked in their countries of origin as well as in countries of transit and destination.<sup>24</sup>

Furthermore, such experts encourage governments to engage NGOs and other members of civil society in order to address the human security issues that lie at the core of the trafficking phenomenon.<sup>25</sup>

Lastly, one of the most serious societal consequences of trafficking in persons is the spread of HIV/AIDS as well as other public health risks, such as sexually transmitted diseases and tuberculosis.<sup>26</sup> In some cultures, it is a commonly held belief that sex with a virgin is a potential cure for AIDS and other sexually transmitted diseases, which increases the demand for children (and virgins) for sexual exploitation. The victims become infected and can transmit the diseases to the next customer.<sup>27</sup> One author points out that “the increasing populations of street children in some countries due to AIDS or socio-economic crises are creating new groups of children vulnerable to sexual and other types of exploitation.”<sup>28</sup>

Given the magnitude of the problem, a variety of international instruments addressing trafficking have emerged over the years under the auspices of the United Nations and other international organizations. Beginning in 1904, the International Agreement for the Suppression of the White Slave Traffic established mechanisms for collecting and coordinating information regarding the international procurement of women for prostitution.<sup>29</sup> In 1910, the International Convention for the Suppression of the White Slave Traffic criminalized the procurement of women for the

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<sup>20</sup> Mohamed Y. Mattar, *Incorporating the Concept of Human Security in National Legal Responses to Trafficking in Persons* (2004), available at <http://www.protectionproject.org/> [hereinafter Mattar 1]; see also Michele Anne Clark, *Trafficking in Persons: An Issue of Human Security* (2004), available at <http://www.protectionproject.org/>.

<sup>21</sup> See Mattar 1, *supra* note 20, at 3 - 4, 5.

<sup>22</sup> See *id.* at 5 - 6.

<sup>23</sup> See *id.*

<sup>24</sup> Clark, *supra* note 20, at 2.

<sup>25</sup> See Mattar 1, *supra* note 20, at 21- 22.

<sup>26</sup> See Intelligence Monograph, *supra* note 2, at 1; see also Clark, *supra* note 20, at 4-5; Linda Smith & Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges*, 28 FLETCHER FOREIGN WORLD AFF. 155, 166-67 (2004); Regional Conference on Public Health & Trafficking in Human Beings in Central, Eastern and Southeast Europe (Mar. 19-21, 2003); Budapest Declaration, Mar. 19-21, 2003.

<sup>27</sup> See Clark, *supra* note 20, at 5; see also Smith & Mattar, *supra* note 26, at 167.

<sup>28</sup> Clark, *supra* note 20, at 5.

<sup>29</sup> See generally International Agreement for the Suppression of the White Slave Traffic, Mar. 18, 1904, art. 2, 1 L.N.T.S. 83.

purposes of prostitution.<sup>30</sup> In 1921, the International Convention for the Suppression of the Traffic in Women and Children extended the protections delineated in previous treaties to minors of either sex as well as to all women and children regardless of race.<sup>31</sup> The 1933 International Convention for the Suppression of the Traffic in Women of Full Age made punishable the acts of procuring, enticing, or leading away of an adult woman for “immoral purposes” in another country.<sup>32</sup> The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others continued the prohibition of trafficking, calling for specific administrative and enforcement measures as well as social measures aimed at assisting trafficked persons.<sup>33</sup> However, the 1949 Convention did not provide a clear definition of the specific crime of trafficking, adequate enforcement mechanisms, or protective measures for the victims of trafficking.<sup>34</sup> Lastly, the quintessential document on women’s rights, the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), which entered into force in 1981, partially addresses trafficking in persons but does not provide for concrete measures to combat the problem.<sup>35</sup>

The most recent and most comprehensive instrument on trafficking has been the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”),<sup>36</sup> which supplements the United Nations Convention against Transnational Organized Crime (“Transnational Organized Crime Convention”).<sup>37</sup> The Trafficking Protocol sets forth a clear definition of trafficking<sup>38</sup> and calls upon its States Parties to criminalize trafficking, prosecute the offense, protect and assist trafficked persons, and adopt measures to prevent trafficking from occurring in the first place.<sup>39</sup> The Trafficking Protocol is unique in that it requires its States Parties to follow this three-tiered approach (prosecution, protection, and prevention) *at a minimum*, and encourages them to pay heed to other elements of the international anti-trafficking regime that are incorporated within the Protocol and within its host Convention.<sup>40</sup> Evident from its title, the Protocol borrows certain key provisions from the

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<sup>30</sup> See generally International Convention for the Suppression of the White Slave Traffic, May 4, 1910, art. 1, 211 Consol. T.S. 45.

<sup>31</sup> See generally International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, art. 2, 9 L.N.T.S. 416.

<sup>32</sup> See generally International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, art. 1, 150 L.N.T.S. 431.

<sup>33</sup> See generally Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 29, 1949, 96 U.N.T.S. 271, available at <http://www1.umn.edu/humanrts/instreetraffickingperson.htm> [hereinafter 1949 Convention on Traffic in Persons].

<sup>34</sup> See *id.* arts. 1-2 (criminalizing solely the following acts: procuring, enticing, or leading away for the purposes of prostitution, exploiting another for the purposes of prostitution, keeping a brothel, and renting out space for the purposes of prostitution); see also *id.* art. 18 (“The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons *with a view to their eventual repatriation.*”) [emphasis added].

<sup>35</sup> See Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, art. 6, 1249 U.N.T.S. 13, available at <http://www.unhcr.ch/html/menu3/b/e1cedaw.htm> [hereinafter CEDAW].

<sup>36</sup> See generally Trafficking Protocol, *supra* note 3.

<sup>37</sup> See generally United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/55/383 (2001), available at [http://www.unodc.org/unodc/en/crime\\_cicp\\_resolutions.html](http://www.unodc.org/unodc/en/crime_cicp_resolutions.html) [hereinafter Transnational Organized Crime Convention].

<sup>38</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>39</sup> See *id.* art. 2.

<sup>40</sup> As one expert has stated the Trafficking Protocol “sets the floor not the ceiling of what countries can do against . . . trafficking of human beings.” See Puleo Speech, *supra* note 3.

Transnational Organized Crime Convention in order to ensure the implementation of its commitments.<sup>41</sup> For example, provisions pertaining to jurisdiction,<sup>42</sup> extradition,<sup>43</sup> witness protection,<sup>44</sup> participation in an organized criminal group,<sup>45</sup> money laundering,<sup>46</sup> corruption,<sup>47</sup> and obstruction of justice,<sup>48</sup> which are outlined in the Convention, are applicable in conjunction with the Trafficking Protocol.

As of December 2005, 117 nations have signed the Trafficking Protocol and 95 of them have become States Parties by depositing ratification instruments and passing domestic legislation mirroring the Protocol's obligations.<sup>49</sup> The Protocol entered into force on December 25, 2003.<sup>50</sup> The Transnational Organized Crime Convention has been signed by 147 governments, 114 of which have become States Parties through ratification.<sup>51</sup> The Convention entered into force on September 29, 2003.<sup>52</sup> All nations can sign both instruments; however, only countries that ratify the Convention can also sign and/or ratify the Protocol.<sup>53</sup>

## B. Purpose of the Assessment Tool

Given that both the Transnational Organized Crime Convention and the Trafficking Protocol have recently come into force, it is important to encourage governments to undertake the obligations set forth in the two instruments and tackle trafficking from both a *de jure* and *de facto* perspective. Trafficking should be addressed through legislative means, by incorporating the minimum required standards such as defining trafficking as a separate offense, providing for the protection of victims, and ensuring the existence of preventive mechanisms within domestic laws (i.e., *de jure*). It is equally important to focus on the application of the various legislative and policy changes *in practice* (i.e., *de facto*). As a result, in addition to a detailed examination of the compliance of domestic laws with the Trafficking Protocol, a major focus of this diagnostic tool

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<sup>41</sup> See Joan Fitzpatrick, *Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking*, 24 MICH. J. INT'L L. 1143, 1148 (2003) ("The Convention was drafted as a framework convention to provide a concerted international response to the special dangers posed by transnational organized crime. . . . Framework conventions are typically supplemented by specific agreements on topics of relevance [like the Trafficking Protocol], which spell out in greater detail the substantive scope of the obligations of each state party to the convention.").

<sup>42</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 15.

<sup>43</sup> See *id.* art. 16.

<sup>44</sup> See *id.* art. 24.

<sup>45</sup> See *id.* art. 5.

<sup>46</sup> See *id.* arts. 6-7.

<sup>47</sup> See *id.* arts. 8-9.

<sup>48</sup> See *id.* art. 23.

<sup>49</sup> See Signatories to the UN Convention against Transnational Crime and its Protocols, *available at* [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/en/crime_cicp_signatures.html). It should be noted that there are various ways in which international instruments become legally binding at the national level. In the case of the United States, for example, it is up to the state "to decide how it will carry out its international obligations. Accordingly, the intention of the United States determines whether an agreement is to be self-executing in the United States or should await implementation by legislation or appropriate executive or administrative action." See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 111 cmt. h (2002).

<sup>50</sup> See Signatories to the UN Convention against Transnational Crime and its Protocols, *available at* [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/en/crime_cicp_signatures.html); see also Trafficking Protocol, *supra* note 3, art. 17(1).

<sup>51</sup> See Signatories to the UN Convention against Transnational Crime and its Protocols, *available at* [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/en/crime_cicp_signatures.html).

<sup>52</sup> See *id.*; see also Transnational Organized Crime Convention, *supra* note 37, art. 38(1).

<sup>53</sup> See UNITED NATIONS OFFICE ON DRUGS AND CRIME, SUMMARY OF THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN ("[E]ach country is required to become a party to the Convention in order to become a party to the [Trafficking] Protocol."), *available at* [http://www.unodc.org/unodc/en/trafficking\\_convention.html](http://www.unodc.org/unodc/en/trafficking_convention.html) [hereinafter UNODC SUMMARY].

will be on the de facto, or “real life,” implementation of anti-trafficking legislation. Both elements must be analyzed in order to assess the impact of government efforts to combat trafficking.

The de jure/de facto analysis allows for a thorough assessment of the positive and negative aspects of domestic anti-trafficking laws and implementation efforts. Through this two-part approach, legislative deficiencies and real life impediments that obstruct the prosecution of traffickers, the protection of trafficked victims, the overall prevention of trafficking, and other anti-trafficking efforts will surface. It is important to focus equally on the quality of *both* de jure and de facto developments within a particular country that is being assessed, as the anti-trafficking campaign is still in its early stages and it naturally lends itself to controversial issues. One such issue is whether the law criminalizing trafficking should take into consideration the victim’s consent.<sup>54</sup> The quality of anti-trafficking legislation depends upon how comprehensively such highly debated issues are addressed during the initial drafting process. If such issues are left unresolved, they will inadvertently continue to affect the subsequent de facto implementation of the proposed anti-trafficking legislation. Thus, legislators should fully address issues like consent early on and introduce clear terminology in anti-trafficking laws so that later confusion is avoided.

While this assessment tool and the results of in-country assessments will prove to be most useful for local governments and NGOs, it is expected that a variety of other entities will express interest in its findings. For example, donor organizations that are committed to combating trafficking, such as the United States Agency for International Development (“USAID”) and other governmental donors and foundations, will likely find the results of this assessment an important mechanism for deciding which countries are in greatest need of support as well as which anti-trafficking programs to fund.

This tool will provide valuable information for NGOs working actively to combat trafficking either transnational or within a particular country. In fact, this assessment tool can be used by the NGO community to monitor compliance of States Parties with the Trafficking Protocol and the Transnational Organized Crime Convention, complementing the efforts of the United Nations Office on Drugs and Crime (“UNODC”), which is tasked “to assist countries in the elaboration, ratification and implementation”<sup>55</sup> of these two instruments as well as “to bring to the foreground the involvement of organized criminal groups in human trafficking and to promote the development of effective criminal justice-related responses.”<sup>56</sup> UNODC and other international

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<sup>54</sup> See generally Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARV. INT’L L.J. 473 (2003) (discussing in detail the debate arising out of the issue of consent).

<sup>55</sup> United Nations Office on Drugs and Crime: Crime Programme, at [http://www.unodc.org/unodc/en/crime\\_cicp.html](http://www.unodc.org/unodc/en/crime_cicp.html).

<sup>56</sup> United Nations Office on Drugs and Crime: UN Global Programme against Trafficking in Human Beings, at [http://www.unodc.org/unodc/en/trafficking\\_human\\_beings.html](http://www.unodc.org/unodc/en/trafficking_human_beings.html). Other United Nations entities also engage in anti-trafficking activities such as:

[T]echnical assistance projects implemented by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention and the United Nations Interregional Crime and Justice Research Institute; actions to prevent trafficking and protect the rights of victims undertaken by the Office of the United Nations High Commissioner for Human Rights; seminars on trafficking in women and children organized by the Economic and Social Commission for Asia and the Pacific; activities to increase national capacity and subregional cooperation to strengthen and reform legislation, policies and enforcement of laws to respond to trafficking undertaken by the United Nations Development Programme; advocacy activities carried out by the United Nations Development Fund for Women, as well as other measures undertaken by the Joint United Nations Programme on HIV/AIDS, the World Health Organization and the International Labour Organization.

*Report of the Expert Group Meeting on “Trafficking in Women and Girls,”* Division for the Advancement of Women; Department of Economic and Social Affairs, at 8, U.N. Doc. EGM/TRAF/2002/WP.2 (2002), available at <http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/WP-DAW.PDF> [hereinafter DESA Report].

organizations with a mandate to combat trafficking will find the tool invaluable inasmuch as it provides a comprehensive analysis of government efforts to address trafficking and identifies key gaps in law and implementation that need to be addressed.

By using this tool to track the progress of countries in their anti-trafficking efforts, NGOs can remind states of the importance of addressing trafficking, both at the de jure and de facto level, and can encourage states to provide detailed information concerning such measures when reporting to the various United Nations human rights treaty-monitoring bodies. Currently there is no enforcement body for the Transnational Organized Crime Convention and the Trafficking Protocol since the designated conference of States Parties has not yet decided upon this matter.<sup>57</sup> However, nations are required to report their progress on other international obligations to existing United Nations treaty monitoring bodies. When reporting to bodies such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, and the Committee on the Rights of the Child, states should describe the affirmative steps they have taken to address trafficking in persons, which is not only a crime but also involves egregious human rights violations.<sup>58</sup>

Finally, governments are another important potential audience, and in many ways, the most important. Governments are ultimately responsible for taking effective steps to stop trafficking. Governments must apprehend and prosecute traffickers, protect affected victims, and implement preventative measures that will eventually eradicate the trafficking phenomenon. Only governments are poised to commit to the global effort to stop trafficking by signing the Transnational Organized Crime Convention and the Trafficking Protocol and by passing domestic legislation mirroring their commitments in order to ratify (depending on whether international instruments are self-executing or non-self-executing in a particular country). Only governments can follow up on those commitments by ensuring that the trafficking problem is addressed both in law and in practice.

Consequently, it is important to disseminate the results of this diagnostic tool widely. The findings of each assessment based on this tool will be compiled in a report by the assessor (or the assessment team). The report will be distributed to various international and regional organizations, domestic NGOs, government officials, and any other stakeholders. The reports will aid in gauging the status of anti-trafficking efforts in a country at a particular moment in time and, thus, act as a catalyst for change in areas that need improvement.

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<sup>57</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 32 (1) (“A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.”); *see also* Conference of the Parties to the United Nations Convention against Transnational Organized Crime and its Protocols, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html#conference](http://www.unodc.org/unodc/en/crime_cicp_convention.html#conference) (listing reports that describe the decisions that have been taken so far by the Conference of States Parties).

<sup>58</sup> Such reporting depends upon the particular international human rights instruments that the countries in question have signed and/or ratified. *See Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council; Addendum: Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. High Commissioner for Human Rights, Substantive Sess., Agenda Item 14(g), at 5, U.N. Doc. E/2002/68/Add.1 (2002) [hereinafter ECOSOC Report]; *see also* DESA Report, *supra* note 56, at 7.

### C. Components of the Assessment Tool

This Introduction to ABA/CEELI's Human Trafficking Assessment Tool contains some of the components which are designed to equip a team of assessors to conduct a thorough assessment of a country's de jure and de facto compliance with the Trafficking Protocol and with certain provisions of the Transnational Organized Crime Convention.

*The main component, entitled "Trafficking Protocol Commentary and Guidelines,"* explains the meaning of each of the thirteen substantive articles of the instrument and contains, where appropriate, references to the Transnational Organized Crime Convention. Since a state must first be a Party to the Convention in order to sign and ratify the Protocol, both instruments are to be interpreted and applied together.

This explanatory portion of the tool also incorporates references to other international treaties, domestic laws, and pertinent secondary materials. For example, in addition to the Protocol and Convention themselves, the tool uses the *travaux préparatoires* to the two instruments, which are not legally binding but offer authoritative guidance as to the meaning of certain terminology.<sup>59</sup> The tool also references other pertinent international treaties and materials developed under the auspices of the United Nations and its various bodies such as the Economic and Social Council ("ECOSOC") and the UNODC.<sup>60</sup> Moreover, the tool relies upon documents addressing trafficking in persons issued by regional bodies such as the European Union ("EU"),<sup>61</sup> Council of Europe ("CoE"),<sup>62</sup> the Stability Pact for South Eastern Europe,<sup>63</sup> and the Organization for Security and Co-operation in Europe ("OSCE").<sup>64</sup> Lastly, materials drafted and distributed by NGOs such as The Protection Project,<sup>65</sup> Anti-Slavery International,<sup>66</sup> and La Strada<sup>67</sup> were also consulted. Such documents seek to interpret the provisions of the Trafficking Protocol, together with the Convention, and also to describe the best manner in which the established obligations are to be implemented.

The analysis of the substantive provisions of the Trafficking Protocol is premised on the notion that this particular instrument sets forth *minimum standards* to enable States Parties to initiate proper anti-trafficking efforts. Thus, this tool incorporates other suggested issues that are not directly addressed by the provisions of the Protocol, but that states should take into consideration in order to combat trafficking in a comprehensive manner.

Included in the *Commentary and Guidelines* are *Examples of Compliance and Non-Compliance* with the Trafficking Protocol by both States Parties and expected States Parties. These examples are

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<sup>59</sup> See Vienna Convention on the Law of Treaties, May 23, 1969, art. 32, 1155 U.N.T.S. 331 (indicating that preparatory works to treaties, or *travaux préparatoires*, are a supplementary means of interpreting certain terms used in the body of the treaties themselves).

<sup>60</sup> See generally United Nations, at <http://www.un.org/>; see also the United Nations Economic and Social Council, at <http://www.un.org/esa/coordination/ecosoc/>; see also the United Nations Office on Drugs and Crime, at [http://www.unodc.org/unodc/crime\\_cicp\\_sitemap.html](http://www.unodc.org/unodc/crime_cicp_sitemap.html).

<sup>61</sup> See generally European Union, at <http://www.europa.eu.int/>.

<sup>62</sup> See generally Council of Europe, at <http://www.coe.int/DefaultEN.asp>.

<sup>63</sup> See generally Stability Pact for South Eastern Europe, at <http://www.stabilitypact.org/>.

<sup>64</sup> See generally Organization for Security and Co-operation in Europe, at <http://www.osce.org>. More specifically, the Office for Democratic Institutions and Human Rights ("ODHIR") manages the OSCE's anti-trafficking program.

<sup>65</sup> See generally The Protection Project, at [www.protectionproject.org](http://www.protectionproject.org).

<sup>66</sup> See generally Anti-Slavery International, at <http://www.antislavery.org/>.

<sup>67</sup> See generally La Strada, at <http://www.strada.cz/en/>.

intended to be illustrative of anti-trafficking laws and implementation policies under each provision of the Protocol. They were drawn from reports drafted by the United States Department of State, the OSCE, and Anti-Slavery International, as well as from country profiles and laws that are available on the website of The Protection Project ([www.protectionproject.org](http://www.protectionproject.org)). Given the wealth of information available regarding the anti-trafficking efforts of various countries, examples of compliance and non-compliance are also listed in Appendix A. All examples reflect the status quo of laws and programmatic efforts as of December 2005.

Lastly, following the *Commentary and Guidelines* is a section highlighting *Examples of Successful NGO Anti-Trafficking Efforts*. The purpose of this section is to highlight the importance of cooperation between governments and NGOs in the fight against trafficking. The organizations exemplified in this section are operating in countries where trafficking in persons is a large-scale problem and where government authorities might not be fully addressing the issue for various reasons (lack of funds, etc.). The successful strategies that are outlined in this section can be replicated by other organizations as well as by governments themselves.

#### **D. Complete Guide for Assessors**

The Introduction to ABA/CEELI's Human Trafficking Assessment Tool is intended for public distribution. It provides a description of the tool and contains detailed information regarding the substantive provisions of the Trafficking Protocol as well as applicable provisions of the Transnational Organized Crime Convention. It does not contain the methodology for conducting an assessment.

The internal version of the assessment tool, *The Assessors' Guide to the Human Trafficking Assessment Tool*, includes the methodology as well as detailed sets of interview questions that carefully track each substantive section of the Protocol and pertinent sections of the Transnational Organized Crime Convention.

Those interested in conducting an assessment based upon this diagnostic tool, should contact ABA/CEELI for more information.

## TRAFFICKING PROTOCOL COMMENTARY AND GUIDELINES

### A. PURPOSES, SCOPE, AND THE OFFENSE OF TRAFFICKING IN PERSONS

#### **Article 1: Relation with the United Nations Convention against Transnational Organized Crime**

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

Article 1 incorporates necessary provisions of the Transnational Organized Crime Convention into the Trafficking Protocol. Such provisions are to apply “*mutatis mutandis*” which literally means “with such modifications as circumstances require” or “with the necessary modifications.” Thus, provisions from the Convention that are applied together with the Protocol will be modified or interpreted to have the same meaning or achieve the same result in a situation where the Protocol governs as in a situation where the Convention governs.<sup>68</sup> Furthermore, Article 1 indicates that the crime of trafficking in persons, established by the Protocol, is an offense within the meaning of the Convention.<sup>69</sup>

It is important for countries that are signing and/or ratifying the Convention and the Protocol to recognize that they are undertaking obligations to *both* instruments and to interpret these two documents together. The UNODC explains that “[t]he Protocol is not a stand-alone instrument. It must be read and applied together with the parent Convention, and each country is required to become a party to the Convention in order to become a party to the Protocol.”<sup>70</sup> Thus, while the Protocol establishes specific duties with respect to trafficking, States Parties should also adhere to pertinent legally binding provisions of the Convention. For example, countries should focus on key provisions regarding:

- jurisdiction
- extradition
- witness protection
- participation in an organized criminal group
- money laundering
- corruption
- obstruction of justice.

These are a few suggested issues that should be taken into consideration. When interpreting the Trafficking Protocol in conjunction with the Convention, however, one should refer to other provisions of the Convention that are pertinent to a trafficking scenario within or across the borders of a particular country. The relationship between the Trafficking Protocol and its host, the

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<sup>68</sup> See Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the Work of Its First to Eleventh Sessions; Addendum: Interpretative Notes for the Official Records (*Travaux Préparatoires*) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, 55th Sess., Agenda Item 105, at 12, U.N. Doc. A/55/383/Add.1 (2000), available at [http://www.unodc.org/pdf/crime/final\\_instruments/383a1e.pdf](http://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf) [hereinafter Convention and Protocol *Travaux*].

<sup>69</sup> See Trafficking Protocol, *supra* note 3, art. 1(3); see also UNODC SUMMARY, *supra* note 53.

<sup>70</sup> UNODC SUMMARY, *supra* note 53.

Transnational Organized Crime Convention, will become evident throughout the substantive analysis of this manual.

## **Jurisdiction**

Article 15 of the Transnational Organized Crime Convention establishes jurisdiction over the offenses listed in the Convention itself as well as trafficking offenses established by States Parties in accordance with Article 5 of the Trafficking Protocol.<sup>71</sup> Under Article 15, a State Party may assert jurisdiction over:

- crimes committed within its territory (territorial jurisdiction)
- crimes committed outside its territory (extraterritorial jurisdiction).<sup>72</sup>

Territorial jurisdiction can be asserted if “the offence is committed in the territory of that State Party” or “the offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.”<sup>73</sup>

A State Party can exercise extraterritorial jurisdiction if “the offence is committed against a national of that State Party” (passive personality principle) or “the offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory” (active nationality principle).<sup>74</sup>

The *travaux préparatoires* of the Transnational Organized Crime Convention stress the importance of extending possible protections to stateless persons when asserting jurisdiction.<sup>75</sup> A stateless person is an individual that no country recognizes as its national under its pertinent domestic laws.<sup>76</sup>

A State Party can assert jurisdiction in order to protect its interests if an offense involving an organized criminal group “is committed outside its territory with a view to the commission of a serious crime within its territory.”<sup>77</sup>

Lastly, a State Party can exercise jurisdiction for the participation in or attempt to launder proceeds of a crime committed outside its territory, with a view to launder proceeds of a crime within its territory.<sup>78</sup>

To complement the types of jurisdiction available through the Transnational Organized Crime Convention, the Council of Europe Committee of Ministers recommended that states establish

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<sup>71</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 15.

<sup>72</sup> See ANGELIKA KARTUSCH, REFERENCE GUIDE FOR ANTI-TRAFFICKING LEGISLATIVE REVIEW: WITH PARTICULAR EMPHASIS ON SOUTH EASTERN EUROPE 52 (2001), available at [http://www.osce.org/odihr/item\\_11\\_13596.html](http://www.osce.org/odihr/item_11_13596.html) [hereinafter OSCE GUIDE].

<sup>73</sup> Transnational Organized Crime Convention, *supra* note 37, art. 15(1).

<sup>74</sup> *Id.* arts. 15(2)(a) and 15(2)(b).

<sup>75</sup> See Convention and Protocol Travaux, *supra* note 68, at 5.

<sup>76</sup> See Convention Relating to the Status of Stateless Persons, Sept. 20, 1954, art. 1(1), 360 U.N.T.S. 117; see also B.S. CHIMNI, INTERNATIONAL REFUGEE LAW 9-10, 72-76 (2000).

<sup>77</sup> Transnational Organized Crime Convention, *supra* note 37, art. 15(2)(c)(i); see also OSCE GUIDE, *supra* note 72, at 52.

<sup>78</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 15(2)(c)(ii); see also OSCE GUIDE, *supra* note 72, at 52.

extraterritorial jurisdiction irrespective of the country where the offense of trafficking was committed, including cases where the offense took place in more than one country.<sup>79</sup>

### **Extradition**

Given that trafficking can be transnational in nature, governments must pay heed to the extradition provisions available in the Transnational Organized Crime Convention when signing and ratifying the Trafficking Protocol.

Article 16 of the Convention details the particulars of extradition requiring that the offense for which extradition proceedings are sought be punishable under the domestic law of *both* the requesting State Party and the requested State Party.<sup>80</sup> In other words, if a State Party to the Convention and Protocol requests the extradition of a suspected trafficker who is found in the territory of another State Party, trafficking must be recognized as a crime by both the requesting and requested State Party.

Furthermore, Article 16 indicates that “if the request for extradition includes several separate serious crimes, some of which are not covered by [the Convention], the requested State Party may apply this article also in respect of the latter offences.”<sup>81</sup> However, the *travaux préparatoires* warn that extending the extradition clause to crimes otherwise not enumerated should not be done in an excessive manner.<sup>82</sup>

According to Article 16, extradition may be accomplished in two ways: either on the basis of a separate bilateral or multilateral extradition treaty between States Parties<sup>83</sup> in addition to the Transnational Organized Crime Convention, or by directly “tak[ing the] ... Convention as the legal basis for cooperation on extradition with other States to this Convention.”<sup>84</sup> It should be noted that these methods of extraditing a perpetrator are only applicable in cases where a country makes the process of extradition conditional upon the existence of a treaty.<sup>85</sup>

Extradition requests are to be subjected to certain conditions arising out of the domestic law of the requested State Party, such as minimum penalty requirements for extradition and allowable grounds upon which the requested Party may refuse extradition.<sup>86</sup> It should be noted that when a State Party refuses a request for extradition, it must consult with the requesting State Party allowing it to present its opinions as well as any other relevant information.<sup>87</sup>

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<sup>79</sup> See *Recommendation of the Comm. of Ministers to Member States on Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation*, § 48, Comm. of Ministers, 710th meeting, Doc. No. R 11 (2000) [hereinafter Recommendation 11]; see also OSCE GUIDE, *supra* note 72, at 52.

<sup>80</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 16(1).

<sup>81</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 16(2).

<sup>82</sup> See Convention and Protocol *Travaux*, *supra* note 68, at 6.

<sup>83</sup> For the European region, the most relevant treaty is the Council of Europe’s 1957 European Convention on Extradition, which is open for signature and ratification to non-Council of Europe member states and which has been ratified by at least forty-five countries including all Stability Pact countries with the exception of Bosnia and Herzegovina. See generally European Convention on Extradition, Dec. 13, 1957, ETS No. 24, available at <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>; see also Stability Pact for South Eastern Europe, June 10, 1999, available at <http://www.stabilitypact.org/>; OSCE GUIDE, *supra* note 72, at 53.

<sup>84</sup> Transnational Organized Crime Convention, *supra* note 37, art. 16(5).

<sup>85</sup> See *id.*

<sup>86</sup> See *id.* art. 16(7).

<sup>87</sup> See *id.* art. 16(16); see also OSCE GUIDE, *supra* note 72, at 55.

Lastly, under Article 16, States Parties are obligated to:

- expedite extradition proceedings if they choose to undertake them<sup>88</sup>
- simplify evidentiary requirements related to extraditions<sup>89</sup>
- abide by the principle of *aut dedere aut judicare* (i.e., the obligation to either extradite or prosecute), taking into consideration the need to eliminate safe havens for offenders like traffickers<sup>90</sup>
- consider the enforcement of sentences imposed by requesting Parties if extradition is refused<sup>91</sup>
- guarantee fair treatment for the accused at all stages of the extradition process.<sup>92</sup>

### **Witness Protection**

The Trafficking Protocol borrows key provisions from the Transnational Organized Crime Convention regarding witness protection. Such provisions are to be interpreted together with the witness protective measures delineated in Article 6 of the Trafficking Protocol.<sup>93</sup>

Article 24 of the Convention requires that States Parties “take appropriate measures within [their] means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offenses covered by this Convention and, as appropriate, for their relatives and other persons close to them.”<sup>94</sup>

Emphasizing the need to balance the rights of accused persons with the need to protect witnesses, Article 24 encourages states to establish means of physically protecting witnesses that include:

- relocation of witnesses when appropriate (based on relocation agreements with other states)
- non-disclosure or limited disclosure of witnesses’ identities
- evidentiary limitations
- the use of technology in the courtroom in order to protect witnesses (i.e., testimony via video link).<sup>95</sup>

In conclusion, Article 24 clearly indicates that such protective measures are to be made available to victims of serious crimes, such as trafficking, when they testify.<sup>96</sup> Article 24 does not restrict a State Party’s obligation to protect witnesses solely during criminal proceedings, so one can

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<sup>88</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 16(8).

<sup>89</sup> See *id.*

<sup>90</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 16(10); see also Convention and Protocol Travaux, *supra* note 68, at 6.

<sup>91</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 16(12); see also Convention and Protocol Travaux, *supra* note 68, at 6 (“The *travaux préparatoires* should indicate that the action referred to in paragraph 12 would be taken without prejudice to the principle of double jeopardy (*ne bis idem*).”).

<sup>92</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 16(13).

<sup>93</sup> See Trafficking Protocol, *supra* note 3, art. 6.

<sup>94</sup> Transnational Organized Crime Convention, *supra* note 37, art. 24(1).

<sup>95</sup> See *id.* arts. 24(2)-(3).

<sup>96</sup> See *id.* art. 24(4). Victims of serious crimes, such as trafficking, are offered assistance and protection independent of witness protections. See *id.* art. 25. The *travaux préparatoires* to the Transnational Organized Crime Convention indicate that victims are not only to be physically protected but their rights are to also be protected in accordance with international law. See Convention and Protocol Travaux, *supra* note 68, at 9.

conclude that such protections are to be made available before, during, and after the criminal proceedings.<sup>97</sup>

A limitation of Article 24 is the fact that a State Party's obligations are weakened by the language "shall take appropriate measures within its means" to protect witnesses and their relatives "as appropriate."<sup>98</sup> This language potentially allows a State Party to provide less than adequate witness protections in trafficking cases (or otherwise). More comprehensive language was introduced in European Union documents that require member states to ensure a "suitable level of protection" to victims of serious crimes and their family members, or similarly situated persons, while "guarantee[ing] that it is possible to adopt, if necessary" appropriate measures of protection.<sup>99</sup> In the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, EU member states further committed themselves to grant "proper and effective protection" to witnesses and close family members before, during, and after criminal proceedings, to facilitate change of identity for victims who are the target of serious threats, and to notify victims upon request when a trafficker has been released from custody.<sup>100</sup>

Another limitation of the Transnational Organized Crime Convention is that it does not require States Parties to provide protection to members of NGOs who are assisting victims.<sup>101</sup> The Council of Europe, for example, calls upon member states to protect NGO affiliates when assisting victims during penal and civil proceedings.<sup>102</sup>

### **Participation in an Organized Criminal Group**

When criminalizing trafficking, States Parties to the Trafficking Protocol should also take into consideration the "criminalization of participation in an organized criminal group" set forth in Article 5 of the Transnational Organized Crime Convention,<sup>103</sup> which is a cluster of *separate* crimes "distinct from" principal criminal activity such as trafficking in persons (i.e., not aggravating circumstances).<sup>104</sup> Such crimes are also distinct from the attempt to commit an offense like trafficking.<sup>105</sup> Thus, a perpetrator can be charged with trafficking in persons as well as one of the crimes below for involving himself/herself with an organized criminal group. Furthermore, a prosecutor would have to prove the requisite intent for the additional crimes.<sup>106</sup> Such intent may be "inferred from objective factual circumstances."<sup>107</sup>

According to Article 5(1)(a) of the Convention, the cluster of these separate offenses is composed of "either or both" of the following:

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<sup>97</sup> See OSCE GUIDE, *supra* note 72, at 84.

<sup>98</sup> Transnational Organized Crime Convention, *supra* note 37, art. 24(1); see also OSCE GUIDE, *supra* note 72, at 84.

<sup>99</sup> See Council Framework Decision 2001/220/JHA, art. 8, paras. 1-2, 2001 O.J. (L 82) 1; see also OSCE GUIDE, *supra* note 72, at 85.

<sup>100</sup> See The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, April 26, 1997, European Union, Ch. III.2.2; see also OSCE GUIDE, *supra* note 72, at 85.

<sup>101</sup> See OSCE GUIDE, *supra* note 72, at 85.

<sup>102</sup> See Recommendation 11, *supra* note 79, § 32.

<sup>103</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 5.

<sup>104</sup> See *id.* art. 5(1)(a).

<sup>105</sup> See *id.*

<sup>106</sup> See *id.* art. 5(1).

<sup>107</sup> *Id.* art. 5(2).

- (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
- (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
  - a. Criminal activities of the organized criminal group;
  - b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.<sup>108</sup>

This cluster of separate offenses also includes the crime of “organizing, directing, aiding, abetting, facilitating or counselling the commission of [a] serious crime involving an organized criminal group.”<sup>109</sup>

It should be noted that elements incorporated within the above crimes, such as “knowledge,” “intent,” “aim,” “purpose,” or “agreement” can be “inferred from objective factual circumstances.”<sup>110</sup>

### **Money Laundering**

Traffickers often times launder the proceeds of their crime<sup>111</sup> in order to conceal the illicit source of their activities.<sup>112</sup> Thus, when drafting anti-trafficking legislation, governments should ensure the existence of separate money laundering offenses and ensure that such offenses comply with Article 6 of the Transnational Organized Crime Convention.<sup>113</sup> Accordingly, traffickers can be charged with trafficking in persons, as the predicate offense, as well as other related, but separate, crimes for laundering illicit proceeds. It should be noted that money laundering charges require proof of the mental element of intent.<sup>114</sup> “Intent,” along with other elements such as “knowledge” and “purpose,” can be “inferred from objective factual circumstances.”<sup>115</sup>

Article 6(1) of the Convention establishes the following money laundering offenses:

- (a)
  - (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

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<sup>108</sup> *Id.* art. 5(1)(a).

<sup>109</sup> *Id.* art. 5(1)(b).

<sup>110</sup> *Id.* art. 5(2).

<sup>111</sup> See Convention and Protocol Travaux, *supra* note 68, at 3 (“[T]he terms ‘laundering of proceeds of crime’ and ‘money-laundering’ are understood to be equivalent.”).

<sup>112</sup> See Intelligence Monograph, *supra* note 2, at 1.

<sup>113</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 6.

<sup>114</sup> See *id.* art. 6(1).

<sup>115</sup> *Id.* art. 6(2)(f).

- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- (b) Subject to the basic concepts of its legal system:
  - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
  - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.<sup>116</sup>

The *travaux préparatoires* of the Convention explain that the terms “concealing or disguising” and “concealment or disguise” should be interpreted to include conduct that seeks to prevent one from discovering the illicit origins of property at hand.<sup>117</sup> Thus, if a trafficker conceals or disguises ill-gotten goods, money, etc. with the intent to prevent authorities or other persons from learning the true origin of such property (i.e., the crime of trafficking), s/he can be charged not only with trafficking in persons but also with money laundering.

Article 6(2) of the Convention further explains that the offenses upon which money laundering charges are predicated must include crimes delineated throughout the Convention (i.e., criminalization of participation in an organized criminal group, corruption, obstruction of justice) and its protocols (trafficking in persons, etc.).<sup>118</sup> Furthermore, such predicate offenses must include crimes that have been committed either within or outside of the jurisdiction of States Parties to the Convention.<sup>119</sup> The *travaux préparatoires* of the Convention recognize that some countries do not allow for the prosecution and conviction of an individual for *both* the predicate offense and money laundering.<sup>120</sup> However, the *travaux* indicate that such countries are still required to cooperate with other countries on matters of extradition and mutual legal assistance.<sup>121</sup>

Article 7 of the Transnational Organized Crime Convention lists several measures to enable States Parties to better combat money laundering. These measures call upon States Parties to:

- establish regulatory regimes for banks and other pertinent institutions that include practices such as customer identification, record-keeping, and reporting of suspicious transactions
- facilitate national and international cooperation and exchange of information among judicial, law enforcement, and financial regulatory authorities to combat money laundering
- create national financial intelligence units that would collect, analyze, and disseminate information regarding potential money laundering activities
- devise measures to detect and monitor the movement of cash and negotiable instruments across borders “without impeding in any way the movement of legitimate capital.”<sup>122</sup>

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<sup>116</sup> *Id.* art. 6(1).

<sup>117</sup> See Convention and Protocol Travaux, *supra* note 68, at 3.

<sup>118</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 6(2)(b).

<sup>119</sup> See *id.* art. 6(2)(c).

<sup>120</sup> See Convention and Protocol Travaux, *supra* note 68, at 3-4.

<sup>121</sup> See *id.*

<sup>122</sup> Transnational Organized Crime Convention, *supra* note 37, art. 7.

## Corruption

Trafficking in persons often occurs with the assistance of corrupt government officials. Experts assert that “[a]lthough there have been some cases of prosecution of public officials for their involvement in trafficking, many states are still unwilling to expose and punish corrupt public officials. In many countries, corruption is rampant and continues to remain a major contributor to the trafficking infrastructure.”<sup>123</sup> It is important for states to have laws in place in order to investigate and prosecute such individuals. This development would be a significant step in the prevention of trafficking.<sup>124</sup> Thus, when signing and ratifying the Trafficking Protocol, countries should ensure that anti-corruption provisions exist and that they comply with the requirements of Article 8 of the Transnational Organized Crime Convention as well as other relevant international and regional treaties.<sup>125</sup> Domestic anti-corruption laws should complement anti-trafficking legislation so that traffickers (and persons aiding traffickers) can be charged with the offense of trafficking along with other corrupt acts.

Article 8 of the Convention criminalizes *intentionally* committed corrupt acts and indicates the following:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article. . . .<sup>126</sup>

Article 8 defines the term “public official” as “a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in

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<sup>123</sup> Smith & Mattar, *supra* note 26, at 172.

<sup>124</sup> See OSCE GUIDE, *supra* note 72, at 48; see also Decision No. 557: OSCE Action Plan to Combat Trafficking in Human Beings 4, OSCE Doc. PC.DEC/557 (July 24, 2003) [hereinafter OSCE Action Plan].

<sup>125</sup> Such treaties include: United Nations Convention Against Corruption Oct. 31, 2003, U.N. Doc. A/58/422, available at [http://www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html); Council of Europe Criminal Law Convention on Corruption, Jan. 27, 1999, No. 173, available at <http://conventions.coe.int/Treaty/en/Treaties/Word/173.doc>; Additional Protocol to the Council of Europe Criminal Law Convention on Corruption, May 15, 2003, No. 191, available at <http://conventions.coe.int/Treaty/en/Treaties/Word/191.doc>; Council of Europe Civil Law Convention on Corruption, Nov. 4, 1999, No. 174, available at <http://conventions.coe.int/Treaty/en/Treaties/Word/174.doc>; Inter-American Convention Against Corruption, Mar. 19, 1996, available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/juridico/english/fightcur.html>; Southern African Development Community Protocol Against Corruption, Aug. 14, 2000, available at <http://www.sadc.int/>.

<sup>126</sup> Transnational Organized Crime Convention, *supra* note 37, art. 8.

question performs that function.”<sup>127</sup> The *travaux préparatoires* of the Convention explain that since the notion of a “public official” naturally varies from country to country, a common definition was introduced in Article 8 in order to foster cooperation among signatories (i.e., agreeing upon a uniform definition).<sup>128</sup> The *travaux* further explain that duress or undue influence can be raised as defenses when charged with the crime of corruption.<sup>129</sup>

Article 9 of the Transnational Crime Convention calls for the following additional measures against corruption:

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.<sup>130</sup>

### **Obstruction of Justice**

When criminalizing trafficking, States Parties to the Trafficking Protocol should also take into consideration the obstruction of justice offenses set forth in Article 23 of the Transnational Organized Crime Convention.<sup>131</sup> These additional charges would be applicable in a situation where, for example, a trafficker *intentionally* threatens a victim that is scheduled to testify or an officer of the court, in an attempt to thwart the legal proceedings initiated against him/her.<sup>132</sup>

Article 23 of the Convention sets forth the following obstruction of justice crimes:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. . . .<sup>133</sup>

The *travaux préparatoires* of the Convention indicate that the term “proceeding” includes the pre-trial stage of a case.<sup>134</sup>

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<sup>127</sup> *Id.* art. 8(4).

<sup>128</sup> *See* Convention and Protocol *Travaux*, *supra* note 68, at 4.

<sup>129</sup> *See id.* (explaining that “the obligation under . . . article [8] was not intended to include the actions of a person who acted under such a degree of duress or undue influence as to constitute a complete defence to the crime.”).

<sup>130</sup> Transnational Organized Crime Convention, *supra* note 37, art. 9.

<sup>131</sup> *See id.* art. 23.

<sup>132</sup> The crime of “obstruction of justice” requires the mental element of intent. *See id.*

<sup>133</sup> *Id.*

<sup>134</sup> *See* Convention and Protocol *Travaux*, *supra* note 68, at 9.

## *Examples of Compliance and Non-Compliance*

### **Jurisdiction**

#### De Jure

- **Compliance:** In Cyprus, if criminal activity committed by any individual in a country outside of Cyprus qualifies as an offense under the Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, Cypriot courts can assert jurisdiction.<sup>135</sup>
- **Compliance:** The provisions of the German Penal Code regarding offenses such as trafficking are applicable irrespective of the location where the illicit act was committed.<sup>136</sup> The reasoning behind this extraterritorial assertion of jurisdiction is because Germany considers such an act to be against “internationally protected legal rights.”<sup>137</sup>

#### De Facto

- **Compliance:** In 2001, Austrian courts asserted jurisdiction over twenty-two suspected traffickers that were transporting victims into the country. The suspects included Afghan, Indian, Pakistani, and Iranian citizens. In a separate case that same year, the government exercised extraterritorial jurisdiction and arrested two leaders of a trafficking ring (a Czech citizen and a Vietnamese citizen) along with fourteen accomplices in Brunn, Czech Republic. Thirty other traffickers related to the same ring were arrested in Austria in December 2000. In more recent years (2002-2005), Austrian authorities continued to assert jurisdiction and break up trafficking rings involving the forced transfer of 300 victims from the Dominican Republic into Austria, 150 victims from Belarus into upper Austria, as well as victims from Lithuania, China, and Tajikistan into Austria.<sup>138</sup>
- **Compliance:** In 1997, France asserted jurisdiction over a French national who was sexually abusing children in Romania and trafficking children from Romania into France. In 2000, a French national was convicted by a Parisian court and sentenced to 7 years in prison for raping an 11-year old girl in Pattaya, Thailand. This was the first case in France involving the rape of a minor that was committed abroad. French courts have also recently (and frequently) asserted jurisdiction over foreign nationals from countries such as Romania, Morocco, Angola, Cameroon, Congo, Sierra Leone, Vietnam, and China who trafficked women, babies, other minors, and persons with disabilities for the purposes of sexual exploitation, illegal adoptions (or baby-selling), forced labor, and begging into France.<sup>139</sup>

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<sup>135</sup> See The Protection Project; Human Rights Reports: Cyprus, at <http://www.protectionproject.org/>.

<sup>136</sup> See PENAL CODE § 6 (Ger.); see also The Protection Project; Human Rights Reports: Germany, at <http://www.protectionproject.org/>.

<sup>137</sup> See *id.*

<sup>138</sup> See The Protection Project; Human Rights Reports: Austria, at <http://www.protectionproject.org/>.

<sup>139</sup> See The Protection Project; Human Rights Reports: France, at <http://www.protectionproject.org/>.

## Extradition

### De Jure

- **Compliance:** The Albanian Criminal Code provides for extradition based upon international treaties to which Albania is a Party, and indicates that individuals will be extradited solely in cases where both Albanian law and the law of the requesting state provide for the criminal act that forms the basis of the extradition.<sup>140</sup>
- **Compliance:** In Cyprus, trafficking in persons is deemed to be an extraditable offense under the Extradition of Fugitives Law of 1970.<sup>141</sup>

### De Facto

- **Compliance:** In June 2004, the U.S. State Department reported that the government of the Czech Republic extradited 117 suspects (during the reporting period), “some of whom were extradited on trafficking charges to Austria, Germany, Bulgaria, and Serbia and Montenegro.”<sup>142</sup>

## Witness Protection

### De Jure

- **Compliance:** In Canada, trafficked victims who agree to testify can apply to be part of the Witness Protection Program. Under this program, individuals can receive protection “in relation to certain inquiries, investigations or prosecutions.”<sup>143</sup> Protection can include “relocation, accommodation and change of identity as well as counselling and financial support for those or any other purposes in order to ensure the security of the protectee or to facilitate the protectee’s re-establishment or becoming self-sufficient.”<sup>144</sup> A witness enters the program by signing a protection agreement<sup>145</sup> and his/her admission is determined based on certain qualifying factors such as “the nature of the risk to the security of the witness,” “the danger to the community if the witness is admitted to the Program,” “the nature of the inquiry, investigation or prosecution involving the witness and the importance of the witness in the matter,” “the value of the information or evidence given or agreed to be given or of the participation by the witness,” “the likelihood of the witness being able to adjust to the Program, having regard to the witness’s maturity, judgment and other personal characteristics and the family relationships of the witness,” “the cost of maintaining the witness in the Program,” “alternate methods of protecting the witness without admitting the witness to the Program,” and other relevant factors.<sup>146</sup>

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<sup>140</sup> See CRIMINAL CODE [CRIM. C.] art. 11 (Alb.); see also Council of Europe; National Legislation: Albania, at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Alb.asp#P1048\\_82848](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Alb.asp#P1048_82848).

<sup>141</sup> See Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, No. 3(1) (2000), art. 13 (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>142</sup> 2004 TIP Report, *supra* note 17, at 133.

<sup>143</sup> Witness Protection Program Act (2001) preamble (Can.), at <http://www.legislationline.org/view.php?document=55135>.

<sup>144</sup> *Id.* art. 2.

<sup>145</sup> See *id.* art. 8.

<sup>146</sup> See *id.* art. 7.

- **Compliance:** In 2003, OSCE, together with other international organizations, reported that the then newly adopted provisions on trafficking in the Criminal Code of Montenegro did not correspond with changes in the Criminal Procedure Code. The report warned that this disconnect left victims vulnerable to being re-trafficked and susceptible to other forms of abuse. However, in October 2004, the Republic of Montenegro passed a witness protection law specifically applicable to trafficking victims.<sup>147</sup>

#### De Facto

- **Non-compliance:** In Moldova, the Law on State Protection of the Victim, of Witnesses and Other Persons who Provide Assistance in the Criminal Proceedings is not implemented properly due to financial and legal constraints. In 2003, the OSCE reported that “only in a very few cases have witnesses in trafficking cases enjoyed limited physical protection.” This trend continues as reflected by ABA/CEELI’s pilot project for this tool, which was implemented in Moldova in the fall of 2004.<sup>148</sup>
- **Compliance:** In Poland, legislation allows for the use of video link testimony. Consequently, in 2003, a total of sixteen victims testified against their traffickers; a number which rose from thirteen in 2002.<sup>149</sup>

### Participation in an Organized Criminal Group

#### De Jure

- **Compliance:** Article 416 of the Italian Penal Code delineates the offense of criminal association.<sup>150</sup> Article 416bis criminalizes the involvement in organized crime groups (*Mafioso* activity).<sup>151</sup>
- **Compliance:** According to Article 140 of the Penal Code of the Netherlands it is an offense to participate in a criminal organization.<sup>152</sup>

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<sup>147</sup> See BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE: 2003 UPDATE ON SITUATION AND RESPONSES TO TRAFFICKING IN HUMAN BEINGS IN ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, SERBIA AND MONTENEGRO, INCLUDING THE UN ADMINISTERED PROVINCE OF KOSOVO, ROMANIA 150 (2003), available at [www.seerights.org](http://www.seerights.org) [hereinafter 2003 SOUTH EASTERN EUROPE UPDATE]; see also 2005 TIP Report, *supra* note 5, at 191.

<sup>148</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 79; see AMERICAN BAR ASSOCIATION CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE, THE HUMAN TRAFFICKING ASSESSMENT TOOL REPORT FOR MOLDOVA 38 (2005), available at <http://www.abanet.org/ceeli/publications/home.html> [hereinafter HTAT Pilot].

<sup>149</sup> See 2004 TIP Report, *supra* note 17, at 163.

<sup>150</sup> See PENAL CODE art. 416 (Italy); see also ELAINE PEARSON, HUMAN TRAFFIC, HUMAN RIGHTS: REDEFINING VICTIM PROTECTION 139 (2002), available at

<http://www.antislavery.org/homepage/resources/humantraffic/Hum%20Traff%20Hum%20Rights.%20redef%20vic%20p rotec%20final%20full.pdf> [hereinafter ASI REPORT].

<sup>151</sup> See PENAL CODE art. 416bis (Italy); see also ASI REPORT, *supra* note 150, at 139.

<sup>152</sup> See PENAL CODE art. 140 (Neth.); see also ASI REPORT, *supra* note 150, at 66.

## De Facto

- **Compliance:** In Italy, the national Prosecutor's office has an anti-*mafia* program that uses the above-mentioned provisions of the Penal Code (Articles 416 and 416bis) to prosecute members of organized crime groups who engage in trafficking in persons and other illicit activities.<sup>153</sup>

## Money Laundering

### De Jure

- **Compliance:** The Cypriot anti-trafficking legislation recognizes trafficking in persons as a predicate offense for money laundering, which in turn is criminalized by the Money Laundering Activities Law.<sup>154</sup>
- **Compliance:** In 2000, Israel enacted the Prohibition on Money Laundering Law that criminalizes the act of money laundering and imposes a reporting requirement in order to monitor suspicious financial transactions. Two accompanying regulations have been promulgated: the Prohibition on Money Laundering (Reporting to Police) Regulation and the Prohibition on Money Laundering (the Banking Corporation's Requirement Regarding Identification, Reporting, and Record Keeping) Order.<sup>155</sup>

### De Facto

- **Compliance:** In the United States, individuals are prosecuted for money laundering at both the federal and state level. In some cases, money laundering charges are grouped together with closely related offenses such as fraud, depending upon the scope of the perpetrator's illicit activities.<sup>156</sup>

## Corruption

### De Jure

- **Compliance:** Bosnia and Herzegovina ("BiH") has incorporated several provisions in its various criminal codes that can be used to charge corrupt public officials. According to the state level Criminal Code of BiH, corrupt officials can be prosecuted for abuse of office or official authority,<sup>157</sup> accepting and giving gifts and other forms of benefits,<sup>158</sup> and forging official documents.<sup>159</sup> According to the Federation Criminal Code, corrupt officials can be prosecuted for abusing their authority, accepting bribes, and falsifying official

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<sup>153</sup> See ASI REPORT, *supra* note 150, at 139, 141.

<sup>154</sup> See Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, No. 3(1) (2000) art. 12 (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>155</sup> See The Protection Project; Human Rights Reports: Israel, at <http://www.protectionproject.org/>.

<sup>156</sup> See, e.g., United States v. Ross, 279 F.3d 600 (8th Cir. 2002) (deciding on sentencing guidelines for wire fraud and money laundering charges).

<sup>157</sup> See CRIMINAL CODE [CRIM. C.] art. 220 (BiH).

<sup>158</sup> See *id.* arts. 217, 218.

<sup>159</sup> See *id.* art. 226.

documents.<sup>160</sup> According to the Criminal Code for the Republika Srpska, corrupt officials can also be prosecuted for accepting and giving bribes as well as for forging documents.<sup>161</sup>

- **Compliance:** In Nigeria, the Corrupt Practices and Other Related Offenses Act of 2000, criminalizes the following illicit acts: the acceptance of gratification,<sup>162</sup> fraudulent acquisition,<sup>163</sup> or receipt of property by public officers,<sup>164</sup> and bribery of public officers.<sup>165</sup> The act also criminalizes the giving or accepting of gratification through an agent.<sup>166</sup> A public official that was given, promised or offered any gratification is obligated to report such acts to the proper authorities.<sup>167</sup> Lastly, the act establishes the Independent Corrupt Practices and Other Related Offenses Commission in order to implement its provisions.<sup>168</sup>

### De Facto

- **Non-compliance:** In 2002, Human Rights Watch reported rampant police complicity in trafficking activities in BiH. Local uniformed and undercover police regularly accepted bribes or free sexual services in exchange for protecting brothels, colluded with nightclub owners, tipped off owners regarding police raids, and delayed punitive action against fellow officers.<sup>169</sup> The foreign departments in the BiH police force, who are responsible for issuing work and residency permits, regularly took bribes, engaged in document forgery, and failed to recognize obviously fake documents.<sup>170</sup> In its 2004 TIP Report, the U.S. State Department indicated that “[o]fficial corruption remained a problem, but the government increased its anti-corruption efforts. In February 2004, Federal authorities arrested the local Interpol Deputy Director on corruption charges.” In 2005, the U.S. State Department indicated that the BiH “government continued to strengthen its law enforcement response and anti-corruption efforts in relation to trafficking.”<sup>171</sup>
- **Compliance:** In Bulgaria, authorities have recognized that corruption, on the part of government officials, is impeding anti-trafficking efforts. Thus, the 2004 U.S. TIP Report indicated that the Prosecutor’s Office launched a total of 399 investigations against police officers that resulted in two indictments for the specific crime of trafficking in persons, three indictments for rape, and one indictment for forced prostitution. The 2005 U.S. TIP Report noted that these anti-corruption efforts extended beyond the Prosecutor’s Office to the Military Prosecution Service of Bulgaria and, between the two entities, a total of 100 convictions were secured for official malfeasance.<sup>172</sup>

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<sup>160</sup> See FED. CRIMINAL CODE [CRIM. C.] arts. 358, 368 (BiH); see also HUMAN RIGHTS WATCH, HOPES BETRAYED: TRAFFICKING OF WOMEN AND GIRLS TO POST-CONFLICT BOSNIA AND HERZEGOVINA FOR FORCED PROSTITUTION 26 (2002), available at <http://www.hrw.org/reports/2002/bosnia/> [hereinafter 2002 HRW BiH REPORT].

<sup>161</sup> See CRIMINAL CODE [CRIM. C.] arts. 341-42, 364 (RS); see also 2002 HRW BiH REPORT, *supra* note 160, at 27.

<sup>162</sup> See The Corrupt Practices and Other Related Offenses Act § 8 (2000) (Nig.).

<sup>163</sup> See *id.* § 12.

<sup>164</sup> See *id.* § 13.

<sup>165</sup> See *id.* § 18.

<sup>166</sup> See *id.* § 9.

<sup>167</sup> See *id.* § 23.

<sup>168</sup> See The Protection Project; Human Rights Reports: Nigeria, at <http://www.protectionproject.org/>.

<sup>169</sup> See 2002 HRW BiH REPORT, *supra* note 160, at 28-35.

<sup>170</sup> See *id.*

<sup>171</sup> 2004 TIP Report, *supra* note 17, at 126; 2005 TIP Report, *supra* note 5, at 69.

<sup>172</sup> See 2004 TIP Report, *supra* note 17, at 128; see also 2005 TIP Report, *supra* note 5, at 72.

## Obstruction of Justice

### De Jure

- **Compliance:** The Penal Code of Sweden delineates the offense of interference in a judicial matter punishing “[a] person, who by violence or threat of violence, assaults someone because he has, in court or before another authority, filed a complaint, pleaded a cause, testified, or else made a statement at a hearing, or to prevent him from so doing.”<sup>173</sup> The code further indicates that “[t]he same shall apply to a person who by some other act causes suffering, injury or inconvenience, or by threat of such act, assaults someone because the latter testified or made some other statement at an official hearing, or does so to prevent the making of such a statement.”<sup>174</sup>

### De Facto

- **Compliance:** In the United States, obstruction of justice is prosecuted at both the federal and state level. Obstruction of justice charges have been filed against individuals when they have submitted false statements to the court,<sup>175</sup> violated bail conditions by attempting to flee,<sup>176</sup> and threatened potential witnesses.<sup>177</sup>

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<sup>173</sup> PENAL CODE ch. 17, § 10 (Swed.), at <http://www.legislationline.org/view.php?document=55177>.

<sup>174</sup> *Id.*

<sup>175</sup> *See, e.g.*, United States v. Khimchiachvili, 372 F.3d 75 (2nd Cir. 2004).

<sup>176</sup> *See, e.g.*, United States v. Fournier, 361 F.3d 42 (1st Cir. 2004).

<sup>177</sup> *See, e.g.*, United States v. Johns, 142 F.3d 437 (6th Cir. 1998).

## Article 2: Statement of Purpose

The purposes of this Protocol are:

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

The Trafficking Protocol has the following purposes at a minimum to:

- prevent trafficking from occurring
- prosecute traffickers
- protect trafficked victims
- promote cooperation among States Parties to the Protocol

While these objectives are described in more detail throughout the Protocol articles that follow,<sup>178</sup> a brief overview is necessary in connection with Article 2.

### Prevention and Prosecution

Article 2(a) of the Trafficking Protocol incorporates two major obligations that States Parties must undertake: to prevent the trafficking phenomenon from occurring and to combat trafficking while specifically focusing on women and children as potential victims.<sup>179</sup> It should be noted that women and children are not the only victims of the trafficking phenomenon as other groups have been subjected to various exploitative schemes. However, when trafficked for the purposes of sexual (as well as other forms of) exploitation, women and girls have been disproportionately affected.<sup>180</sup>

Preventive anti-trafficking measures include:

- awareness raising and information campaigns for potential victims and their families
- the development of long-term strategies that aim at improving the economic and social position of groups that are in danger of becoming trafficked
- an increase in opportunities for individuals to migrate legally for work and vocational training.<sup>181</sup>

Strategies to combat trafficking are centered upon the prosecution of such illicit behavior as a separate crime. In order to effectively prosecute traffickers, a state must:

- clearly define trafficking in its legislation as a distinct crime<sup>182</sup>
- establish criminal sanctions comparable to the gravity of the offense of trafficking such that they will have a deterrent effect<sup>183</sup>
- provide for the criminal liability of legal persons that are used by traffickers as a front for their illicit activities<sup>184</sup>

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<sup>178</sup> See *infra* pp. 75-90 (discussing protective measures for trafficked victims); see also *infra* pp. 116-125 (discussing preventive and cooperative measures).

<sup>179</sup> See Trafficking Protocol, *supra* note 3, art. 2(a).

<sup>180</sup> See Intelligence Monograph, *supra* note 2, at 3.

<sup>181</sup> See OSCE GUIDE, *supra* note 72, at 17.

<sup>182</sup> See *id.* at 39; see also Trafficking Protocol, *supra* note 3, art. 5.

<sup>183</sup> See OSCE GUIDE, *supra* note 72, at 43; see Transnational Organized Crime Convention, *supra* note 37, art. 2(b) (“‘Serious crime’ shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”); see also discussion *infra* pp. 59-62 (looking in depth at the issue of establishing proper sanctions for the crime of trafficking in persons).

- criminalize all activities related to trafficking<sup>185</sup>
- establish other criminal offenses related (but in addition) to trafficking<sup>186</sup>
- create specialized investigation units focused on trafficking<sup>187</sup>
- exercise extraterritorial jurisdiction since trafficking often extends beyond national borders<sup>188</sup>
- implement extradition agreements and proceedings.<sup>189</sup>

## **Protection**

Another purpose of the Trafficking Protocol is to protect and assist victims of trafficking in accordance with human rights principles.<sup>190</sup> One commentator emphasizes that:

Victims of trafficking in persons should be entitled to basic human rights, especially the right to safety, the right to privacy, the right to information, the right to legal representation, the right to be heard in court, the right to compensation for damages, the right to medical assistance, the right to social assistance, the right to seek residence, and the right to return to their country of origin. Victims of trafficking should be treated with dignity, fairness, compassion and respect for their human rights.<sup>191</sup>

Protection of victims is predicated on a several principles that are not directly addressed in the Trafficking Protocol but deserve attention. These principles include measures to:

- properly identify victims of trafficking
- define trafficked persons as “victims” according to international standards
- ensure that the acts of trafficked persons, as victims of the offense, are not criminalized.<sup>192</sup>

A more in-depth discussion regarding the importance of each of these principles is incorporated within the analysis of Article 6 of the Trafficking Protocol, which is the key provision addressing protective measures and assistance for victims.<sup>193</sup>

<sup>184</sup> See OSCE GUIDE, *supra* note 72, at 45 (“Traffickers sometimes act through legal entities (also called “legal persons”), such as travel agencies, marriage brokers, sex shops, bars, brothels or employment agencies. If there exists no criminal liability of such legal persons, their activities remain without punishment.”); *see also* discussion *infra* p. 66-67.

<sup>185</sup> See OSCE GUIDE, *supra* note 72, at 47 (“To a significant extent, trafficking involves activities of organized groups carrying out different parts of the activities of trafficking, such as recruitment, transportation, accommodation or escort of trafficked persons, or the arrangement of their travel, employment or other formalities. . . . This raises the question of criminalizing aiding, abetting, and instigating trafficking, in order to ensure that all actors involved in the process of trafficking are prosecuted.”); *see also* discussion *infra* pp. 54-56.

<sup>186</sup> See OSCE GUIDE, *supra* note 72, at 48 (“Trafficking is often only one of the crimes committed against trafficked persons. Often, they are subjected to threats, physical and sexual violence or being locked up; their passports are confiscated; they are forced to work without any payment; or they are forced to undergo abortions. Further, in a number of cases, corrupt state officials are involved in trafficking. These acts constitute criminal offences in most countries and could be invoked to address certain elements of the full range of crimes.”); *see also* discussion *infra* pp. 56-59.

<sup>187</sup> See OSCE GUIDE, *supra* note 72, at 50; *see also* discussion *infra* pp. 67-68.

<sup>188</sup> See OSCE GUIDE, *supra* note 72, at 52; *see also* discussion *supra* pp. 12-13.

<sup>189</sup> See OSCE GUIDE, *supra* note 72, at 53; *see also* discussion *supra* pp. 13-14.

<sup>190</sup> See Trafficking Protocol, *supra* note 3, art. 2(b).

<sup>191</sup> *A Comparative Analysis of the Anti-Trafficking Legislation in Foreign Countries: Towards a Comprehensive and Effective Legal Approach to Combating Trafficking in Persons: Hearing Before House Comm. on Int’l Rel., Subcomm. On Int’l Terrorism, Nonproliferation and Human Rights*, 108th Cong. 15 (2003) (statement of Mohamed Y. Mattar, Co-Director, The Protection Project) [hereinafter Mattar 2]; *see also* Dr. Mohamed Mattar, *Establishing a Bill of Rights for Victims of Trafficking in Persons; How it Can Become a Possibility*, available at <http://www.protectionproject.org/> [hereinafter Mattar 3].

<sup>192</sup> See Mattar 2, *supra* note 191, at 15; *see The Role of the Government in Combating Trafficking in Persons - A Global Human Rights Approach, Hearing Before the House Comm. on Gov. Reform, Subcomm. On Human Rights and Wellness*, 108th Cong. 11 (2003) (statement of Mohamed Y. Mattar, Co-Director, The Protection Project) [hereinafter Mattar 4].

<sup>193</sup> See Trafficking Protocol, *supra* note 3, art. 6; *see also* discussion *infra* 75-90.

Protection and assistance measures for victims of trafficking include basic assistance while residing in their country of destination (i.e., “destination country”) or the country through which they pass in route to their destination (i.e., “transit country”). Such assistance is recognized by the provisions of the Trafficking Protocol<sup>194</sup> and includes:

- medical care
- safe accommodations
- psychological and legal counseling
- residence status for a certain period of time
- protection from criminal charges that would otherwise stem from irregular residence and employment status
- access to employment and education
- information campaigns regarding the rights of victims, including the right to compensation and the right to fair trial if victims are subjected to criminal prosecution in either their country of destination, transit or origin.<sup>195</sup>

Such protection and assistance measures are meant to contribute to the psychological and physical stabilization of trafficked victims and to avoid retraumatization.<sup>196</sup> Thus, victims will be more likely to regain control of their own lives and decide whether they wish to testify against the traffickers.<sup>197</sup> The aforementioned protective measures are meant to complement prevention and prosecution efforts by creating a comprehensive method for combating trafficking.<sup>198</sup>

### **International Cooperation**

The Trafficking Protocol also seeks to promote international cooperation in combating trafficking.<sup>199</sup> Given the transnational nature of trafficking, states should cooperate on bilateral and multilateral levels in order to coordinate law enforcement efforts among the various national authorities as well as international organizations such as Europol and Interpol.<sup>200</sup> Cooperation among states also entails:

- exchange of information
- training of law enforcement authorities
- mutual legal assistance (i.e., taking evidence or statements from persons or providing copies of relevant documents)
- joint investigations.<sup>201</sup>

Such efforts are usually based upon multilateral or bilateral treaties among states.<sup>202</sup>

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<sup>194</sup> See Trafficking Protocol, *supra* note 3, art. 6.

<sup>195</sup> See OSCE GUIDE, *supra* note 72, at 57.

<sup>196</sup> See *id.*

<sup>197</sup> See *id.*

<sup>198</sup> See Trafficking Protocol, *supra* note 3, art. 4.

<sup>199</sup> See *id.* art. 2(c).

<sup>200</sup> See OSCE GUIDE, *supra* note 72, at 56.

<sup>201</sup> See *id.*

<sup>202</sup> See *id.*

## *Examples of Compliance and Non-Compliance*

### **Prevention, Prosecution, Protection, and International Cooperation**

#### De Jure

- **Compliance:** Bulgarian anti-trafficking provisions incorporate all the general requisite elements to combat trafficking in persons: prosecution of alleged traffickers, prevention of the trafficking phenomenon, protection of the trafficked victims, and regional cooperation. The criminal provisions establishing the offense of trafficking in persons came into force on October 1, 2002.<sup>203</sup> In 2003, Bulgaria also adopted a law entitled the “Combating Trafficking in Human Beings Act” that focuses on devising preventive anti-trafficking measures and providing the requisite protection to victims of trafficking.<sup>204</sup> Lastly, Bulgaria also signed and ratified the European Convention on Mutual Assistance in Criminal Matters,<sup>205</sup> an important step towards cooperation and mutual assistance with other member states of the Council of Europe in all criminal proceedings, including trafficking cases.
- **Compliance:** In the United States, the Trafficking Victims Protection Act of 2000 (“TVPA”) incorporates measures to prevent trafficking in persons from occurring, protect and assist trafficked victims, as well as strengthen the prosecution and punishment of traffickers.<sup>206</sup> Furthermore, the U.S. law, as amended in 2003, provides for assistance to other countries in order to help them better combat trafficking.<sup>207</sup>

#### De Facto

- **Compliance:** In 2004, the U.S. State Department reported that Germany entered into a cooperative effort with the Czech Republic (which is a major destination country for German sex tourists) establishing an anti-trafficking working group that consisted of high-ranking officials from both countries. Furthermore, until recently Germany participated in and provided funds for the Task Force on Trafficking in Human Beings under the Stability Pact for South Eastern Europe (now closed). Lastly, Germany currently participates in and provides funding for the trafficking unit in the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe

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<sup>203</sup> See CRIMINAL CODE [CRIM. C.] arts. 159(a)-(c) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp); see also 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 57.

<sup>204</sup> See Council of Europe; National Legislation: Bulgaria, at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>205</sup> See European Convention on Mutual Assistance in Criminal Matters, Apr. 20, 1959, available at <http://conventions.coe.int/treaty/en/Treaties/html/030.htm>.

<sup>206</sup> See Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 106, 107, 112 (2000), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_public\\_laws&docid=f:publ386.106.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ386.106.pdf) [hereinafter TVPA 2000]; see also Trafficking Victims Protection Reauthorization Act of 2003, 22 U.S.C. §§ 3-5 (2003), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h2620enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2620enr.txt.pdf) [hereinafter TVPRA 2003].

<sup>207</sup> See TVPA 2000, *supra* note 206, § 109; see also TVPRA 2003, *supra* note 206, § 7.

(OSCE) and consistently funds initiatives to assist returnees, raise awareness among potential victims of trafficking, and combat child sex tourism.<sup>208</sup>

- **Compliance:** A success in international cooperation to combat trafficking and protect victims is the regional initiative entitled the Southeast European Cooperative Initiative (“SECI”) headquartered in Romania. This joint operation, which involves twelve neighboring countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Macedonia, Moldova, Romania, Serbia and Montenegro, Slovenia, and Turkey), has targeted over 20,000 border crossings, bars, and nightclubs and has identified 696 trafficked victims and 831 suspected traffickers (2003 statistics).<sup>209</sup>

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<sup>208</sup> See 2004 TIP Report, *supra* note 17, at 144; see Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, at <http://www.osce.org/odihr/>; see also 2005 TIP Report, *supra* note 5, at 112.

<sup>209</sup> See Mattar 4, *supra* note 192, at 16; see also The Southeast European Cooperative Initiative, at <http://www.secicenter.org/>.

### Article 3: Use of Terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Article 3 provides a comprehensive definition of trafficking in persons and outlines particular elements that are to be included when criminalizing such conduct within domestic legislation as directed by Article 5 of the Protocol (see below).<sup>210</sup> It should be noted that the elements enumerated below are what should be incorporated in national anti-trafficking laws *at a minimum*. The Trafficking Protocol represents a "floor" not a "ceiling" for standards that are to be legally codified in order for nations to be able to combat trafficking in a comprehensive manner.<sup>211</sup> Thus, States Parties to the Protocol should fulfill their obligations by including the elements listed below, but can, if necessary, include other elements that would enable them not only to establish a proper definition of the trafficking offense but also to address particular aspects of the trafficking phenomenon that are occurring within and across their borders.

### Trafficking Definition

Suspect Activities:	recruitment, transportation, transfer, harboring or receipt of persons
Means (at a minimum):	threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or giving or receiving payments or benefits to achieve the consent of a person having control over another person
Purpose:	Exploitation
Types of exploitation (at a minimum):	Exploitation of the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery, practices similar to slavery, servitude or the removal of organs

Article 3(a) of the Trafficking Protocol indicates that trafficking entails "the recruitment, transportation, transfer, harbouring or receipt of persons . . . for the purpose of exploitation" and delineates the means by which such illicit conduct can be accomplished: "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

<sup>210</sup> See Trafficking Protocol, *supra* note 3, art. 5.

<sup>211</sup> See Puleo Speech, *supra* note 3.

consent of a person having control over another person.”<sup>212</sup> The types of exploitation, *at a minimum*, are “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.”<sup>213</sup> While the suspect activities (recruitment, etc.) present themselves as relatively uncomplicated terms, it is important to provide more details concerning the means and types of exploitation that must be proven in order to establish the basis for trafficking charges.

### *Means*

The means used by traffickers to force or lure victims range from:

- threats or use of force
- other forms of coercion
- abduction
- fraud
- deception
- abuse of power or a position of vulnerability
- giving or receiving payments or benefits in order to achieve the consent of individuals that have control over potential victims (i.e., parents, relatives, etc.).<sup>214</sup>

In order to comply with the Trafficking Protocol, States Parties must incorporate these means as elements of the trafficking offense within their domestic laws. However, this is not an exhaustive list, and states may choose to introduce other means in addition to those required by the trafficking definition in Article 3(a). For example, Luxembourg’s Criminal Code provisions delineating the offense of trafficking indicate that “[i]f the victim is employed, incited or abducted by fraud or using violence, threats, abuse of authority or any other form of constraint, and effectively engages in prostitution or immoral activities, or if the offender takes advantage of the particularly vulnerable situation of the victim, such as their illegal or precarious administrative situation, pregnancy, ill health or an infirmity or physical or mental disability, the sentence shall be one to five years.”<sup>215</sup> While only punishing traffickers for exploiting victims for the purpose of prostitution or other immoral activities, the Luxembourg Code expands the list of illicit means possibly used by traffickers.

### **Threats or Use of Force**

Since the *travaux préparatoires* of the Trafficking Protocol do not provide guidance regarding the terms “threat or use of force” as incorporated in the Article 3 definition of trafficking in persons, one can refer to domestic jurisdictions and draw on examples as to how the laws of certain states define these terms. It should be noted that these examples are highlighted strictly for comparison purposes and should not be interpreted as binding precedent.

The anti-trafficking law of Cyprus indicates that “sexual exploitation of adult persons for profit” is a crime if the trafficker applies “the use of force, violence or threats” among other means.<sup>216</sup> Although this provision solely criminalizes trafficking for the purposes of sexual exploitation, this

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<sup>212</sup> Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>213</sup> *Id.*

<sup>214</sup> *See id.*

<sup>215</sup> CRIMINAL CODE [CRIM. C.] art. 379(1)bis (Lux.), at <http://www.legislationline.org/view.php?document=55280>. NOTE: these means are a list of aggravated circumstances to the principal offense of trafficking in persons. *See id.*

<sup>216</sup> *See* Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, No. 3(1) (2000) art. 3(1)(a) (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

is a good example of how domestic legislation incorporates the notion of “violence” into the definition of the trafficking offense. Thus, if a Cypriot prosecutor brings forth evidence that a trafficker threatened a victim or has physically attacked a victim, such evidence is sufficient to prove that illicit means were used to carry out the offense of trafficking in persons.

The German Penal Code introduces the terms “force, [and] threat of *appreciable* harm” as elements of the crime of serious trafficking in human beings.<sup>217</sup> This provision requires that the harm caused or threatened, be substantial in order to support the charge. Thus, in Germany, a prosecutor must bring forth evidence of substantial harm actually caused or threatened by a trafficker against a victim in order to satisfy the illicit means requirement for the offense of serious trafficking in human beings. It should be noted that this offense is separate from the regular offense of trafficking in human beings also codified in German law.<sup>218</sup>

### Other Forms of Coercion

In order to understand the term “coercion” as included in the Protocol’s definition of trafficking in persons, one can, once again, refer to the manner in which such a term has been interpreted by domestic jurisdictions. For example, the United States anti-trafficking law defines “coercion” as:

- (A) threats of serious harm to or physical restraint against any person;
- (B) 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; or
- (C) the abuse or threatened abuse of the legal process.<sup>219</sup>

Thus, in the United States, in order to prove that a trafficker used the illicit means of coercion, the prosecutor must bring forth evidence that the trafficker physically attacked or threatened to attack a victim, induced or forced a victim into complying to be trafficked by devising a particular scheme, plan or pattern, or took advantage or threatened to take advantage of the legal system.

The Swedish government has established the offense of unlawful coercion, which is *separate* from any other crime including trafficking in persons,<sup>220</sup> that the trafficker might be charged with. The law states:

A person who, by assault or otherwise by force or by threat of a criminal act, compels another to do, submit to or omit to do something, shall be sentenced for unlawful coercion to a fine or imprisonment for at most two years. Anyone who to such effect exercises coercion by threatening to prosecute or report another for a crime or give detrimental information about another, shall also be sentenced for unlawful coercion, provided that the coercion is wrongful. If the crime referred to in the first paragraph is gross, imprisonment for at least six months and at most six years shall be imposed. In assessing whether the crime is gross special consideration shall be given to whether the act included the infliction of pain to force a confession, or other torture.<sup>221</sup>

Thus, in Sweden, a trafficker can be charged *separately* with unlawful coercion if the prosecutor brings forth evidence that s/he assaulted a victim, used force against the victim, threatened the victim with any other illicit conduct, or threatened to prosecute or report the victim if s/he did not

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<sup>217</sup> See CRIMINAL CODE [CRIM. C.] art. 181 (Ger.), at <http://www.legislationline.org/view.php?document=55334> [emphasis added].

<sup>218</sup> See CRIMINAL CODE [CRIM. C.] art. 180b (Ger.), at <http://www.legislationline.org/view.php?document=55334>.

<sup>219</sup> TVPA 2000, *supra* note 206, § 103(2)(A)-(C).

<sup>220</sup> See CRIMINAL CODE [CRIM. C.] ch. 6, sects. 1-2 (Swed.), ch. 4, sec. 3 at

<http://www.legislationline.org/view.php?document=55170>; see also 2005 TIP Report, *supra* note 5, at 205.

<sup>221</sup> CRIMINAL CODE [CRIM. C.] ch. 4, sec. 4 (Swed.), at <http://www.legislationline.org/view.php?document=55170>.

comply. Furthermore, if the trafficker inflicted any pain upon the victim or tortured the victim, the penalties are increased.

Tajikistan also codifies the offense of coercion *separately* from the offense of trafficking in persons.<sup>222</sup> The law states that:

Coercion of a person to performance or non-performance of any action by threat of violence, destruction or damage of property, distribution of false and disgraceful information as well as by threat of infringement of this person's rights and interests, if there are no signs of [a] more serious crime, is punishable by a fine in the amount of 200 to 500 times the minimum monthly wage, or by a 2 year term of limitation of freedom, or of imprisonment for the same period.<sup>223</sup>

Thus a Tajik prosecutor can charge a trafficker with trafficking in persons as well as coercion if s/he establishes that the trafficker threatened to use violence against a victim, destroyed or damaged property, disseminated false or dishonorable information about the victim, or impeded upon the victim's rights and interests in any other way.

### Abduction

The term "abduction," as incorporated into the trafficking definition in Article 3(a) of the Protocol, has been interpreted by some states to mean kidnapping. Tajikistan, for example, included kidnapping as a type of illicit means used by traffickers in its offense of trafficking in persons:

Trafficking in human beings is [the] purchase or sale of people with or without their consent by means of deception, attraction, hiding, handing over, transportation, *kidnapping*, forgery, abuse of a person's disability, giving [a] bribe for acquiring [the] consent of a person controlling another person, as well as other forms of compulsion [or coercion] with the purpose of further sale, involvement in sexual or criminal activity, use in armed conflicts, pornography, forced labour, slavery or likewise activity, debt related detention, or adoption of children with commercial aims.<sup>224</sup>

Thus, if a suspect uses means that fall within the definition of kidnapping as set forth in the Tajik Criminal Code, s/he has abducted the victim and s/he can be found guilty of trafficking if all other requisite elements of the crime are satisfied.

In Serbia, kidnapping is an aggravating circumstance of the currently defined trafficking offense. If trafficking activities involve kidnapping of persons, the penalties increase from a minimum of one year imprisonment to a minimum of three years imprisonment.<sup>225</sup> The Serbian Criminal Code defines the basic crime of kidnapping *separately* as:

Whoever takes or keeps another person by force, threat, deception or in any other manner, without intending to release him until he extorts money or another material benefit from him or from a third person or until he forces him or a third person to do or not to do

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<sup>222</sup> In 2004, Tajikistan amended its Criminal Code to include the separate crimes of trafficking in persons and trafficking in minors. See DRAFT AMENDMENTS TO CRIMINAL CODE [CRIM. C.] arts. 130, 167 (Taj.), at <http://www.legislationline.org/view.php?document=56924>.

<sup>223</sup> CRIMINAL CODE [CRIM. C.] art. 134 (Taj.), at <http://www.legislationline.org/view.php?document=56918>.

<sup>224</sup> DRAFT AMENDMENTS TO CRIMINAL CODE [CRIM. C.] art. 130 (Taj.), at <http://www.legislationline.org/view.php?document=56924> [emphasis added]. NOTE: The language in the final version of Article 130, which was incorporated into the Tajik Criminal Code and became enforceable in 2004, does not differ substantially from the language in the draft version available at the above website.

<sup>225</sup> See CRIMINAL CODE [CRIM. C.] art. 111b(1)-(2) (Serb.), at <http://www.legislationline.org/view.php?document=56720>. It should be noted that Serbia is in the process of redrafting its Criminal Code. The new code will become enforceable on January 1, 2006.

something or to suffer something shall be punished with at least three years of imprisonment.<sup>226</sup>

Thus, if a trafficker detains a victim by force, threat of deception or any other manner in order to use him/her to gain financial or other material benefits either from the victim or a third person, s/he has committed kidnapping in the course of his/her trafficking activities, which, in Serbia, increases the penalty to a minimum of three years imprisonment.<sup>227</sup>

## Fraud

The term “fraud” is used broadly in the Protocol’s definition of trafficking in persons. Traffickers use fraudulent means in order to accomplish various illicit goals with respect to their victims. For example, traffickers have been known to falsify identification and travel documents in order to transport their victims across borders undetected.<sup>228</sup> They may also make false claims about the nature or the conditions of the work or services that those they recruit will perform in the country of destination.

Domestic jurisdictions, like the United States, incorporate the notion of “fraud” in their anti-trafficking laws. The TVPA indicates that “severe forms of trafficking in persons” means (A) sex trafficking in which a commercial sex act is induced by force, *fraud*, or coercion . . . or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, *fraud*, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>229</sup> Fraudulent “statements or entries” are defined generally in the Criminal Code of the United States in the following manner:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation;
- or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.<sup>230</sup>

In general, this is the meaning of the term “fraud” as used in the United States anti-trafficking law.

More specifically, the United States Criminal Code defines the offense of “fraud and related activity in connection with identification documents, authentication, features, and information [as]:”

(a) Whoever . . .,

- (1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;
- (2) knowingly transfers an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority;

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<sup>226</sup> *Id.* art. 64(1).

<sup>227</sup> *See id.* art. 111b(2).

<sup>228</sup> *See* Intelligence Monograph, *supra* note 2, at 8.

<sup>229</sup> TVPA 2000, *supra* note 206, § 103(8).

<sup>230</sup> 18 U.S.C.A. § 1001 (2004).

- (3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor), authentication features, or false identification documents;
- (4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor), authentication feature, or a false identification document, with the intent such document or feature be used to defraud the United States;
- (5) knowingly produces, transfers, or possesses a document-making implement or authentication feature with the intent such document-making implement or authentication feature will be used in the production of a false identification document or another document-making implement or authentication feature which will be so used;
- (6) knowingly possesses an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States which is stolen or produced without lawful authority knowing that such document or feature was stolen or produced without such authority;
- (7) knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; or
- (8) knowingly traffics in false authentication features for use in false identification documents, document-making implements, or means of identification

shall be punished as provided in subsection (b) [omitted].<sup>231</sup>

Thus, in the United States, if the situation presents itself, a prosecutor can bring charges against traffickers for committing the offense of “trafficking in persons” and for fraudulently falsifying the identification documents in accordance with the above provisions.

### **Deception**

The term “deception” is also broadly used within the context of the Protocol’s definition of trafficking in persons. Thus, we turn to domestic laws to examine how legislatures have interpreted this type of illicit means.

In Germany, the term “trickery” is used throughout the provisions that define the offense of serious trafficking in human beings:

(1) Whoever:

- 1. with force, threat of appreciable harm or *trickery* induces another person to take up or continue prostitution;
- 2. recruits another person through *trickery* or abducts [the] person against the person’s will by threat of appreciable harm or *trickery*, with knowledge of the helplessness associated with the person’s stay in a foreign country, in order to get the person to commit sexual acts on or in front of a third person, to allow them to be committed on the person by a third person; or
- 3. professionally recruits another person, with knowledge of the helplessness associated with the person’s stay in a foreign country, in order to induce the person

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<sup>231</sup> 18 U.S.C.A. § 1028 (2004).

to take up or continue prostitution, shall be punished with imprisonment from one year to ten years.<sup>232</sup>

Although this particular provision criminalizes trafficking only for the purposes of prostitution, it incorporates the notion of deception as a possible means used by traffickers. Proof of deception under German law could entail any measures that are designed to trick victims and force them into prostitution, such as promises of legitimate employment in other countries (i.e., jobs as waitresses, office clerks, factory workers, nannies, models, etc.).<sup>233</sup>

### **Abuse of Power**

“Abuse of power” is another type of illicit means listed in the Protocol’s definition of trafficking in persons. Certain countries, like Cyprus, introduce this term in their domestic definition of the trafficking offense. Law No. 3(1) of 2000, prohibits, in part:

- (a) The sexual exploitation of adult persons for profit if:
- i. it is done by the use of force, violence or threats; or
  - ii. there is fraud; or
  - iii. it is done through *abuse of power* or other kind of pressure to such an extent so that the particular person would have no substantial and reasonable choice but to succumb to pressure or ill-treatment.<sup>234</sup>

The Cypriot anti-trafficking law equates the notion of “abuse of power” with the exertion of pressure, such that an individual is rendered helpless and has no other choice but to submit to being trafficked.

Furthermore, the Cypriot legislation identifies the potential perpetrators. The persons exerting the above-mentioned pressure, or abusing their power, either on their own as traffickers or with the encouragement of traffickers, can be:

- blood relations “up to the third degree” with the victims
- guardians
- educators
- hostel administrators
- staff of rehabilitation homes
- prison personnel
- others that exercise influence and authority over victims.<sup>235</sup>

### **Abuse of a Position of Vulnerability**

Article 3(a) of the Trafficking Protocol indicates that another possible type of illicit means that traffickers might employ is “abuse of a position of vulnerability.” The *travaux préparatoires* of the Protocol indicate that the term “the abuse of a position of vulnerability” is to be understood as referring to *any situation* in which a targeted victim “has no real and acceptable alternative but to submit to the abuse involved.”<sup>236</sup> Here, the definition recognizes that trafficking can occur without the use of physical force per se. Depending upon various cultural norms, many persons

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<sup>232</sup> CRIMINAL CODE [CRIM. C.] sect. 181(1) (Ger.), at <http://www.legislationline.org/view.php?document=55334>.

<sup>233</sup> See Intelligence Monograph, *supra* note 2, at 5; see also ICMPD TRAINING MANUAL, *supra* note 10, at 18.

<sup>234</sup> Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, No. 3(1) (2000) art. 3(1)(a) (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>235</sup> See *id.* art. 3(2).

<sup>236</sup> Convention and Protocol Travaux, *supra* note 68, at 12 [emphasis added].

who become victims of trafficking are controlled by someone close to them, like a parent or a spouse, and they have no other choice but to submit to the circumstances at hand.<sup>237</sup> Furthermore, such victims might not have any available legal protections and thus they become trapped.<sup>238</sup> While their submission seems voluntary given the absence physical force, they are still considered victims of trafficking.<sup>239</sup>

In fact, this part of the trafficking definition affirms what some experts maintain: that violence should not be a requisite element of the offense of trafficking in persons. A successful prosecution of a trafficking case should not always require proof that the traffickers used violence in order to subjugate their victims. At most, the use of violent means may be grounds for increasing the penalty for a trafficking conviction.<sup>240</sup> The Luxembourg anti-trafficking law is a pertinent example. Article 379bis(1) indicates that “[e]mploying, inciting or abducting any person, even with their consent, for the purpose of prostitution or immoral activities, in the Grand Duchy of Luxembourg or abroad, in order to satisfy the desires of others” is punishable “by six months to three years imprisonment and a fine of 10,001 to 2,000,000 francs.”<sup>241</sup> This is the basic offense of trafficking in persons albeit only for purposes of sexual exploitation. The sentence increases to “one to five years” if

[T]he victim is employed, incited or abducted by fraud or *using violence*, threats, abuse of authority or any other form of constraint, and effectively engages in prostitution or immoral activities, *or* if the offender takes advantage of the particularly vulnerable situation of the victim, such as their illegal or precarious administrative situation, pregnancy, ill health or any infirmity or physical or mental disability.”<sup>242</sup>

### **Giving or Receiving Payments or Benefits**

According to Article 3(a) of the Trafficking Protocol, another type of illicit means used by traffickers is “the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.”<sup>243</sup> A trafficker can subjugate victims by offering financial or other compensation to persons who have control over such potential victims. Parents, other family members, and boyfriends essentially end up “selling” their sons, daughters, and loved ones to the traffickers.<sup>244</sup> Furthermore, authorities of state institutions, like orphanages, have also been known to accept financial compensation or other benefits in exchange for handing over individuals under their control to the traffickers.<sup>245</sup>

### ***Types of Exploitation***

Article 3(a) of the Trafficking Protocol also lists the types of activities that amount to exploitation. These include:

- exploitation of the prostitution of others

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<sup>237</sup> See ANN D. JORDAN, THE ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL 8 (2002), available at <http://www.hrlawgroup.org/resources/content/TraffickingProtocol.pdf> [hereinafter ANNOTATED GUIDE].

<sup>238</sup> See *id.*

<sup>239</sup> See *id.*

<sup>240</sup> See Mattar 2, *supra* note 191, at 6.

<sup>241</sup> CRIMINAL CODE [CRIM. C.] art. 379bis(1) (Lux.), at <http://www.legislationline.org/view.php?document=55280>.

<sup>242</sup> *Id.* [emphasis added].

<sup>243</sup> Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>244</sup> See ICMPD TRAINING MANUAL, *supra* note 10, at 18.

<sup>245</sup> See *id.*

- other forms of sexual exploitation
- forced labor or services
- slavery or slave-like practices
- servitude
- removal of organs<sup>246</sup>

This is not an exhaustive list as other illicit activities can amount to exploitative schemes. For example, Moldovan legislation extends the definition of trafficking to include exploitative purposes such as using the victim in armed conflicts and in the pornographic industry in addition to the exploitative purposes delineated in Article 3(a) of the Trafficking Protocol.<sup>247</sup>

### Exploitation of the Prostitution of Others and Other Forms of Sexual Exploitation

“Exploitation of the prostitution of others” and “other forms of sexual exploitation” are not defined in the Protocol. The *travaux préparatoires* indicate though that the lack of precise definitions allows each of the States Parties to address the issue of prostitution within their respective domestic laws without being influenced by the negotiators of the Protocol or the instrument itself.<sup>248</sup> Once again, here the Protocol provides a “floor” from which countries can build upon various concepts and adapt the application of the Protocol’s provisions to the specific trafficking activities occurring within or across their borders.<sup>249</sup> The terms “prostitution” and “sexual exploitation” were defined together in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as this instrument called for the punishment of “any person who, to gratify the passions of another: (1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person.”<sup>250</sup>

It should be noted that, attempts to define “prostitution” within the specific context of trafficking (i.e., persons being *forced* into prostitution), have fueled an already existing debate as to whether governments should criminalize prostitution, legalize prostitution and regulate it, or decriminalize the acts of the women in prostitution but not of their customers.<sup>251</sup> Two experts explain:

<sup>246</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>247</sup> See CRIMINAL CODE [CRIM. C.] art. 113(2) (Mold.), at <http://www.legislationline.org/index.php?topic=14&country=28&org=0&eu=0>.

<sup>248</sup> See Convention and Protocol Travaux, *supra* note 68, at 12.

<sup>249</sup> As one expert has stated, the Trafficking Protocol “sets the floor not the ceiling of what countries can do against . . . trafficking of human beings.” See Puleo Speech, *supra* note 3.

<sup>250</sup> 1949 Convention on Traffic in Persons, *supra* note 33, art. 1.

<sup>251</sup> Many scholars have engaged in this debate over the years and fall on different sides of the issue. See generally Norma Jean Almodovar, *For Their Own Good: The Results of the Prostitution Laws as Enforced by Cops, Politicians and Judges*, 10 HASTINGS WOMEN’S L.J. 119-133 (1999) (arguing for the decriminalization rather than legalization of prostitution); Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 111-155 (1993) (advocating for the penalization of customers and those benefiting from the activities of prostitutes rather than the prostitutes themselves); Elizabeth Bernstein, *What’s Wrong with Prostitution? What’s Right with Sex Work? Comparing Markets in Female Sexual Labor*, 10 HASTINGS WOMEN’S L.J. 91-117 (1999) (addressing the debate on prostitution); Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J.L. & FEMINISM 69-99 (1998) (making a case for the decriminalization of the sex trade but not based on the Nevada model in the United States); Vednita Carter & Evelina Giobbe, *Duet: Prostitution, Racism and Feminist Discourse*, 10 HASTINGS WOMEN’S L.J. 37-57 (1999) (dismissing the various mechanisms for legalization and decriminalization of prostitution as “mere social experiments that have repeatedly failed”); Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 WOMEN’S RTS. L. REP. 99-119 (1989); Jessica Drexler, *Government’s Role in Turning Tricks: The World’s Oldest Profession in the Netherlands and the United States*, 15 DICK. J. INT’L L. 201-236 (1996) (arguing for the decriminalization of prostitution); Mary K. Farmer et al., *A Proposal for the Legalization of Prostitution in Connecticut*, 49 CONN. BAR J. 49 (1975) (arguing for the legalization and regulation of most forms of prostitution); Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes’ Rights Groups, Radical Feminists, and the (Im)Possibility of Consent*, 5 BERKELEY WOMEN’S L.J. 75-109 (1990) (calling for the decriminalization of prostitution);

The act of prostitution in many countries is legal, and sex in return for money is acceptable. Only prostitution-related activities constitute a crime, and in those countries where the act of prostitution does not constitute a crime, no provisions exist to punish the customer, since he or she is obtaining a service that is legal in nature. Such countries include the majority of countries in Western Europe and Latin America. In Thailand, where the problem of exploitation of women for the purposes of prostitution is widespread, the government is currently considering the legalization of the sex industry. . . . The Islamic law countries of Saudi Arabia, Iran, Pakistan, Yemen, Mauritania, Jordan, Bahrain, Sudan, Tunisia, Malaysia, Brunei, and the United Arab Emirates, however, take a different approach. These countries penalize both the women in prostitution and the customer as the customer who buys sexual service from a woman in prostitution is considered to be committing adultery, which is a crime under Islamic law that punishes the adulterer and the adulteress. In Sweden, . . . buying sex is a crime but selling sex is not. . . .<sup>252</sup>

While not endorsing a particular stance on “prostitution” or “other forms of sexual exploitation” and not advocating for the legalization of prostitution, ABA/CEELI generally suggests that governments address such issues during the initial stages of drafting anti-trafficking legislation and should clearly define terms that are chosen for inclusion. If such issues are left unresolved, they will inadvertently continue to affect the subsequent implementation of the proposed anti-trafficking legislation.

Although not directly mentioned in Article 3 of the Trafficking Protocol, countries should make the distinction between the terms “commercial sex act” and “non-commercial sex act” within domestic anti-trafficking laws. For example, the U.S. Trafficking Victims Protection Act of 2000 (“TVPA”) (later amended) defines a “commercial sex act” as “any sex act on account of which anything of value is given to or received by any person.”<sup>253</sup> It should be noted, that while the TVPA defines the term “commercial sex act,” it does not criminalize it at the federal level.<sup>254</sup> By derivation, a

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Anne M. Jennings, *The Victims as Criminal: A Consideration of California's Prostitution Law*, 64 CAL. L. REV. 1235-1284 (1976) (advocating for the legalization and regularization of prostitution); Minouche Kandel, *Whores in Court: Judicial Processing of Prostitutes in the Boston Municipal Court in 1990*, 4 YALE J.L. & FEMINISM 329-352 (1992) (promoting the decriminalization of prostitution); Sylvia Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 524-610 (2000) (suggesting that prostitution should be decriminalized); Carol Leigh, *A First Hand Look at the San Francisco Task Force on Prostitution*, 10 HASTINGS WOMEN'S L.J. 59-90 (1999) (advocating for a system that does not seek to penalize prostitutes, improves the conditions of sex workers, and attempts to eliminate the discrimination that they endure); Barbara Milman, *New Rules for the Oldest Profession: Should We Change Our Prostitution Laws*, 3 HARV. WOMEN'S L.J. 1-82 (1980) (recommending that laws regarding prostitution address the ways that prostitution victimizes society and decriminalizes those aspects that do not); Martha C. Nussbaum, *Whether From Reason or Prejudice: Taking Money for Bodily Service*, 27 J.L. STUDIES 693-724 (1998) (pushing for the economic autonomy of prostitutes); Julie Pearl, *The Highest Paying Customers: American Cities and the Cost of Prostitution Control*, 38 HASTINGS L.J. 769-790 (1987) (presenting a cost-benefit analysis of the enforcement of prostitution laws and warning as to the feasibility of enforcing such laws); Charles Rosenbleet & Barbara J. Pariente, *The Prostitution of the Criminal Law*, 11 AM. CRIM. L. REV. 373-421 (1973) (arguing that prostitution laws are enforced unevenly and unjustly against prostitutes in contrast to their customers); Kenneth Shuster, *On the 'Oldest Profession': A Proposal in Favor of Legalized but Regulated Prostitution*, 5 U. FLA. J.L. & PUB. POL'Y 1-31 (1992) (proposing the legalization and regulation of prostitution); James R. Stout & Thomas S. Tanana, *Could California Reduce AIDS by Modeling Nevada Prostitution Law?*, 2 SAN DIEGO JUST. J. 491-506 (1994) (advocating for the legalization of prostitution); Susan E. Thompson, *Prostitution: A Choice Ignored*, 21 WOMEN'S RTS. L. REP. 217-247 (2000) (arguing that decriminalization of prostitution is the most favorable legal approach to offer prostitutes access to benefits and protection from exploitation); Maria Jacobson, *Why Do Men Buy Sex?*, NIKK MAGASIN (2002), at 22 (interviewing Prof. Sven-Axel Månsson who takes the position that prostitution is a male problem and that the women, providing the services, should not be punished).

<sup>252</sup> Smith & Mattar, *supra* note 26, at 170.

<sup>253</sup> TVPA 2000, *supra* note 206, § 103(3).

<sup>254</sup> The US criminalizes commercial sex acts at the state level. For example, the penal code of the state of New York indicates that “[a] person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.” See Penal Code, N.Y. PENAL § 230.00 (1999). The state of Florida criminalizes, *inter alia*, conduct that entails the forcing, compelling, or coercing of a person to become a prostitute and

non-commercial sex act does not involve the exchange of money or anything of value and it is something that occurs, for example, between married people.<sup>255</sup> Some experts argue, however, that “[i]n the event that non-commercial sex involves *abuse*, it should be considered an illicit activity, especially in cases of forced marriages, arranged marriages, early marriages, temporary marriages, marriages for the purpose of child bearing and mail-order brides.”<sup>256</sup>

When defining the crime of trafficking, governments should not limit its scope by solely penalizing trafficking into prostitution. To comply with the Protocol, trafficking laws should cover other exploitative schemes where individuals are held in forced labor, slavery or servitude, both in the sex industry and beyond. Where domestic laws only reach trafficking into prostitution, “persons trafficked into forced domestic labour or factory labour or into other sexual services, such as pornography, striptease or massage [followed by sex acts], are not protected by the law, and their traffickers are not punished.”<sup>257</sup> In fact, the latter set of sexual services or entertainment fall under the rubric of “other forms of sexual exploitation” within the Protocol’s definition if individuals have been forced or coerced to perform them.<sup>258</sup>

### **Forced Labor**

“Forced labour,” also known as “compulsory labour,” is defined in Article 2(1) of the International Labor Organization Forced Labour Convention No. 29 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.”<sup>259</sup> Experts explain:

Labour exploitation usually occurs within the agricultural, garment and catering sectors where adult and child trafficked victims of both genders are coerced into working in slavery-like conditions. In this connection it should be mentioned that countries may also have individuals exploited within their borders in ‘sweatshop’ style conditions for little or no wages. This latter situation is a classic case of exploitation of economic labour migration, as opposed to forced labour, which is covered by the [Trafficking] Protocol.<sup>260</sup>

The difference between “forced labour” as incorporated in Article 3(a) of the Protocol and “exploitation of economic labour migration” is the extent to which traffickers exploit their victims. If the exploitation is closer to slavery or slave-like practices, terms that are defined below, then traffickers have subjugated their victims to perform forced labor.<sup>261</sup>

### **Slavery**

“Slavery” is defined in Article 1(1) of the Slavery Convention as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>262</sup> The Slavery Convention further indicates that the slave trade includes:

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defines “prostitution” as “the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.” See FLA. STAT. ANN. §§ 796.04, 796.07(1)(a) (1999).

<sup>255</sup> See, e.g., FLA. STAT. ANN. § 796.07(1)(a) (1999).

<sup>256</sup> Mattar 2, *supra* note 191, at 5 (emphasis added).

<sup>257</sup> OSCE GUIDE, *supra* note 72, at 39.

<sup>258</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>259</sup> International Labour Organisation Convention Concerning Forced or Compulsory Labour, June 28, 1930, art. 2(1), ILO No. C29, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> [hereinafter ILO Convention No. 29].

<sup>260</sup> ICMPD TRAINING MANUAL, *supra* note 10, at 23.

<sup>261</sup> See *id.*

<sup>262</sup> Slavery Convention, Sept. 25, 1926, art. 1(1), 212 U.N.T.S. 17, available at <http://www.unhchr.ch/html/menu3/b/f2sc.htm>.

[A]ll acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.<sup>263</sup>

Experts report that many victims of trafficking are held in conditions of actual captivity. That is, not only are victims psychologically manipulated into becoming trafficked (i.e., through trickery, etc.) but, as they pass through countries of transit and arrive in countries of destination, they are denied the right to move freely.<sup>264</sup>

### Practices Similar to Slavery

“Practices similar to slavery” are enumerated in Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (“Supplementary Convention on Slavery”):

- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his 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 the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, 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 status;
- (c) Any institution or practice whereby:
  - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her 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;
- (d) 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.<sup>265</sup>

Simply stated, the above definitions encompass any exploitative measures taken against trafficked victims that come close but do not quite qualify as formal slavery. As Article 3(a) of the Protocol indicates, such practices deserve as much attention as the notion of “slavery” and its core concept of ownership of another person when drafting anti-trafficking laws and establishing anti-trafficking programs.

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<sup>263</sup> *Id.* art. 1(2).

<sup>264</sup> See ICMPD TRAINING MANUAL, *supra* note 10, at 24; see also Intelligence Monograph, *supra* note 2, at 5.

<sup>265</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, art. 1, 266 U.N.T.S. 3, available at <http://www.unhchr.ch/html/menu3/b/30.htm> [hereinafter Supplementary Convention on Slavery].

## Servitude

“Servitude” is prohibited by Article 8 of the International Covenant on Civil and Political Rights (“ICCPR”).<sup>266</sup> Its *travaux préparatoires* distinguish “servitude” from “slavery” in the following manner: “slavery, which impli[es] the destruction of the juridical personality, [is] a relatively limited and technical notion, whereas servitude [is] a more general idea covering all possible forms of man’s domination of man.”<sup>267</sup> It is understood that the “practices similar to slavery” listed above in the Supplementary Convention on Slavery are forms of servitude. The notion of “servitude” is present throughout the definitions of terms such as “debt bondage,” “serfdom,” and other institutions or practices designed to subjugate individuals to situations short of slavery and forced labor.<sup>268</sup> Thus, when a trafficked victim is forced to work off debt, which often consists of exaggerated travel and living costs that traffickers insist the victim has incurred,<sup>269</sup> s/he has been forced into servitude.

## Removal of Organs

The traffic of persons for the purpose of removing their organs is an increasing trend.<sup>270</sup> “Removal of organs” is not an exploitative scheme on its own. According to the Trafficking Protocol, trafficking in organs can only occur if an *individual* is transported for the purpose of removing his /her organs. The Protocol does not cover the illicit transport of the organs alone.<sup>271</sup> It should be noted that the *travaux préparatoires* indicate that “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.”<sup>272</sup>

## Illegal Adoption

Lastly, the *travaux préparatoires* mention that the Trafficking Protocol covers “illegal adoption” as a form of exploitation, if it amounts to a practice similar to slavery,<sup>273</sup> defined as follows by Article 1(d) of the Supplementary Convention on Slavery:

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.<sup>274</sup>

Thus, adopting a child is not, on its own, a form of trafficking. However, if the child is adopted for the purposes of exploiting him/her, then this can rise to the level of trafficking. For example, “the sale of children in the name of intercountry adoption may be considered a practice similar to

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<sup>266</sup> See International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 8(2), 999 U.N.T.S. 171, available at <http://www1.umn.edu/humanrts/instreet/b3ccpr.htm> [hereinafter “ICCPR”].

<sup>267</sup> MARC J. BOSSUYT, GUIDE TO THE “TRAVAUX PRÉPARATOIRES” OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 167 (Martinus Nijhoff Publishers 1987).

<sup>268</sup> See Supplementary Convention on Slavery, *supra* note 265, art. 1.

<sup>269</sup> See Intelligence Monograph, *supra* note 2, at 5 (“Once recruited, the women usually find themselves in situations with severely curtailed freedoms. The women’s passports or travel documents are taken, their movements are restricted, and their wages are withheld until their smuggling debt is repaid.”); see also ICMPD TRAINING MANUAL, *supra* note 10, at 24-25.

<sup>270</sup> See Sanjay Kumar, *Police Uncover Large-Scale Organ Trafficking in Punjab*, at <http://bmj.bmjournals.com>; see also Sandra Blakeslee et al., *In Science’s Name, Lucrative Trade in Body Parts*, N.Y. TIMES, Mar. 12, 2004.

<sup>271</sup> See ANNOTATED GUIDE, *supra* note 237, at 10.

<sup>272</sup> Convention and Protocol Travaux, *supra* note 68, at 12 [emphasis added].

<sup>273</sup> See *id.*

<sup>274</sup> Supplementary Convention on Slavery, *supra* note 265, art. 1(d).

slavery.”<sup>275</sup> “Intercountry adoption” or “international adoption” is the practice where adult citizens of one nation adopt a child who is a citizen of another nation.<sup>276</sup> Experts indicate that “[p]oor, single mothers, unaware of their legal rights, are targeted by baby brokers and coerced into giving up their newborns. . . . even offering to pay for medical bills. . . . Increased demand for children has caused husbands to become baby brokers.”<sup>277</sup> This is a rising trend particularly in the Americas.<sup>278</sup>

Given the complex nature of the trafficking definition, it is important for states to clearly define all of the above terms when drafting anti-trafficking legislation. If such terms are left undefined, they will inadvertently continue to have a negative impact upon the subsequent implementation of the proposed laws. The OSCE explains:

An important starting point for any anti-trafficking measures is a clear definition of the crime. If the crime is not clearly defined, research on the scale of the problem and the elaboration of solutions how to tackle it are impossible. Solutions will also vary according to how the problem is defined. Without a clear definition, it is also impossible to engage in cross-border co-operation. Until everyone, government and NGOs, are focusing on the same crime and identifying the same set of victims, proposed solutions will lack coordination and effectiveness.<sup>279</sup>

States should therefore clearly define trafficking in persons as a separate offense, rather than depending upon already existing sections of domestic criminal codes that criminalize activities such as smuggling or prostitution. Solely prosecuting on the basis of these already existing crimes falls short because “[t]he limited scope of these laws allows traffickers to receive a relatively low penalty that does not reflect the serious and brutal nature of trafficking.”<sup>280</sup> Thus, states should strive to create a separate crime of trafficking coupled with commensurate punishments for offenders. However, until trafficking becomes an offense within a particular country, prosecutors should continue to utilize existing criminal code provisions to charge traffickers.

## Consent

Article 3(b) of the Trafficking Protocol indicates that the consent of a trafficked victim to the aforementioned exploitative schemes is *irrelevant* when the trafficker has threatened to use force or has used force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or has given or received payments or benefits to achieve the consent of a person who has control over the potential victim (i.e., all means of carrying out trafficking activities).<sup>281</sup> The existence of these means negates meaningful consent. While recognizing the right of defendants to raise various defenses,<sup>282</sup> Article 3(b) specifies that once the elements of the offense of trafficking

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<sup>275</sup> Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, In Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 *FORDHAM INT’L L.J.* 721, 726 (2003) [hereinafter Mattar 5].

<sup>276</sup> *See id.*

<sup>277</sup> Smith & Mattar, *supra* note 26, at 163.

<sup>278</sup> *Id.* at 163-64.

<sup>279</sup> OSCE GUIDE, *supra* note 72, at 39.

<sup>280</sup> *Id.*

<sup>281</sup> *See* Trafficking Protocol, *supra* note 3, art. 3(b).

<sup>282</sup> *See* Convention and Protocol Travaux, *supra* note 68, at 13 (“The *travaux préparatoires* should indicate that subparagraph (b) should not be interpreted as imposing any restriction on the right of accused persons to a full defence and to the presumption of innocence. . . . Further, the *travaux préparatoires* will refer to article 11, paragraph 6, of the Convention, which preserves applicable legal defences and other related principles of the domestic law of States Parties”); *see also* Transnational Organized Crime Convention, *supra* note 37, art. 11(6).

have been proven, any allegation that the trafficked victims consented is irrelevant.<sup>283</sup> Thus, if a person agrees to travel abroad when told that s/he will get a legitimate job and, upon arrival to the destination, his/her documentation is confiscated by the trafficker and s/he is held against his/her will, the fact that s/he originally agreed to leave is no longer relevant. In fact, if the victim consents at any time during the process of being trafficked and the traffickers have used illicit means, his/her consent is still irrelevant. Consent is a continuous element of the crime of trafficking in persons.

The *travaux préparatoires* indicate that the trafficked victim is not to bear the burden of proof concerning the irrelevancy of consent. The burden of proof remains with the prosecutor in accordance with domestic law.<sup>284</sup>

The issue of consent is highly debated<sup>285</sup> but it is important given the perilous situations in which numerous victims of trafficking find themselves. In order to comply with the Trafficking Protocol, governments should address the issue of consent and draft anti-trafficking legislation in conformity with the Protocol's requirements. If issues like consent are left unresolved, they will inadvertently continue to affect the subsequent implementation of the proposed anti-trafficking legislation.

### Children

Article 3(c) of the Trafficking Protocol states that “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does *not* involve any of the means set forth in subparagraph (a) [of Article 3 (i.e., threat or use of force, etc.)].”<sup>286</sup> This provision recognizes that children are different from adults with regard to their ability to consent. A prosecutor does not have to prove any of the illicit means explained above or any other illicit means that might be present in a state's anti-trafficking law, when establishing a case against a defendant for trafficking children. Trafficking in children qualifies as an offense without the trafficker having threatened, physically forced, or applied any of the other illicit means delineated in Article 3(a) of the Protocol.<sup>287</sup> Article 3(d) defines a child as “any person under eighteen years of age.”<sup>288</sup>

While Article 3(c) effectively sets forth the separate offense of trafficking in children, this provision has been criticized for not adequately addressing the special needs of trafficked children. Article 6(4) of the Trafficking Protocol indicates that States Parties should pay particular attention to “the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.”<sup>289</sup> However, this provision is inadequate as well. Neither Article 3(c) nor Article 6(4) of the Protocol provide countries with any guidance as to the specific measures that they should undertake in order to properly address the special needs of minors. ECOSOC encourages governments to adopt the following measures with respect to trafficked children:

- establish procedures for the rapid identification of child victims

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<sup>283</sup> See Trafficking Protocol, *supra* note 3, art. 3(b).

<sup>284</sup> See Convention and Protocol Travaux, *supra* note 68, at 13.

<sup>285</sup> See generally Abramson, *supra* note 54.

<sup>286</sup> Trafficking Protocol, *supra* note 3, art. 3(c) [emphasis added].

<sup>287</sup> See *id.* art. 3(a).

<sup>288</sup> *Id.* art. 3(d).

<sup>289</sup> *Id.* art. 6(4).

- ensure that trafficked children are not prosecuted
- adopt measures to protect the rights and interests of the children during all stages of the criminal proceedings against their traffickers as well as during any compensation proceedings
- protect the privacy and identity of child victims and prevent the dissemination of any information that would unveil their identity
- take steps to locate family members when the child victims are unaccompanied
- establish adequate care arrangements “that respect the rights and dignity of the trafficked [children]” when it is not possible to safely return them to their country of origin
- guarantee the right of the trafficked children to freely express themselves (if they are at an age when they are capable of doing so) and respect their wishes especially when deciding to return them
- provide children with specialized care that includes appropriate physical, psychological, legal, and educational support as well as appropriate housing
- ensure that personnel assigned to provide assistance to child victims are properly trained and educated (i.e., legal and psychological training).<sup>290</sup>

When drafting anti-trafficking legislation, it is also important for states to refer to other international instruments that they have signed or ratified and that focus on children such as the United Nations Convention on the Rights of the Child,<sup>291</sup> the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography,<sup>292</sup> and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182.<sup>293</sup>

### *Examples of Compliance and Non-Compliance*

#### **Trafficking Definition**

##### De Jure

- **Non-compliance:** Although trafficking in persons is separately defined in China’s Criminal Code and such provisions prohibit the abduction, kidnapping, buying, trafficking in, fetching, sending, or transferring of women or children for the purposes of forced prostitution and selling,<sup>294</sup> they do not clearly delineate the other exploitative purposes mentioned in Article 3(a) of the Protocol (i.e., slavery, forced labor, removal or

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<sup>290</sup> See ECOSOC Report, *supra* note 58, at 13.

<sup>291</sup> See generally Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm> [hereinafter CRC].

<sup>292</sup> See generally Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, May 25, 2000, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (2000), available at <http://www.unhchr.ch/html/menu2/dopchild.htm>. [hereinafter CRC Protocol].

<sup>293</sup> See International Labour Organisation Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, ILO No. C182, available at <http://www.ilo.org/ilolex/english/convdisp1.htm>. [hereinafter ILO Convention No. 182].

<sup>294</sup> See CRIMINAL CODE [CRIM. C.] art. 240 (China), at <http://www.protectionproject.org/>.

organs, etc.).<sup>295</sup> While the term “selling” implies the subjugation of women and children, the law does not explicitly indicate for what purpose.

- **Compliance:** The Former Yugoslav Republic of Macedonia defines trafficking in persons as a separate crime in Article 418(a) of its Criminal Code. The definition closely follows the Trafficking Protocol definition and even goes beyond its minimum standards. The provisions punish: “[a] person who by means of serious threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of self power or of a position of other person's vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person recruits, transports, transfers, buys, sells, harbours or receipts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, forced labour or servitude, slavery or practices similar to slavery or removal of organs.”<sup>296</sup> Furthermore, the Code criminalizes the destruction of personal documents in order to commit the offense of trafficking and the knowledgeable use or procurement of sexual services from a victim of trafficking.<sup>297</sup>

## Consent

### De Jure

- **Compliance:** The Kosovo anti-trafficking regulation indicates that “the consent of a victim of trafficking in persons . . . shall be irrelevant”<sup>298</sup> where means such as “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 benefit”<sup>299</sup> are used in order to exploit victims.
- **Non-compliance:** The current Serbian definition of the offense of trafficking in persons, when read and interpreted *in toto*, indicates that the consent of the trafficked victim is taken into consideration when s/he is over the age of fourteen.<sup>300</sup> This is a deviation from the Trafficking Protocol definition that makes consent irrelevant where traffickers use means such as threat or use of force or other means of coercion, abduction, etc.<sup>301</sup>

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<sup>295</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>296</sup> CRIMINAL CODE [CRIM. C.] art. 418/a (Maced.), *at*

[http://www.coe.int/T/F/Affaires\\_juridiques/Coop%E9ration\\_juridique/Combattre\\_la\\_criminalit%E9\\_%E9conomique/P\\_rojet\\_LARA/Natleg\\_FYROM.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%E9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/P_rojet_LARA/Natleg_FYROM.asp#TopOfPage).

<sup>297</sup> See *id.*

<sup>298</sup> UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, sec. 1(2), *available at*

<http://www.unmikonline.org/regulations/2001/reg04-01.html>.

<sup>299</sup> UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, sec. 1(1)(a), *available at*

<http://www.unmikonline.org/regulations/2001/reg04-01.html>.

<sup>300</sup> See CRIMINAL CODE [CRIM. C.] art. 111(b)(4) (Serb.), *at* <http://www.legislationline.org/view.php?document=56720>; see also 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 139. NOTE: Serbia is in the process of redrafting its Criminal Code. The new code will become enforceable on January 1, 2006.

<sup>301</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 139; see also Trafficking Protocol, *supra* note 3, art. 3(b).

## Children

### De Jure

- **Non-compliance:** The Cypriot anti-trafficking law differentiates between trafficking for the purposes of sexual exploitation of adults and of children and incorporates coercive means such as “use of force, violence, threat, or fraud, or . . . ‘abuse of power or other kind of pressure to such an extent so that the particular person would have no substantial and reasonable choice but to succumb to pressure or ill-treatment’” for *both* crimes (i.e., against children and adults).<sup>302</sup> When the victim is a child, the penalty is increased.<sup>303</sup> However, this definition of the trafficking offense does not comply with Article 3(c) of the Trafficking Protocol. Article 3(c) indicates that when the victim is a child, the offense is still trafficking in persons even though none of the listed coercive means are present.<sup>304</sup>
- **Compliance:** Kosovo’s anti-trafficking regulation states that: “[t]he 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 section 1.1(a) [such as 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].”<sup>305</sup>

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<sup>302</sup> Combating of Trafficking in Persons and Sexual Exploitation of Children Law, No. 3(1) § 3(1) (2000) (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>303</sup> See *id.* § 5(2).

<sup>304</sup> See Trafficking Protocol, *supra* note 3, art. 3(c).

<sup>305</sup> UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, secs. 1(1)(a), 1(3), available at <http://www.unmikonline.org/regulations/2001/reg04-01.html>.

#### Article 4: Scope of Application

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

Article 4 indicates that the scope of the Protocol (at a minimum) pertains to the:

- prevention of trafficking in persons
- prosecution (and investigation) of suspected traffickers
- protection of individuals who have fallen victim to trafficking.<sup>306</sup>

These are the three main pillars that should be introduced in any domestic legislation that seeks to comprehensively address trafficking. This is not to say that domestic anti-trafficking laws cannot include additional standards in order to address particular aspects of the trafficking phenomenon that is occurring within and across a country's borders.<sup>307</sup> In addition to drafting appropriate legal provisions, governments should also follow through with various initiatives that effectively implement preventive measures and means of prosecution (and investigation) as well as victim protections.

#### Prevention

While preventative measures will be discussed at greater length below,<sup>308</sup> they include awareness raising and information campaigns for potential victims (source countries) and for community members and the general public (source and destination countries), longer-term strategies that aim to improve the economic and social position of groups susceptible to trafficking, a move towards less restrictive immigration laws and policies in destination countries such that they do not contribute to the growth of irregular migration and trafficking in persons, and an increase in opportunities for individuals to migrate legally for work and vocational training.<sup>309</sup>

#### Prosecution

Prosecution under the Trafficking Protocol is for "offences established in accordance with article 5 of [the] Protocol, where those offences are transnational in nature and involve an organized criminal group."<sup>310</sup>

Article 5 of the Protocol obligates each State Party to adopt legislation and implement other necessary measures in order to criminalize trafficking in persons.<sup>311</sup> The *travaux préparatoires* specify that these "other measures" should be in addition to legislative measures, thus, presupposing the existence of anti-trafficking laws before the implementation of such additional measures.<sup>312</sup>

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<sup>306</sup> See Trafficking Protocol, *supra* note 3, art. 4.

<sup>307</sup> See Puleo Speech, *supra* note 3.

<sup>308</sup> See *infra* pp. 116-125 (discussing preventive measures).

<sup>309</sup> See OSCE GUIDE, *supra* note 72, at 17.

<sup>310</sup> Trafficking Protocol, *supra* note 3, art. 4.

<sup>311</sup> See *id.* art. 5.

<sup>312</sup> See Convention and Protocol Travaux, *supra* note 68, at 13.

### *Transnational and Internal Nature of the Crime*

Trafficking offenses that are criminalized in accordance with Articles 4 and 5 of the Protocol on their face are “transnational in nature;” term, which is better explained in the Transnational Organized Crime Convention. Article 3(2) of the Convention indicates that:

[A]n offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.<sup>313</sup>

However, this terminology should not deter a state from also criminalizing trafficking that is internal in nature. The drafters of the Trafficking Protocol, and the Convention that it supplements, did not intend to exclude situations where a trafficker transports his/her victims within the borders of one country. In fact, in Article 34(2) of the Convention, the drafters indicate that the offenses established in accordance with the Convention and its protocols “shall be established in the domestic law of each State Party *independently* of the transnational nature” of the illicit conduct.<sup>314</sup> Thus, a ratifier is in true compliance with both the Convention and the Protocol if its domestic legislation covered transnational *and* internal trafficking of persons. This would be pertinent in a country like India, where trafficking activity takes place across its borders as Bangladeshi and Nepali women are brought to Mumbai, as well as among its provinces.<sup>315</sup>

### *Involvement of an Organized Criminal Group*

Article 4 of the Trafficking Protocol further indicates that separate trafficking offences that are to be introduced within domestic criminal codes “involve an organized criminal group.”<sup>316</sup> Article 2(a) of the Transnational Organized Crime Convention states that an “organized criminal group” is “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established . . . [by the] Convention [or Trafficking Protocol], in order to obtain, directly or indirectly, a financial or other material benefit.”<sup>317</sup>

Once again, this terminology is not meant to exclude trafficking activities that do *not* involve organized crime. Article 34(2) of the Convention states that the offenses established in accordance with the Convention and its protocols “shall be established in the domestic law of each State Party *independently* of . . . the involvement of an organized criminal group” in the illicit conduct.<sup>318</sup> Thus, situations where a husband and wife bring a worker from abroad and force her to work for little or no pay and/or restrict her freedom can also be covered by anti-trafficking legislation in addition to offenses committed by organized criminal groups.

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<sup>313</sup> Transnational Organized Crime Convention, *supra* note 37, art. 3(2).

<sup>314</sup> *Id.* art. 34(2).

<sup>315</sup> See American Bar Association, Ending the Sale of Rights and Dignity: Combating Trafficking in Persons: Insights from India and Bangladesh 7 [hereinafter ABA India & Bangladesh Report (unpublished)]; see also The Protection Project; Human Rights Reports: India, at <http://www.protectionproject.org/>.

<sup>316</sup> See Trafficking Protocol, *supra* note 3, art. 4.

<sup>317</sup> Transnational Organized Crime Convention, *supra* note 37, art. 2(a).

<sup>318</sup> *Id.* art. 34(2).

## Protection

While protection measures for victims of trafficking are discussed in greater detail below,<sup>319</sup> they include:

- medical care
- safe accommodations
- psychological and legal counseling
- legal residency status for a certain period of time
- protection from criminal charges that would otherwise stem from irregular residence and employment status
- access to employment and education
- information campaigns regarding the rights of victims including the right to compensation and the right to a fair trial if victims are subjected to criminal prosecution in either their country of destination, transit, or origin.<sup>320</sup>

These types of assistance should be made available to victims of trafficking in countries of origin, transit, and destination.<sup>321</sup>

## *Examples of Compliance and Non-Compliance*

### **Transnational Trafficking/Internal Trafficking**

#### De Jure

- **Compliance:** Despite the fact that Nigeria did not incorporate all of the minimum required elements into its domestic definition of the crime of trafficking in persons, it does recognize *both* the trans-border and internal nature of this particular offense by stating that “transportation within or across Nigerian borders” is a possible suspect activity within a trafficking scenario.<sup>322</sup>

#### De Facto

- **Non-compliance:** Latvia’s laws have been amended and, as of December 2004, they criminalize both international and internal trafficking in persons accompanied by sufficiently severe penalties. Despite such legislative progress, in 2004, Latvian courts continued to apply provisions pertaining to pimping and alien smuggling for the purposes of sexual exploitation to cases that could have qualified as international or internal trafficking, thus bestowing much lower sentences upon potential traffickers.<sup>323</sup>

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<sup>319</sup> See *infra* pp. 75-90 (discussing protective measures for trafficked victims).

<sup>320</sup> See OSCE GUIDE, *supra* note 72, at 57.

<sup>321</sup> See *id.*

<sup>322</sup> Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, art. 50 (Nig.).

<sup>323</sup> See 2005 TIP Report, *supra* note 5, at 141.

## Involvement of an Organized Criminal Group

### De Jure

- **Compliance:** The offense of trafficking in persons in Russia's Criminal Code incorporates the involvement of an organized group as an aggravating circumstance raising the term of imprisonment from up to five years to anywhere between eight to fifteen years.<sup>324</sup>

### De Facto

- **Non-compliance:** Investigations and prosecutions under Russia's anti-trafficking provisions were initiated but no convictions were reported when the annual US TIP Report was published in June 2004. Members of organized criminal groups were prosecuted for their trafficking activities but under pre-existing laws. In June 2005, the US TIP Report indicated that little progress had been made in securing trafficking convictions and that "[t]he government continued to bring charges against traffickers using older code provisions."<sup>325</sup>

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<sup>324</sup> See CRIMINAL CODE [CRIM. C.] art. 127(1)(3)(c) (Russ.), at <http://www.legislationline.org/view.php?document=58712&ref=true>.

<sup>325</sup> See 2004 TIP Report, *supra* note 17, at 168; 2005 TIP Report, *supra* note 5, at 184-85.

## Article 5: Criminalization

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

Article 5 of the Trafficking Protocol outlines the obligations of its States Parties to adopt legislation and to implement other necessary measures in order to criminalize trafficking in persons and other related activities.<sup>326</sup> While attempting to grant signatories a certain level of flexibility, Article 5 does not provide detailed guidance regarding certain key issues that states should take into consideration when criminalizing trafficking. Several of these issues are listed below; however, the reader should not interpret this as an exhaustive list. It should be noted that some of these issues are addressed by the Transnational Organized Crime Convention, which is to be interpreted and applied together with the Trafficking Protocol.

Obligations Under Art. 5	Obligations Not Addressed in Art. 5	Obligations Under the Transnational Organized Crime Convention
<ul style="list-style-type: none"> <li>• Defining trafficking in persons as a separate crime</li> <li>• Adopting other measures to ensure the effective establishment of trafficking in persons as a separate crime</li> <li>• Including the requisite mental element of intent</li> <li>• Criminalizing attempt to commit trafficking in persons (lesser included offense)</li> <li>• Establishing accomplice liability</li> <li>• Criminalizing conduct that entails organizing and directing other</li> </ul>	<ul style="list-style-type: none"> <li>• Developing a framework for the purpose of identifying both the traffickers and the trafficked</li> <li>• Criminalizing the omission or failure to prevent trafficking in persons</li> <li>• Defining <i>other</i> crimes related to trafficking in persons (based upon human rights abuses)</li> <li>• Establishing clear guidelines as to the type, severity, and proportionality of penalties and sanctions for the crime of trafficking in persons</li> <li>• Creating specialized units for investigation and prosecution of</li> </ul>	<ul style="list-style-type: none"> <li>• Indicating that penalties and sanctions for the offense of trafficking in persons are to take into account the gravity of this “serious crime”</li> <li>• Establishing the obligation to confiscate and seize the assets of traffickers</li> <li>• Properly disposing of confiscated assets</li> <li>• Establishing liability of legal persons</li> </ul>

<sup>326</sup> See Trafficking Protocol, *supra* note 3, art. 5.

persons to commit acts of trafficking	traffickers	
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### **States Parties' Obligations**

According to the mandatory language in Article 5(1) (“shall adopt”), states that sign and ratify the Trafficking Protocol are *required* to pass domestic legislation that defines trafficking in persons as a separate crime and adopt “other measures” that ensure the effectiveness of its criminalization.<sup>327</sup> The *travaux préparatoires* specify that “other measures” should be taken in addition to legislation, thus presupposing the existence of anti-trafficking laws before the implementation of such other measures.<sup>328</sup>

Article 5(1) provides that the crime of trafficking in persons requires individuals to have “intentionally” engaged in such illicit conduct.<sup>329</sup> Similar to other major crimes in almost every legal system in the world, the mental element of intent is key to trafficking.<sup>330</sup> States should clearly set forth this element as a component of their anti-trafficking legislation.

Lastly, states should also develop a framework (both in law and in practice) to aid prosecutors and law enforcement personnel with properly identifying victims of trafficking as well as traffickers. While this is not an obligation specifically delineated in Article 5 of the Trafficking Protocol, this is a measure that is required by Article 10<sup>331</sup> and should be taken into consideration as ECOSOC recommends below:

A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.

States are also obliged to exercise due diligence in identifying traffickers, including those who are involved in controlling and exploiting trafficked persons.<sup>332</sup>

Properly identifying suspected traffickers as well as the victims of trafficking is important in order to protect the rights of all persons affected. It also contributes to States Parties fulfilling their obligation under Article 5 by criminalizing trafficking in a more complete and effective manner.

### **Criminalization of Lesser Included Offenses and Other Activities Related to Trafficking**

Article 5(2) of the Trafficking Protocol places additional requirements on States Parties. In addition to creating a separate offense of trafficking in persons, states are to criminalize the following types of conduct:

- attempting to commit acts of trafficking
- participating in acts of trafficking as an accomplice
- organizing and directing other persons to commit acts of trafficking.<sup>333</sup>

According to the OSCE, criminalizing such related behavior is important because:

<sup>327</sup> See *id.* art. 5(1).

<sup>328</sup> See Convention and Protocol Travaux, *supra* note 68, at 13.

<sup>329</sup> See Trafficking Protocol, *supra* note 3, art. 5(1).

<sup>330</sup> See M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 281 (Transnational Publishers, Inc. 2003).

<sup>331</sup> See Trafficking Protocol, *supra* note 3, art. 10(1)(a).

<sup>332</sup> See ECOSOC Report, *supra* note 58, at 6.

<sup>333</sup> See Trafficking Protocol, *supra* note 3, art. 5(2).

[t]o a significant extent, trafficking involves activities of organized groups carrying out different parts of the activities of trafficking, such as recruitment, transportation, accommodation or escort of trafficked persons, or the arrangement of their travel, employment or other formalities. Whereas some of these activities may be punished as trafficking or as acts of organized crime, other acts, such as the arrangement of employment possibilities or the occasional escorting of victims between their accommodation and their work place, may themselves not be sufficient to establish criminal liability for trafficking.<sup>334</sup>

Thus, criminal provisions related to trafficking in persons (i.e., the lesser included offense of attempt, accomplice liability, and organizing and directing persons to engage in trafficking) need to be established such that everyone involved in a trafficking operation is prosecuted according to the level of his or her involvement.<sup>335</sup>

The lesser included offense of attempt, described in Article 5(2)(a) of the Trafficking Protocol, is especially significant since it ensures that individuals are punished for their participation even though a particular trafficking cycle has not come to its full completion.<sup>336</sup> Attempt is an offense included within the greater offense of trafficking in persons. It would be impossible to commit the greater offense of trafficking in persons without necessarily committing the lesser offense of attempt. An attempt to commit trafficking can be composed of some but not all the elements of the greater trafficking offense.<sup>337</sup> A charge of attempt would be pertinent, for example, in a situation where an individual, who was supposed to receive trafficked victims in a destination country, fails to do so either because such victims escaped or because she or he was arrested in the interim.<sup>338</sup> A prosecutor might also be faced with the issue of lack of proof to bring forth a charge of trafficking in persons, but might be able to bring forth a charge of attempt to commit trafficking in persons based on existing evidence that the traffickers engaged in preparatory activity with the intent to commit the illicit conduct.<sup>339</sup> The *travaux préparatoires* mention that attempt is “understood in some countries to include both acts perpetrated in preparation for a criminal offense and those carried out in an unsuccessful attempt to commit the offense, where those acts are also culpable or punishable under domestic law.”<sup>340</sup> Thus, domestic anti-trafficking laws need provisions that address persons who fall short of completing the act of trafficking. Such provisions can also aid with deterring the activities of a trafficking ring and perhaps halt them altogether.

Although not explicitly mentioned in Article 5(2) of the Trafficking Protocol, commentators also identify the omission to act, or failure to prevent trafficking activities as a criminal provision related to trafficking.<sup>341</sup> They stress the importance of criminalizing such conduct and imposing a legal obligation as it would address “persons who are not actually part of the criminal group, such as a border guard who turns a blind eye to the traffickers passing the border.”<sup>342</sup> In the context of inter-state or internal conflict, for example, a military commander is criminally liable if s/he fails to exercise proper control over his/her forces where s/he knew or should have known that the forces were committing or about to commit war crimes and s/he “failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit

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<sup>334</sup> See OSCE GUIDE, *supra* note 72, at 47.

<sup>335</sup> See *id.*; see also OSCE Action Plan, *supra* note 124, at 2.

<sup>336</sup> See OSCE GUIDE, *supra* note 72, at 47.

<sup>337</sup> See BLACK’S LAW DICTIONARY 902 (16th ed. 1990).

<sup>338</sup> See OSCE GUIDE, *supra* note 72, at 47.

<sup>339</sup> See *id.*

<sup>340</sup> Convention and Protocol Travaux, *supra* note 68, at 13.

<sup>341</sup> See OSCE GUIDE, *supra* note 72, at 47.

<sup>342</sup> *Id.*

the matter to the competent authorities for investigation and prosecution.”<sup>343</sup> Similarly (but not necessarily during wartime), a government official or customs authority that is aware of trafficking activity and fails to take steps to prevent it would be criminally liable.

### **Establishment of Additional Crimes Within the Trafficking Context**

Trafficking is only one of the offenses committed against the targeted victims. Many victims are also subjected to other forms of abuse including the following:

- threats
- physical violence
- sexual violence
- mental abuse
- involuntary lock up
- working without pay
- confiscation of travel documents
- forced abortions.<sup>344</sup>

States should consider establishing separate offenses (if they do not already exist) or consider such abuses as the basis for aggravated circumstances when the act of trafficking in persons has been committed. Regardless of the manner of incorporation into the Criminal Code or other pertinent laws, states should bring charges against perpetrators for these abuses *in addition* to the charge of trafficking in persons.

Such additional charges could help bolster an otherwise weak case against an alleged trafficker. Furthermore, if a situation arises where there may not be sufficient evidence to bring forth a charge of trafficking, then a prosecutor would be able to rely upon these separate offenses instead. However, it should be noted that such separate crimes should *not* replace the crime of trafficking at all times because the punishments allocated for such offenses alone are not proportionate to the gravity of the trafficking offense and, ultimately, would not have a deterrent effect upon the trafficking trade.<sup>345</sup> The complicated investigation process that is involved in a trafficking case coupled with limited resources might tempt officials within a particular state to bring charges based solely upon these separate crimes.<sup>346</sup> However, the OSCE stresses the importance of first attempting to bring forth the charge of trafficking in persons (together with additional applicable charges of assault, rape, etc.) and not immediately resorting to these separate offenses as alternatives to trafficking charges.<sup>347</sup>

Possible criminal charges that can be brought in addition to the charge of trafficking in persons include:

- rape
- assault
- murder
- kidnapping
- extortion

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<sup>343</sup> ICC Statute, *supra* note 4, art. 28(a).

<sup>344</sup> See OSCE GUIDE, *supra* note 72, at 48; see also Intelligence Monograph, *supra* note 2, at 5.

<sup>345</sup> See OSCE GUIDE, *supra* note 72, at 48, 50.

<sup>346</sup> See Intelligence Monograph, *supra* note 2, at 32-35.

<sup>347</sup> See OSCE GUIDE, *supra* note 72, at 48 (“It is important to stress, however, that such offences should not replace prosecution for trafficking, but should be invoked additionally or subsidiarily.”).

- racketeering
- money laundering
- bribery of public officials
- conspiracy
- visa, mail, and wire fraud
- document forgery
- confiscation of identity documents in furtherance of slavery or trafficking
- recruiting, smuggling, and transporting aliens
- harboring for the purposes of prostitution
- drug trafficking
- loan sharking
- gambling<sup>348</sup>

The OSCE also suggests that states should establish separate crimes based upon international human rights standards.<sup>349</sup> For example, acts that amount to slavery, slavery-like practices, servitude, and debt bondage fall under the auspices of various instruments such as the:

- Universal Declaration of Human Rights (“UDHR”) (Art. 4)<sup>350</sup>
- International Covenant on Civil and Political Rights (“ICCPR”) (Art. 8)<sup>351</sup>
- Slavery Convention (Arts. 1-2)<sup>352</sup>
- Supplementary Slavery Convention (Art. 1)<sup>353</sup>
- ILO Forced Labour Convention No. 29 (Arts. 1, 2(1) & 4(1))<sup>354</sup>
- ILO Abolition of Forced Labour Convention No. 105 (Arts. 1-2)<sup>355</sup>
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“Migrant Workers Convention”) (Art. 11),<sup>356</sup> and
- Convention on the Rights of the Child (“CRC”) (Art. 32).<sup>357</sup>

Furthermore, forced marriage, forced abortion and forced pregnancy are banned by the:

- UDHR (Arts. 16(1)-16(2))<sup>358</sup>

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<sup>348</sup> See Intelligence Monograph, *supra* note 2, at 1, 35.

<sup>349</sup> See OSCE GUIDE, *supra* note 72, at 48.

<sup>350</sup> See Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3<sup>rd</sup> Sess., art.4, U.N. Doc. A/810 (1948), available at <http://www.un.org/Overview/rights.html> [hereinafter “UDHR”] (“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”).

<sup>351</sup> See ICCPR, *supra* note 266, art. 8 (“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labour.”).

<sup>352</sup> See Slavery Convention, *supra* note 262, arts. 1-2 (defining slavery and calling for the abolition of all forms of slavery).

<sup>353</sup> See Supplementary Convention on Slavery, *supra* note 265, art. 1 (defining and prohibiting practices of debt bondage, serfdom as well as other practices similar to slavery).

<sup>354</sup> See ILO Convention No. 29, *supra* note 259, arts. 1, 2(1), 4(1) (calling for the suppression of the use of forced or compulsory labor).

<sup>355</sup> See International Labour Organisation Abolition of Forced Labour Convention, June 25, 1957, arts. 1-2, ILO No. 105, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> [hereinafter ILO Convention No. 105].

<sup>356</sup> See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, G.A. Res. 45/158, U.N. GAOR, 45<sup>th</sup> Sess., Supp. No. 49A, at 262, art. 11, U.N. Doc. A/45/49 (1990), available at <http://www1.umn.edu/humanrts/instree/n8icprmw.htm> [hereinafter Migrant Workers Convention] (indicating that migrant workers are not to be subjected to slavery, servitude, forced or compulsory labor).

<sup>357</sup> See CRC, *supra* note 291, art. 32 (protecting children from economic exploitation).

<sup>358</sup> See UDHR, *supra* note 350, arts. 16(1)-16(2) (discussing equal rights to marriage and the necessity of free and full consent by the intended spouses).

- International Covenant on Economic, Social and Cultural Rights (“ICESCR”) (Art. 10(1))<sup>359</sup>
- ICCPR (Art. 23)<sup>360</sup>
- CEDAW (Art. 16)<sup>361</sup>
- Supplementary Slavery Convention (Art. 1(c)).<sup>362</sup>

Torture and cruel, inhuman or degrading treatment are prohibited by the:

- UDHR (Art. 5)<sup>363</sup>
- ICCPR (Art. 7)<sup>364</sup>
- Convention Against Torture (“CAT”) (Arts. 2, 4, &16)<sup>365</sup>
- CRC (Art. 37(a))<sup>366</sup>
- Migrant Workers Convention (Art. 10).<sup>367</sup>

Lastly, rape, sexual and other forms of assault such as bodily injury and murder, and kidnapping (mentioned above) are deemed to be violations of the right to life, liberty and security of a person as well as discrimination and are proscribed by the:

- UDHR (Art. 3)<sup>368</sup>
- ICCPR (Art. 6)<sup>369</sup>
- CEDAW (Arts. 2(f) & 6).<sup>370</sup>

States should follow suit and criminalize the aforementioned types of conduct that amount to human rights violations as well as the illicit behavior related to trafficking. Such criminalization would enable law enforcement officials to charge perpetrators with trafficking in persons *and* rape,

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<sup>359</sup> See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 10(1), 993 U.N.T.S. 3, *available at* <http://www1.umn.edu/humanrts/instree/b2esc.htm> [hereinafter ICESCR] (“Marriage must be entered into with the free consent of the intending spouses.”).

<sup>360</sup> See ICCPR, *supra* note 266, art. 23 (outlining the equal rights of spouses and indicating that marriage should not be entered into without free and full consent).

<sup>361</sup> See CEDAW, *supra* note 35, art. 16 (“Everyone shall have the right to recognition everywhere as a person before the law.”).

<sup>362</sup> See Supplementary Convention on Slavery, *supra* note 265, art. 1(c) (guaranteeing a woman’s right to refuse marriage and prohibiting forced marriages).

<sup>363</sup> See UDHR, *supra* note 350, art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).

<sup>364</sup> See ICCPR, *supra* note 266, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”).

<sup>365</sup> See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, arts. 2, 4, 16, 1465 U.N.T.S. 85, *available at* <http://www1.umn.edu/humanrts/instree/h2catoc.htm>.

<sup>366</sup> See CRC, *supra* note 291, art. 37(a) (“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”).

<sup>367</sup> See Migrant Workers Convention, *supra* note 356, art. 10 (“No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).

<sup>368</sup> See UDHR, *supra* note 350, art. 3 (“Everyone has the right to life, liberty and security of person”).

<sup>369</sup> See ICCPR, *supra* note 266, art. 6 (describing in detail the right to life).

<sup>370</sup> See CEDAW, *supra* note 35, arts. 2(f) and 6 (encouraging states “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” and to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”); *see also* Office of the High Commissioner for Human Rights, Violence Against Women: CEDAW General Recommendation No. 19, para. 1, U.N. Doc. A/47/38 (1992), *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/300395546e0dec52c12563ee0063dc9d?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/300395546e0dec52c12563ee0063dc9d?OpenDocument) [hereinafter CEDAW Gen. Rec. 19] (explaining that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”).

murder, slavery, servitude, debt bondage, etc. when appropriate. As noted above, officials should strive to bring forth such separate charges *in addition* to charges of trafficking. They should *not* seek to replace the primary offense of trafficking in persons with the aforementioned separate offenses except in limited circumstances.

## Sanctions

Despite the fact that the Trafficking Protocol criminalizes the act of trafficking in persons in Article 5, neither the Protocol nor the Transnational Organized Crime Convention *specifically* indicate the type of sanctions that are to be imposed.<sup>371</sup> Punishment for the crime of trafficking in persons can be in the form of criminal penalties as well as civil and administrative sanctions.

Criminal penalties involve imprisonment on a short-term or long-term basis. Usually domestic legislation delineating the penalties for a particular offense provide for a range of allowable time periods for incarceration (minimum to maximum years in prison).<sup>372</sup> Furthermore, such provisions provide for sentence enhancements depending upon whether aggravating circumstances were involved in the commission of the offense or the defendant has a record of past offenses.<sup>373</sup> In the case of trafficking in persons, aggravating circumstances could consist of the involvement of organized crime,<sup>374</sup> the young age of the victim,<sup>375</sup> the pregnancy of the victim,<sup>376</sup> the threat to the life or mental health of the victim,<sup>377</sup> and the death of the victim.<sup>378</sup> Criminal penalties can include the imposition of a fine, which is not considered as serious a penalty as incarceration and is generally imposed *in addition* to a jail term.<sup>379</sup>

Civil sanctions can include forfeiture whereby the government can seize certain assets of the defendant.<sup>380</sup> The scope of assets that can be seized usually encompasses proceeds of underlying criminal activity and property used to facilitate that activity.<sup>381</sup> Depending upon the jurisdiction, the proceedings to determine asset forfeiture (whether criminal or civil) are separate and can occur simultaneous with the criminal trial of the defendant or after his/her guilt has been pronounced.<sup>382</sup> Fines can also qualify as civil sanctions.<sup>383</sup>

Administrative sanctions can involve closure of establishments where the offense was committed and revocation of licenses.<sup>384</sup> Decisions to carry out such sanctions should be rendered by the body that initially authorized the opening of the establishment or the issuance of the license<sup>385</sup> or

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<sup>371</sup> See OSCE GUIDE, *supra* note 72, at 43.

<sup>372</sup> See WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 26.1(c) (2nd ed. 1999).

<sup>373</sup> See *id.*

<sup>374</sup> See, e.g., CRIMINAL CODE [CRIM. C.] art. 204(3)(b) (Czech Rep.), at <http://www.legislationline.org/view.php?document=55359>.

<sup>375</sup> See, e.g., CRIMINAL CODE [CRIM. C.] art. 124(1) (Ukr.), at <http://www.legislationline.org/view.php?document=55168>.

<sup>376</sup> See, e.g., CRIMINAL CODE [CRIM. C.] art. 165(2) (Mold.), at <http://www.legislationline.org/index.php?topic=14&country=28&org=0&eu=0>.

<sup>377</sup> See *id.*

<sup>378</sup> See e.g., CRIMINAL CODE [CRIM. C.] art. 110a (Alb.), at <http://www.legislationline.org/view.php?document=62283>.

<sup>379</sup> See LAFAVE, *supra* note 372, § 26.1(f).

<sup>380</sup> See *id.* § 26.6(d).

<sup>381</sup> See *id.*

<sup>382</sup> See *id.*

<sup>383</sup> See *id.* § 26.1(f).

<sup>384</sup> See OSCE GUIDE, *supra* note 72, at 44.

<sup>385</sup> See BLACK'S LAW DICTIONARY 45 (16th ed. 1990) ("Administrative authority [is] [t]he power of an agency or its head to carry out the terms of the law creating the agency as well as to make regulations for the conduct of business before the

by a court. These proceedings, whereby the administrative authority issues an affirmative or negative, injunctive or declaratory order,<sup>386</sup> are separate from the criminal trial of the defendant for the underlying illicit activity. Fines can also be ordered in addition to administrative sanctions.  
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Neither the Trafficking Protocol nor the Transnational Organized Crime Convention provide clear guidelines for the severity of the penalties and sanctions to be imposed for the offense of trafficking in persons.<sup>388</sup> The Convention solely indicates that sanctions are to “take into account the gravity of [the] offence”<sup>389</sup> and that if a crime is a “serious crime,” such as trafficking in persons, it is punishable “by a maximum deprivation of liberty of at least four years or a more serious penalty.”<sup>390</sup> Thus, a minimum sentence for trafficking in persons should not be less than four years. In Guatemala, for example, the base punishment for trafficking in persons is one to three years imprisonment and a fine of 500 to 3,000 quetzals.<sup>391</sup> According to the Convention, this is not an adequate sanction.

The reason the Transnational Organized Crime Convention sets forth a minimum threshold of four years imprisonment for serious crimes is to adjust for sentencing guidelines in common law (and some civil law) countries that offer plea bargaining.<sup>392</sup> “A plea bargain is an agreement in a criminal case where a prosecutor and a defendant arrange to end the case against the defendant. The defendant agrees to plead guilty (and often allocute) to a more minor offense than charged or to a smaller number of offenses than charged. . . . Plea bargains are subject to the approval of the court.”<sup>393</sup> A defendant may plea in exchange for his/her knowledge regarding a criminal matter that s/he was involved in; knowledge that would ensure “the success of a broader more significant prosecution.”<sup>394</sup> A defendant may also plea in order to avoid the uncertainties associated with going to trial.<sup>395</sup> Regardless of the reason, the defendant’s plea has a direct affect on the length of his/her sentence. The Transnational Organized Crime Convention takes this factor into account and ensures that individuals who have committed a serious crime, such as trafficking in persons, do not plea and end up with a sentence that is less than four years.<sup>396</sup>

The OSCE warns that, in reality, “sanctions for trafficking in human beings available in many countries have no deterrent effect upon traffickers because they are too weak. In many instances, the punishment for carrying drugs is much more severe than those for the buying and selling of

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agency.”).

<sup>386</sup> See *id.* (defining the term “administrative adjudication.”).

<sup>387</sup> See LAFAVE, *supra* note 372, § 26.1(f).

<sup>388</sup> See OSCE GUIDE, *supra* note 72, at 43.

<sup>389</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 11(1).

<sup>390</sup> *Id.* art. 2(b).

<sup>391</sup> See The Protection Project; Human Rights Reports: Guatemala, at <http://www.protectionproject.org/>.

<sup>392</sup> Plea bargaining is part of common law systems like the United States but has been introduced in a few civil law countries, like Germany, Italy, Argentina, and France. It should be noted that the concept of plea bargains has been met with some resistance in certain countries. See Máximo Langer, *From Legal Transplants to Legal Transitions: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT’L L.J. 1, 3 (2004) (discussing in depth the positive and negative aspects of plea bargaining in common and civil law countries).

<sup>393</sup> Plea Bargain, at [http://www.fact-index.com/p/pl/plea\\_bargain.html](http://www.fact-index.com/p/pl/plea_bargain.html).

<sup>394</sup> *Id.*

<sup>395</sup> See *id.*

<sup>396</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 2(b).

human beings.”<sup>397</sup> Trafficking is a crime of the caliber of drug trafficking or other serious offenses for which, depending on the circumstances, a defendant can serve ten to twenty years in jail.<sup>398</sup>

When establishing sanctions for trafficking, states should pay heed to the notion that punishments need to be proportionate to the crimes committed. Thus, states should balance proportionality with deterrence.<sup>399</sup> For example, the OSCE encourages its member states to:

[make] legislative provisions for effective and proportionate criminal penalties, including imprisonment, that take into account the serious nature of this crime. Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, such as in the case of offences involving trafficking in children or offences committed by or involving the complicity of State officials.<sup>400</sup>

While carefully considering the severity of sanctions that is appropriate for a charge of trafficking in persons, states should also consider harmonizing such sanctions with those of neighboring states. A somewhat uniform system of laws and corresponding sanctions within a particular region facilitates cooperation among states. For example, before complying with requests for information, assistance or extradition in connection with a trafficking case, a state would be able to verify if the sentence faced by the alleged trafficker meets a certain threshold established within its domestic law, and thus, agree to comply with such requests more swiftly.<sup>401</sup> Furthermore, if a harmonized system of sanctions exists within a particular region, traffickers would have a harder time evading prison sentences by moving from country to country.

The European Union issued guidelines for harmonizing trafficking sanctions within a particular region. The 1997 Council Joint Action “provid[ed] for effective, proportionate and dissuasive criminal penalties for trafficking in human beings” and “enumerate[ed] further penalties and administrative measures such as the confiscation and forfeiture of proceeds and property of the trafficker and the closure of establishments.”<sup>402</sup> In 2002, the Council Framework Decision on Combating Trafficking in Human Beings, replaced the 1997 Joint Action and now provides for maximum penalties:

Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances:

- (a) the offence has deliberately or by gross negligence endangered the life of the victim;
- (b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and

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<sup>397</sup> OSCE GUIDE, *supra* note 72, at 43.

<sup>398</sup> See Intelligence Monograph, *supra* note 2, at 33 (explaining that in the state of Maryland, in the United States, a defendant convicted on a felony drug charge, with two prior misdemeanour drug charges, is required to serve ten years without possibility of parole. If the defendant uses a gun in the commission of the crime of drug trafficking, s/he is required to serve five years (if first offense) and twenty years for each subsequent violation.).

<sup>399</sup> See ECOSOC Report, *supra* note 58, at 8.

<sup>400</sup> OSCE Action Plan, *supra* note 124, at 2.

<sup>401</sup> See OSCE GUIDE, *supra* note 72, at 43.

<sup>402</sup> OSCE GUIDE, *supra* note 72, at 43; see Council Joint Action 97/154/JHA, arts. II A(b) & II A(d), 1997 O.J. (L 063) 2, 4 (no longer in force).

the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography;  
(c) the offence has been committed by use of serious violence or has caused particularly serious harm to the victim; and  
(d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA, apart from the penalty level referred to therein.<sup>403</sup>

The Council of Europe also encourages its member states to “[i]ntroduce or increase penal sanctions that are in proportion to the gravity of the offenses, including dissuasive custodial sentences” in the Committee of Ministers Recommendation R (2000) 11.<sup>404</sup>

Please see Appendix B for examples of existing penalties and sanctions for the crime of trafficking in persons.

### **Confiscation and Seizure of Assets**

States should enact domestic provisions that would enable them to confiscate the assets of traffickers (which is a type of civil sanction described above) and, where applicable, repeal conflicting legislation.<sup>405</sup> Upon confiscation, such assets would become the property of the state in which they are located and could be used to aid victims of trafficking through specifically established funds.<sup>406</sup> Confiscated funds should be made available for costs associated with the assistance and protection of trafficked persons including housing, medical, psychological, and material assistance, education, employment, and legal recourse (i.e., compensation).<sup>407</sup> The anti-trafficking law of the Dominican Republic, for example, provides that, upon confiscation, the proceeds of the crime of trafficking in persons are to be used for the compensation of victims for material and moral damages as well as for the establishment of programs that protect and assist trafficked victims.<sup>408</sup>

While the Trafficking Protocol does not explicitly mention the obligation to confiscate and seize the assets of traffickers upon proof of the commission of the crime or the attempt of the crime, the Transnational Crime Convention describes this responsibility in detail in Article 12.<sup>409</sup> First off,

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<sup>403</sup> See Council Framework Decision 2002/629/JHA, art. 3, para. 2, 2002 O.J. (L 203/1) 1, 2; see also OSCE GUIDE, *supra* note 72, at 43.

<sup>404</sup> See Recommendation 11, *supra* note 79, § 43; see also OSCE GUIDE, *supra* note 72, at 43.

<sup>405</sup> NOTE: the issue of confiscating assets of trafficking has created some complications since confiscation procedures vary from country to country. Certain states have not yet ratified the Transnational Organized Crime Convention and the Trafficking Protocol because their domestic criminal provisions conflict with the uniform international standards on confiscation. Thus, domestic laws on confiscation have to be repealed or amended in order for certain nations to be able to uphold their obligations under the Trafficking Protocol and the Transnational Organized Crime Convention. See Vivienne Chin & Yvon Dandurand, *Trafficking and Other Transnational Forms of Violence against Women and Children*, Nov. 10, 2001, at 17, available at <http://www.lawsite.ca/IAWI/Traffickingtext.htm>.

<sup>406</sup> See ECOSOC Report, *supra* note 58, at 8-9; see OSCE Action Plan, *supra* note 124, at 3.

<sup>407</sup> See Trafficking Protocol, *supra* note 3, art. 6; see also ECOSOC Report, *supra* note 58, at 13 (“Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies.”); see also ECOSOC Report, *supra* note 58, at 9 (advising states to “ensu[re] that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in the law.”).

<sup>408</sup> See Mohamed Y. Mattar, Speech Given at the Conference on New Steps in Path Breaking Strategies in the Global Fight Against Sex Trafficking, Santo Domingo, Dominican Republic 6 (Dec. 8-9, 2003), at <http://www.protectionproject.org/> [hereinafter Mattar 6].

<sup>409</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 12(1)(b) (“State Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of . . .

Article 12 requires States Parties to adopt “to the greatest extent possible within their domestic legal systems” measures that would enable law enforcement officials and courts to confiscate:

- proceeds of a crime like trafficking in persons
- property the value of which corresponds to the proceeds (if no proceeds)
- property, equipment, or other instrumentalities used in or destined for use in a crime like trafficking in persons.<sup>410</sup>

Furthermore, Article 12 imposes other obligations upon States Parties such as:

- adopting measures for the identification, tracing, freezing, or seizure of any item for the purpose of eventual confiscation<sup>411</sup>
- confiscating property that has been partially or fully transformed or converted from proceeds of a crime like trafficking in persons<sup>412</sup>
- confiscating legitimately owned property that has been intermingled with proceeds of a crime like trafficking in persons<sup>413</sup>
- confiscating income or other benefits derived from:
  - proceeds of a crime like trafficking in persons
  - property into which proceeds of crime have been transformed or converted
  - property with which proceeds of crime have been intermingled<sup>414</sup>
- empowering courts and other authorities to order the production of bank, financial, or commercial records (bank secrecy does not apply)<sup>415</sup>
- *consider* requiring an offender to demonstrate the lawful origin of alleged proceeds of a crime like trafficking in persons or other property liable to confiscation (note: this is solely a suggestion).<sup>416</sup>

The application of the above measures is not to impede upon the rights of a bona fide third party.<sup>417</sup>

The *travaux préparatoires* of the Convention indicate that the aforementioned confiscation and seizure procedures do not apply to official state property that is used for non-commercial purposes unless the state in question consents.<sup>418</sup> Furthermore, the *travaux* stress that the obligations arising from Article 12 are not intended “to restrict the rules that apply to diplomatic or State immunity, including that of international organizations.”<sup>419</sup>

Article 13 of the Transnational Crime Convention outlines the manner in which states are to cooperate with one another for the purposes of confiscating assets related to trafficking activities.<sup>420</sup> In general, the procedure is as follows: upon a request from a state that has

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[p]roperty, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.”); see also Convention and Protocol Travaux, *supra* note 68, at 5 (explaining Art. 12(1)(b) and pointing out that intent to use property, equipment or other instrumentalities to commit a crime like trafficking or having such property, equipment or other instrumentalities destined for illicit use is tantamount to an attempt to commit that crime).

<sup>410</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 12(1).

<sup>411</sup> See *id.* art. 12(2).

<sup>412</sup> See *id.* art. 12(3).

<sup>413</sup> See *id.* art. 12(4).

<sup>414</sup> See *id.* art. 12(5).

<sup>415</sup> See *id.* art. 12(6).

<sup>416</sup> See *id.* art. 12(7).

<sup>417</sup> See *id.* art. 12(8).

<sup>418</sup> See Convention and Protocol Travaux, *supra* note 68, at 5.

<sup>419</sup> *Id.*

<sup>420</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 13.

jurisdiction over a crime like trafficking in persons under the Convention and its Protocols, the requested state must act in accordance with an order of confiscation issued by a court within the territory of the requesting state and “take measures to identify, trace and freeze or seize proceeds of [trafficking], property, equipment or other instrumentalities” located within its boundaries.<sup>421</sup> The remaining provisions of Article 13 go into greater detail of the steps that are to be taken throughout the confiscation process.<sup>422</sup> The Convention allows a State Party to refuse a confiscation request “if the offence to which the request relates is not an offence covered by [the] Convention”<sup>423</sup> and its Protocols. Article 13 also stresses that the rights of bona fide third parties not to be prejudiced by the confiscation procedure.<sup>424</sup> Lastly, states may choose to enter into bilateral or multilateral treaties or agreements in order to enhance the effectiveness of their cooperation efforts regarding confiscation.<sup>425</sup>

### **Disposal of Confiscated Assets**

While the Trafficking Protocol does not address disposal of confiscated assets, the Transnational Organized Crime Convention provides guidance in this respect. Article 14 of the Convention discusses the manner in which governments are to dispose of confiscated proceeds of a crime like trafficking as well as related property:

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.
2. When acting on the request made by another State Party in accordance with article 13 of this Convention, State Parties shall, *to the extent permitted by domestic law* and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give *compensation to the victims of the crime* or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
  - (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2(c), of this Convention and to *intergovernmental bodies specializing in the fight against organized crime*;
  - (b) *Sharing with other States Parties*, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.<sup>426</sup>

Thus, in order to properly follow up with the obligations of Article 14, States Parties would need to revise their domestic laws to allow for the compensation of victims of crimes like trafficking from confiscated proceeds and property (if such laws do not already exist). ECOSOC suggests that the

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<sup>421</sup> See *id.* art. 13(2).

<sup>422</sup> See *id.* arts. 13(3)-13(6).

<sup>423</sup> *Id.* art. 13(7).

<sup>424</sup> See *id.* art. 13(8).

<sup>425</sup> See *id.* art. 13(9).

<sup>426</sup> *Id.* art. 14 [emphasis added].

assets be used to cover compensation awards for victims as well as support services for trafficked persons in countries of destination, transit, and origin.<sup>427</sup>

Article 14(2) of the Convention in particular allows for the transfer of confiscated proceeds and property by one State Party in response to a request by another State Party for the purposes of compensating victims.<sup>428</sup> If proceeds of trafficking and related property are located within the territory of one state, that state is obligated to return such proceeds and property to the requesting state. In turn, the requesting state can compensate victims of crimes like trafficking. It should be noted that such a transfer is to be done “to the extent permitted by domestic law”<sup>429</sup> and it is more of a recommendation rather than an obligation.

Article 14(3)(a) of the Convention allows States Parties to contribute part or all of the confiscated proceeds and property to a fund established by the United Nations for the purposes of assisting developing countries and countries with economies in transition to combat crimes such as trafficking in persons.<sup>430</sup> Article 14(3)(a) also suggests that State Parties should contribute confiscated proceeds and property to intergovernmental bodies that specialize in combating organized crime, which could feasibly include trafficking in persons.<sup>431</sup> These are recommendations, not requirements. One commentator points out that “[w]hile this provision is helpful and even necessary, the contributions should only be made after payment of compensation, restitution and damages to trafficked persons and after providing financial support to organizations that provide services and assistance to, or advocate on behalf of, trafficked persons.”<sup>432</sup> Prioritizing the victims’ right of compensation and funding for victim support is important and such an issue should be taken into consideration when passing domestic anti-trafficking laws.

Article 14(3)(b) of the Convention discusses the option of states sharing the proceeds of a crime like trafficking and related property with other states.<sup>433</sup> Once again, this is not a requirement, only a recommendation. One observer explains:

Trafficking is a billion-dollar industry and assets are located all over the world. No country should claim ownership over all of the assets simply because the assets are found in its territory. The assets should be shared by all of the affected countries, with particular consideration being given to the needs of trafficked persons and the financial ability of governments in countries of origin to provide services and assistance to trafficked persons and populations vulnerable to trafficking. The assets should be distributed in a manner that meets the needs of the trafficked persons and the government’s burden of providing such assistance.

Failure to return the assets to trafficked persons could lead to re-trafficking and revictimization. Persons often return home with no money, a lingering debt to the trafficker back home and a continuing need to support family members. They often decide to migrate once again in the hopes of avoiding the traffickers and earning some money. Unfortunately, some of them end up re-trafficked.<sup>434</sup>

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<sup>427</sup> See ECOSOC Report, *supra* note 58, at 8-9.

<sup>428</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 14(2).

<sup>429</sup> *Id.*

<sup>430</sup> See *id.* art. 14(3)(a); see also *id.* art. 30(2); ECOSOC Report, *supra* note 58, at 8-9.

<sup>431</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 14(3)(a).

<sup>432</sup> ANNOTATED GUIDE, *supra* note 237, at 17.

<sup>433</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 14(3)(b).

<sup>434</sup> ANNOTATED GUIDE, *supra* note 237, at 17.

Governments should contemplate sharing confiscated proceeds and property derived from trafficking with other governments in order to aid victims of trafficking whenever feasible. States should recognize the fact that sharing assets<sup>435</sup> confiscated from traffickers furthers the crucial goal of international cooperation delineated in the Trafficking Protocol.<sup>436</sup>

### **Liability of Legal Persons**

When criminalizing trafficking in accordance with the Trafficking Protocol, drafters should set forth the liability of *both* natural and legal persons as traffickers (although not directly mentioned in Article 5). Traffickers sometimes operate under the penumbra of a legal entity with assets. When drafting anti-trafficking legislation, consideration should be given to confiscating and using those assets as compensation and damages for victims of trafficking.<sup>437</sup> The 1995 Belgian law on trafficking in persons provides for confiscation of such assets regardless of whether ownership lies with the convicted trafficker.<sup>438</sup>

Article 10 of the Transnational Crime Convention delineates the liability of legal persons in the following manner:

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offenses.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.<sup>439</sup>

It should be noted that the Convention presents the option of imposing criminal penalties as well as civil or administrative sanctions upon legal persons (although such penalties and sanctions are not defined in great detail, as mentioned above). These sanctions are not mutually exclusive. The anti-trafficking legislation of the Dominican Republic, for example, holds organizations or corporations that are involved in trafficking criminally liable and imposes penalties such as fines, revocation of licenses, limitations upon the activity of legal entities, and closure of business.<sup>440</sup> Such sanctions are important because the legal entities of the traffickers should be penalized in addition to the traffickers themselves.<sup>441</sup> The OSCE explains that:

the prosecution of the individual persons involved is not sufficient in order to reach the main perpetrators. In such cases these businesses may continue to operate with other persons running them, whereas the individuals are sent to prison. In many cases, it might also be difficult to prove the involvement of individual persons acting for such entities.

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<sup>435</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 14(3)(b).

<sup>436</sup> See Trafficking Protocol, *supra* note 3, art. 2(c).

<sup>437</sup> See OSCE GUIDE, *supra* note 72, at 45 (“Traffickers sometimes act through legal entities (also called “legal persons”), such as travel agencies, marriage brokers, sex shops, bars, brothels or employment agencies.”); *see also* ECOSOC Report, *supra* note 58, at 8.

<sup>438</sup> See Law Containing Provisions to Combat Trafficking in Human Beings and Child Pornography, art. 77bis, §5 (1995) (Belg.), available at <http://www.legislationline.org/view.php?document=54829>.

<sup>439</sup> Transnational Organized Crime Convention, *supra* note 37, art. 10.

<sup>440</sup> See Mattar 6, *supra* note 408, at 4.

<sup>441</sup> See OSCE Action Plan, *supra* note 124, at 2.

Further, these entities, and not the individuals acting in their name or collaborating with them, realize the main profits from trafficking.<sup>442</sup>

### **Establishment of Specialized Units**

In order to effectively investigate and prosecute trafficking cases, the OSCE recommends the creation of specialized units within the national police and the prosecutor's offices of each country.<sup>443</sup> In particular, the OSCE suggests that:

Tasks of such units should include the development and use of effective investigation and prosecution methods, as well as the co-ordination of anti-trafficking activities in co-operation with other national authorities. They should also establish or strengthen co-operation with their counterparts in other countries, as well as relevant regional and international organizations, including Europol and Interpol.<sup>444</sup>

Neither the Trafficking Protocol nor the Transnational Organized Crime Convention requires its States Parties to establish such specially trained bodies.<sup>445</sup>

### ***Investigation Units***

The European Union issued several resolutions encouraging its member states to create special police divisions, preferably staffed by women that would be tasked to receive complaints from victims of trafficking and to arrange for their protection. Furthermore, EU member states were encouraged to establish separate units within their domestic police forces that focus particularly on combating trafficking in persons.<sup>446</sup>

In its Action Plan to Combat Trafficking in Human Beings, the OSCE also calls for the creation of specialized police units that are to pursue trafficking cases.<sup>447</sup> The OSCE suggests that in order for these units to function properly they must comprise of "both women and men with advanced training in investigating offences involving sexual assault or involving children, in order to promote competence, professionalism and integrity."<sup>448</sup>

Until recently, the Stability Pact for South Eastern Europe Task Force on Trafficking in Human Beings conducted a three-pronged training of police officers, special anti-trafficking investigators, prosecutors, and judges.<sup>449</sup> This particular regional course promoted international standards and emphasized education on the trafficking phenomenon for police officers, who are often the first point of contact with victims and perpetrators. The Stability Pact indicated that "[p]roviding anti-trafficking training throughout the ranks of each country's front-line police force will result in the best chance for improving law enforcement's ability to respond appropriately to a trafficking case in the initial 24 hours after discovery."<sup>450</sup> The course included topics such as knowledge of

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<sup>442</sup> OSCE GUIDE, *supra* note 72, at 46.

<sup>443</sup> *See id.* at 50.

<sup>444</sup> *Id.* at 51.

<sup>445</sup> *See id.* at 50; *see generally* Trafficking Protocol, *supra* note 3; *see generally* Transnational Organized Crime Convention, *supra* note 37.

<sup>446</sup> *See, e.g.*, OSCE GUIDE, *supra* note 72, at 50; European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament 'For Further Actions in the Fight against Trafficking in Women,' EUR. PARL. DOC. (A5-0127) 310 (2000).

<sup>447</sup> *See* OSCE Action Plan, *supra* note 124, at 3; *see also* OSCE GUIDE, *supra* note 72, at 50.

<sup>448</sup> OSCE Action Plan, *supra* note 124, at 3; *see also* OSCE GUIDE, *supra* note 72, at 50.

<sup>449</sup> *See* ICMPD TRAINING MANUAL, *supra* note 10, at 5.

<sup>450</sup> *Id.*

international and national anti-trafficking laws, proper contact with victims (i.e., gender sensitization), and evidence gathering, as well as stressed the importance of protecting trafficked victims and reintegrating them into society.<sup>451</sup> This regional training also incorporated specialized police officers tasked with trafficking cases.<sup>452</sup>

### *Prosecution Units*

To complement the police units specialized in the investigation of trafficking cases, a separate unit of prosecutors solely handling trafficking cases should be established. The training materials and courses of the Stability Pact mentioned above also sought to include prosecutors and judges.<sup>453</sup> Such training of attorneys and the judiciary is essential to ensuring the correct interpretation and application of international and domestic anti-trafficking laws. For example, proving the use of force or other coercive means, a key element of a trafficking case, is often challenging.<sup>454</sup> Through training, prosecutors can become familiar with the types of evidence that can be brought forth and the proper manner in which such evidence is to be introduced in order to successfully sustain a trafficking prosecution. Furthermore, sensitizing prosecutors to gender issues and victimization issues is also important when they attempt to secure a victim's testimony.<sup>455</sup>

Despite the fact that neither the Trafficking Protocol nor the Transnational Organized Crime Convention specifically addresses the issue of specialized investigative and prosecutorial units, states should consider establishing such bodies in order to better implement anti-trafficking laws. The specialized units would enable governments to become more effective in their investigations and prosecutions of suspected traffickers and to better protect victims of trafficking.

### *Examples of Compliance and Non-Compliance*

#### **States Parties' Obligations**

##### De Jure

- **Non-compliance:** Angola signed but has not yet ratified the Transnational Organized Crime Convention<sup>456</sup> and has neither signed nor ratified the Trafficking Protocol.<sup>457</sup> Moreover, Angola does not have domestic legislation defining trafficking in persons as a separate crime.<sup>458</sup> Authorities use constitutional<sup>459</sup> and statutory provisions criminalizing forced or bonded labor, prostitution, kidnapping, and illegal entry to prosecute traffickers.<sup>460</sup> While the above provisions can be used to supplement trafficking charges,

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<sup>451</sup> See *id.*

<sup>452</sup> See *id.* at 5.

<sup>453</sup> See *id.*

<sup>454</sup> See Intelligence Monograph, *supra* note 2, at 32-3.

<sup>455</sup> See ICMPD TRAINING MANUAL, *supra* note 10, at 68.

<sup>456</sup> Angola signed the Transnational Crime Convention on December 13, 2000 but has not yet deposited an instrument of ratification. See Signatories to the Convention against Transnational Organized Crime, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

<sup>457</sup> See Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>458</sup> See 2005 TIP Report, *supra* note 5, at 54.

<sup>459</sup> See *id.*

<sup>460</sup> See *id.*

they are not a substitute for the establishment of a separately defined offense of trafficking in persons.

- **Compliance:** Romania has signed and ratified both the Transnational Organized Crime Convention<sup>461</sup> and the Trafficking Protocol<sup>462</sup> and defines the crime of trafficking in persons in its “Law on the Prevention and Combat of Trafficking in Human Beings.”<sup>463</sup> The definition complies with that of the Trafficking Protocol.<sup>464</sup>

#### De Facto

- **Compliance:** The Netherlands separately defines the offense of trafficking in persons for the purpose of forced prostitution and forced labor. In 2003 convictions based on trafficking charges numbered 106, and in 2004 Dutch police initiated 604 investigations referring 87 trafficking cases for prosecution.<sup>465</sup> It should be noted that authorities give priority to trafficking cases among other criminal cases and that prosecutions last approximately one year.<sup>466</sup>
- **Non-compliance:** As of June 2005, South Africa does not have a law criminalizing trafficking in persons as a separate offense. Traffickers are currently prosecuted under several statutes, such as the Child Care Act, the Sexual Offences Act, the Prevention of Organized Crime Act, and general criminal law. Approximately ten investigations and four prosecutions related to trafficking were initiated under the aforementioned laws in 2003-04 and at least two traffickers were prosecuted in 2004-05, but not exclusively based on trafficking charges. The South African government does not make public statistics on the number of trafficking cases investigated or prosecuted per year.<sup>467</sup>

### **Criminalization of Lesser Included Offenses and Other Activities Related to Trafficking**

#### De Jure

- **Compliance:** The Hungarian Penal Code indicates that “[a]ny person making preparations to engage in trafficking in human beings commits a misdemeanor and shall [be] punishable with imprisonment of up to two years.”<sup>468</sup>
- **Non-compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” states the act of attempting to commit the crime of trafficking is punishable but does not delineate the sentence that is to accompany this particular offense.<sup>469</sup>

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<sup>461</sup> Romania signed the Transnational Organized Crime Convention on December 14, 2000 and deposited its instrument of ratification on December 4, 2002. See Signatories to the Convention against Transnational Organized Crime, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

<sup>462</sup> Romania signed the Trafficking Protocol on December 14, 2000 and deposited its instrument of ratification on December 4, 2002. See Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>463</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), arts. 2, 12-16 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>464</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 93.

<sup>465</sup> See 2004 TIP Report, *supra* note 17, at 160; see 2005 TIP Report, *supra* note 5, at 164.

<sup>466</sup> See ASI REPORT, *supra* note 150, at 68.

<sup>467</sup> See 2004 TIP Report, *supra* note 17, at 77; see also 2005 TIP Report, *supra* note 5, at 198.

<sup>468</sup> CRIMINAL CODE [CRIM. C.] art. 175/B(6) (Hung.), at <http://www.legislationline.org/view.php?document=55324>.

## De Facto

- **Non-compliance:** Yemen does not criminalize trafficking in persons or the attempt to commit trafficking, but in 2003, government authorities arrested eight individuals for attempting to traffic twenty children into Saudi Arabia for the purpose of begging and in 2004 security forces interdicted and curtailed several child trafficking attempts.<sup>470</sup>

## **Establishment of Additional Crimes Within the Trafficking Context**

### De Jure

- **Compliance:** In addition to the separate offense of trafficking in persons, The Former Yugoslav Republic of Macedonia has a provision in its Criminal Code that prohibits torture by a public official. Article 142(1) indicates that “[a] person who while performing his duty, applies force, threat or some other unallowed means or unallowed manner, with the intention of extorting a confession or some other statement from an accused, a witness, an expert or from some other person, shall be punished with imprisonment of three months to five years.”<sup>471</sup> Furthermore, if severe violence was used or the victim suffers severe consequences, then the sentencing threshold is raised to at least one year.<sup>472</sup> The Macedonian Criminal Code also includes such crimes as kidnapping,<sup>473</sup> rape,<sup>474</sup> statutory rape of a helpless person,<sup>475</sup> sexual attack upon a child,<sup>476</sup> and statutory rape with misuse of position.<sup>477</sup>

### De Facto

- **Compliance:** Denmark defines trafficking as a separate offense but prosecutors also have other laws that they can charge under *in addition* to trafficking. For example, in December 2003, Danish authorities arrested five men and charged them with *both* trafficking and pimping. Their trial began in April 2004.<sup>478</sup>

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<sup>469</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 15 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>470</sup> See 2004 TIP Report, *supra* note 17, at 254; see also 2005 TIP Report, *supra* note 5, at 227.

<sup>471</sup> CRIMINAL CODE [CRIM. C.] art. 142(1) (Maced.), at

[http://www.coe.int/T/E/Affaires\\_juridiques/Coop%E9ration\\_juridique/Combattre\\_la\\_criminalit%E9\\_%E9conomique/P\\_rojet\\_LARA/Natleg\\_FYROM.asp#TopOfPage](http://www.coe.int/T/E/Affaires_juridiques/Coop%E9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/P_rojet_LARA/Natleg_FYROM.asp#TopOfPage).

<sup>472</sup> See *id.* art. 142(2).

<sup>473</sup> See *id.* art. 141.

<sup>474</sup> See *id.* art. 186.

<sup>475</sup> See *id.* art. 187.

<sup>476</sup> See *id.* art. 188.

<sup>477</sup> See *id.* art. 189.

<sup>478</sup> See 2004 TIP Report, *supra* note 17, at 135.

## Sanctions

### De Jure

- **Compliance:** In Moldova, the sentence for the offense of trafficking in persons is seven to fifteen years.<sup>479</sup> Aggravating circumstances, such as the offense being committed repeatedly, against two or more persons, against victims who are pregnant, by two or more persons, endangering the life or mental health of the victims, or using torture, increase the punishment to anywhere between ten and twenty years in jail.<sup>480</sup> If trafficking is committed by an organized criminal group or results in serious bodily injury, permanent psychological damage, or the death of the victims, the sentences range between fifteen to twenty five years to life imprisonment.<sup>481</sup> The Moldovan Criminal Code defines trafficking in children as a separate offense, which is punishable by ten to fifteen years imprisonment.<sup>482</sup> The offense of trafficking in children also takes into consideration some of the same aggravating circumstances mentioned above, and increase the punishment to anywhere between fifteen years to life imprisonment.<sup>483</sup>
- **Non-compliance:** Syria does not have a new anti-trafficking law, but most forms of trafficking in persons, like trafficking for the purpose of prostitution, exist in older statutes. However, this 1961 provision subjects the offender to “imprisonment for a period of less than a year and not more than five years” and imposes various fines depending on where the offense took place.<sup>484</sup>

### De Facto

- **Non-compliance:** Colombia separately defines the offense of trafficking in persons and between 1992 and 2000, 99 cases were filed based on trafficking charges. In 2002, it was reported that “[o]nly seven of the 99 cases went to trial, with an average sentence imposed of between two and five years’ imprisonment for the trafficker. Under the Colombia legal system, individuals sentenced to two years in prison are allowed to go free, as this is the minimum sentence. In two of the cases, the traffickers were sentenced to 5 years imprisonment, but their attorneys applied for anticipated sentences, which lowered prison terms and granted the offenders domiciliary detention (i.e., at home).” In more recent years, authorities continued to prosecute traffickers but no convictions were registered in 2004.<sup>485</sup>

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<sup>479</sup> See CRIMINAL CODE [CRIM. C.] art. 165(1) (Mold.), at <http://www.legislationline.org/index.php?topic=14&country=28&org=0&eu=0>.

<sup>480</sup> See *id.* art. 165(2).

<sup>481</sup> See *id.* art. 165(3).

<sup>482</sup> See *id.* art. 206(1).

<sup>483</sup> See *id.* arts. 206(2)-(3).

<sup>484</sup> See Law No. 10/1961, art. 5 (1961) (Syria), at <http://www.protectionproject.org/>; see also The Protection Project; Human Rights Reports: Syria, at <http://www.protectionproject.org/>; 2005 TIP Report, *supra* note 5, at 208.

<sup>485</sup> ASI REPORT, *supra* note 150, at 189; see 2005 TIP Report, *supra* note 5, at 85.

## Confiscation and Seizure of Assets

### De Jure

- **Compliance:** In the United Kingdom, the Proceeds of Crime Act requires a court to order an offender to pay a certain amount when the court determines that the offender has benefited from his/her criminal conduct.<sup>486</sup> Furthermore, the Powers of Criminal Courts (Sentencing) Act authorizes a court to deprive a convicted person of the criminal property/assets related to the offense that s/he has committed.<sup>487</sup>

### De Facto

- **Compliance:** In 2002, it was reported that the Central Clubs and Vice Unit of the London Metropolitan Police had the highest rate of criminal asset seizure in the United Kingdom. Specifically, in trafficking cases, the unit had seized £275,000 in traffickers' assets during the first half of 2002.<sup>488</sup>

## Disposal of Confiscated Assets

### De Jure

- **Compliance:** South Africa's International Cooperation in Criminal Matters Act of 1996, later amended by the Prevention of Organized Crime Act of 1998, provides for the confiscation of proceeds of a crime and for the transfer of such confiscated proceeds between South Africa and foreign states.<sup>489</sup>

### De Facto

- **Non-compliance:** Although English law provides for the confiscation of criminal assets /property and victim compensation via proceeds from such assets/property, a 2002 report indicated that "[t]here are concerns that currently seized assets are remaining in the Government's Treasury, rather than being applied to compensation for trafficked persons."<sup>490</sup>

## Liability of Legal Persons

### De Jure

- **Compliance:** The anti-trafficking legislation of the Dominican Republic holds organizations or corporations that are involved in trafficking criminally liable and imposes penalties such as fines, revocation of licenses, limitations upon their activity, and closure of business.<sup>491</sup>

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<sup>486</sup> See Proceeds of Crime Act, § 1 (1995) (U.K.); see also ASI REPORT, *supra* note 150, at 115.

<sup>487</sup> See Powers of Criminal Courts (Sentencing) Act § 143 (2000) (U.K.); see also ASI REPORT, *supra* note 150, at 115.

<sup>488</sup> See ASI REPORT, *supra* note 150, at 115.

<sup>489</sup> See The Protection Project; Human Rights Reports: South Africa, at <http://www.protectionproject.org/>.

<sup>490</sup> ASI REPORT, *supra* note 150, at 115.

<sup>491</sup> See Mattar 6, *supra* note 408, at 4.

## De Facto

- **Compliance:** While enforcement of anti-trafficking measures remains weak in the Dominican Republic, authorities closed down seven commercial establishments in Sosúa where tourists were sexually exploiting children.<sup>492</sup>
- **Compliance:** In 2004, the U.S. Department of State reported that in Kuwait, “[t]he Ministry of Interior has a department specifically responsible for licensing, regulating, and monitoring recruitment agencies that hire foreign domestic workers. The government closed 48 recruitment agencies and suspended the hiring privileges of 113 businesses for trafficking-related offenses.”<sup>493</sup>

## **Establishment of Specialized Units**

### De Jure

- **Compliance:** The BiH Council of Ministers authorized the creation of a Strike Force, or a special unit within the police force solely dedicated to combating trafficking in persons. The Strike Force is under the auspices of the State Prosecutor and consists of representatives from the Prosecutor’s Office, the Entity and Brcko taxation offices, the Ministries of Interior, the financial police, and Brcko and State Border Services. The Ministry of Security officially appoints members of the Strike Force. The Strike Force signed a Memorandum of Understanding with the governments of the Entities and of the Brcko District to ensure the implementation of the Bosnian National Plan of Action (“NPA”) to combat trafficking.<sup>494</sup>
- **Non-compliance:** India’s 1956 law entitled “The Suppression of Immoral Traffic in Women and Girls Act” calls for the appointment of a special police officer “for each area to be specified by the State Government” to deal with trafficking offenses.<sup>495</sup> Given the large scale trafficking problem in India, one officer per designated area is insufficient. Furthermore, the law does not call for the establishment of a specialized prosecutorial unit.

### De Facto

- **Compliance:** In the Czech Republic, there is a special division within the Organized Crime Investigation Unit of the State Police that focuses on trafficking cases. This unit uses special investigation techniques such as electronic surveillance and undercover operations. The Czech Ministry of Interior cooperates with NGOs in order to train police officers and

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<sup>492</sup> See 2004 TIP Report, *supra* note 17, at 233; see also 2005 TIP Report, *supra* note 5, at 96.

<sup>493</sup> 2004 TIP Report, *supra* note 17, at 196.

<sup>494</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 109; see also BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE: 2004 FOCUS ON PREVENTION IN ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, ROMANIA, SERBIA AND MONTENEGRO, THE UN ADMINISTERED PROVINCE OF KOSOVO, 178 (2004), available at [www.seerights.org](http://www.seerights.org) [hereinafter 2004 SOUTH EASTERN EUROPE UPDATE].

<sup>495</sup> See The Suppression of Immoral Traffic in Women and Girls Act, No. 104, § 13(1) (1956) (India), available at <http://www.protectionproject.org/>.

investigators in handling trafficking cases. As of June 2005, a new internal website was developed for police in order to provide trafficking awareness information.<sup>496</sup>

- **Non-compliance:** In 2004, the U.S. Department of State reported that the government of Sierra Leone originally assigned responsibility for trafficking cases to the Family Support Unit within the police force. Although the unit received training in anti-trafficking methods, it continued to focus its efforts on domestic abuse cases. In 2005, the U.S. Department of State reported that Sierra Leonean authorities created a new anti-trafficking task force but that “law enforcement efforts will likely remain hampered by a lack of resources, personnel, and equipment.”<sup>497</sup>

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<sup>496</sup> See 2004 TIP Report, *supra* note 17, at 133; see also 2005 TIP Report, *supra* note 5, at 94.

<sup>497</sup> See 2004 TIP Report, *supra* note 17, at 76; see also 2005 TIP Report, *supra* note 5, at 193.

## B. VICTIM ASSISTANCE AND PROTECTION

### Article 6: Assistance to and Protection of Victims of Trafficking in Persons

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

Article 6 of the Trafficking Protocol outlines the obligations of States Parties to assist and protect victims of trafficking.<sup>498</sup> The notion of “assistance” entails providing victims with information pertaining to their situation,<sup>499</sup> housing,<sup>500</sup> legal representation,<sup>501</sup> medical, psychological and material support,<sup>502</sup> as well as opportunities for employment and education.<sup>503</sup> The notion of “protection” entails concealing the identity of victims during legal proceedings,<sup>504</sup> and providing for the physical safety of victims<sup>505</sup> (i.e., shielding victims from possible retaliation by traffickers, etc.).

It should be noted that Article 6 incorporates qualifying language and requires States Parties to provide victims of trafficking with various means of assistance and protection “in appropriate cases” and “to the extent possible.”<sup>506</sup> This language takes into consideration the resources that a country has available and can devote to its efforts to comply with international standards on trafficking. This is not to say that the obligations delineated in Article 6 are to be ignored simply because a country does not have any resources to spare for anti-trafficking measures. Article 6

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<sup>498</sup> See Trafficking Protocol, *supra* note 3, art. 6.

<sup>499</sup> See *id.* art. 6(2)(a).

<sup>500</sup> See *id.* art. 6(3)(a).

<sup>501</sup> See *id.* arts. 6(2)(b), 6(3)(b).

<sup>502</sup> See *id.* art. 6(3)(c).

<sup>503</sup> See *id.* art. 6(3)(d).

<sup>504</sup> See *id.* art. 6(1).

<sup>505</sup> See *id.* art. 6(5).

<sup>506</sup> *Id.* art. 6.

incorporates clear and legally binding requirements (“shall protect,” “shall ensure,” etc.)<sup>507</sup> and, thus, sets forth the minimum level of assistance and protection that a nation must provide to trafficked victims in order to be in compliance with the Trafficking Protocol.<sup>508</sup>

Countries must, at least, abide by the obligations described in Article 6 and should strive to give victims as much protection as possible. One commentator provides a succinct list of the rights that victims are entitled to including:

- the right to safety
- the right to privacy
- the right to information
- the right to legal representation
- the right to be heard in court
- the right to compensation for damages
- the right to medical assistance
- the right to social assistance
- the right to seek residence
- the right to return.<sup>509</sup>

Most of these rights are met when States Parties fulfill their minimum obligations under Article 6 as well as other provisions of the Protocol.<sup>510</sup> However, governments should undertake as many *de jure* and *de facto* initiatives as is feasible (even those not specifically mentioned in Article 6 of the Protocol) in order to provide full protection and assistance to trafficked victims. All countries should consider launching such efforts including countries of origin, transit, and destination. Furthermore, countries should examine other countries’ anti-trafficking laws and examples of best practices. Also when nations run into financial problems, resource rich countries should step in and give aid. For example, in 2004, the United States pledged \$50 million in strategic anti-trafficking assistance to eight countries: Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania.<sup>511</sup> The government of Sweden likewise allotted \$24 million to anti-trafficking efforts for the period of 2004-2006, including assistance to nations in the Baltics and the Balkans.<sup>512</sup>

It is important to provide adequate protections and means of assistance to trafficked persons because doing so ensures, *inter alia*, the willingness of such victims to testify against their traffickers and/or to provide investigation and prosecution units with invaluable information regarding trafficking networks.<sup>513</sup> Furthermore, upon their testimony and/or help, it is crucial to protect victims (as well as their families and persons close to them) from retaliation by the traffickers and from the possibility of being re-trafficked.<sup>514</sup> The OSCE indicates, though, that protection and assistance should not only be offered to victims who agree to testify.<sup>515</sup>

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<sup>507</sup> See *id.*

<sup>508</sup> See Puleo Speech, *supra* note 3 (indicating that the Trafficking Protocol provides a “floor” not a “ceiling” for what countries can do to combat trafficking in persons).

<sup>509</sup> See Mattar 3, *supra* note 191, at 1.

<sup>510</sup> See Trafficking Protocol, *supra* note 3, arts. 7-8.

<sup>511</sup> See Press Release, United States Department of State, U.S. to Provide Anti-Trafficking Assistance to Eight Countries (July 16, 2004), at <http://www.state.gov/r/pa/prs/ps/2004/34437.htm>.

<sup>512</sup> See 2004 TIP Report, *supra* note 17, at 177-78; see also 2005 TIP Report, *supra* note 5, at 206.

<sup>513</sup> See ECOSOC Report, *supra* note 58, at 9; see also ANNOTATED GUIDE, *supra* note 237, at 19.

<sup>514</sup> See OSCE Action Plan, *supra* note 124, at 5.

<sup>515</sup> See OSCE GUIDE, *supra* note 72, at 74.

Below is a discussion of the protective measures and means of assistance provided for in Article 6 of the Trafficking Protocol as well as those that are not provided for in the Protocol but delineated in other applicable instruments such as the Transnational Organized Crime Convention. Once again, the reader should not interpret this as an exhaustive list.

Obligations Under Art. 6	Obligations Not Addressed in Art. 6	Obligations Under the Transnational Organized Crime Convention
<ul style="list-style-type: none"> <li>• Protecting the privacy and identity of victims by making legal proceedings “confidential”</li> <li>• Providing victims with information and assistance in connection with court proceedings</li> <li>• Rehabilitating victims by providing them with housing, legal counseling, information, medical, psychological and material assistance, employment, education and training</li> <li>• Addressing the special needs of victims (especially children)</li> <li>• Ensuring the physical safety of victims</li> <li>• Providing for means of compensation</li> </ul>	<ul style="list-style-type: none"> <li>• Identifying individuals as trafficked victims</li> <li>• Defining individuals as trafficked victims in accordance with the law</li> <li>• Ensuring that victims are not penalized for illegal acts in connection with trafficking</li> <li>• Defining what the term “confidential” entails with regard to the said legal proceedings</li> <li>• Providing <i>free</i> translation when giving victims information and assistance in connection with court proceedings</li> <li>• Providing <i>free</i> legal services to victims throughout proceedings</li> <li>• Providing basic or emergency services for victims</li> <li>• Protecting child witnesses Providing for the physical safety of victims during repatriation</li> </ul>	<ul style="list-style-type: none"> <li>• Protecting the privacy and identity of testifying victims through non-disclosure or limited disclosure of their identities and whereabouts at all times</li> <li>• Protecting the privacy and identity of testifying victims and providing for their safety by relocating them</li> <li>• Protecting the privacy and identity of testifying victims through video link and other technology</li> <li>• Providing for the physical safety of families and persons close to the victims if and when victims agree to testify</li> <li>• Providing for both compensation <i>and</i> restitution for victims</li> </ul>

### Identifying Individuals as Trafficked Victims

Article 6 of the Protocol does not clearly indicate that the first step in protecting victims of trafficking is properly identifying them as victim through an established method.<sup>516</sup> Article 10(1)(a) of the Protocol imposes an obligation to distinguish between perpetrators and victims at the borders.<sup>517</sup> Experts, however, insist that a more precise identification process – and training of law enforcement on that process- should be in place.<sup>518</sup> ECOSOC warns that “[a] failure to

<sup>516</sup> See Trafficking Protocol, *supra* note 3, art. 6.

<sup>517</sup> See *id.* art. 10(1)(a).

<sup>518</sup> See OSCE GUIDE, *supra* note 72, at 70.

identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place."<sup>519</sup>

The U.S. State Department's Office to Monitor and Combat Trafficking in Persons issued guidelines for law enforcement personnel, service providers, and the general public to aid in the identification of trafficked victims.<sup>520</sup> While the guidelines are detailed and deserve a full read, some of the highlights include indicators of possible establishments where trafficked victims are kept as well as signs that a person may have been trafficked.

According to the guidelines, a place is suspect if:

- it is a heavily secured commercial establishment with barred windows, locked doors, and electronic surveillance in an isolated location where victims are never seen leaving the premises unless escorted
- victims live on the premises (like a brothel or work site), are prohibited from leaving, and/or are driven to and from the premises by a guard
- it is frequented often by a stream of men arriving and leaving the premises.<sup>521</sup>

According to the guidelines, a person is suspected of being trafficked if:

- s/he is kept under surveillance when taken to a doctor, hospital, or clinic for treatment (trafficker may act as translator)
- s/he shows signs of poor physical health such as malnutrition, dehydration, poor personal hygiene, sexually transmitted diseases, diabetes, cancer, heart disease, or any other illnesses left untreated
- s/he shows signs of poor mental health such as post-traumatic stress or other psychological disorders
- s/he shows signs of ill treatment such as rape, sexual abuse, bruising, and broken bones
- s/he does not have his/her own identity or travel documents
- s/he has very little or no money and a trafficker or pimp controls all the money
- s/he is extremely nervous especially if their "translator" (i.e., trafficker) is present.<sup>522</sup>

The above should not be interpreted as exhaustive lists, and states should strive to develop their own criteria for identifying trafficked victims based on the particulars of the trafficking activities occurring across and within their borders.

### **Defining Individuals as Trafficked Victims**

Individuals must be defined as victims of trafficking within the meaning of the laws of a particular state. A definition delineated in law is needed in order to enable governments to develop a victim identification process and train their officials accordingly and to ascertain what protection and assistance such victims are eligible for under the law. This is not an obligation that is emphasized by Article 6 of the Protocol<sup>523</sup> or the Transnational Organized Crime Convention. One way to

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<sup>519</sup> ECOSOC Report, *supra* note 58, at 6.

<sup>520</sup> See generally United States Department of State, Office to Monitor and Combat Trafficking in Persons, How Can I Recognize Trafficking Victims? (July 28, 2004), available at <http://www.state.gov/g/tip/rls/fs/34563.htm> [hereinafter U.S. State Department Identification Guidelines].

<sup>521</sup> See *id.* at 2.

<sup>522</sup> See *id.* at 2-3.

<sup>523</sup> See Trafficking Protocol, *supra* note 3, art. 6.

properly define individuals as victims of trafficking is to follow the guidelines of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (“UN Victims Declaration”).<sup>524</sup> The Declaration indicates that *victims of crimes* are those “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.”<sup>525</sup> An individual is a victim independent of the fact that the perpetrator has been identified, apprehended, prosecuted, or convicted.<sup>526</sup> Furthermore, one is a victim independent of the fact that there is a familial relationship between the victim and perpetrator.<sup>527</sup> A person’s immediate family or dependents also acquire the status of victims if they have suffered harm “in intervening to assist victims in distress or to prevent victimization.”<sup>528</sup> Lastly, the UN Victims Declaration distinguishes between victims of crimes and *victims of abuse of power*, or “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 *do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.*”<sup>529</sup>

The U.S. anti-trafficking legislation provides a good example of how to define trafficked victims. The law differentiates between “sex trafficking”<sup>530</sup> and “severe forms of trafficking in persons”<sup>531</sup> and allots certain protective benefits and services to victims of the latter<sup>532</sup> as well as to their families.<sup>533</sup> Severe forms of trafficking in persons means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>534</sup> Accordingly, a victim of severe forms of trafficking in persons is defined in the U.S. anti-trafficking law as an individual who as been subjected to any of the above described illicit acts, has not yet attained eighteen years of age, *or* who is the subject of a particular certification. This definition applies throughout the statute including provisions that address prosecution and punishment, prevention, protection and assistance for victims, and foreign assistance. This definition is further defined for access to public benefits and services for victims who do not have legal immigration status in the United States.<sup>535</sup> While not applicable to child victims, the act specifies that adult victims who

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<sup>524</sup> See generally United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Nov. 29, 1985, G.A. Res. 40/34, U.N. GAOR, U.N. Doc. A/40/53 (1985), available at <http://www1.umn.edu/humanrts/instreet/i9dbpv.htm> [hereinafter UN Victims Declaration]; see also Mattar 3, *supra* note 191, at 1.

<sup>525</sup> UN Victims Declaration, *supra* note 524, art. 1.

<sup>526</sup> See *id.* art. 2.

<sup>527</sup> See *id.*

<sup>528</sup> *Id.*

<sup>529</sup> *Id.* art. 18 [emphasis added].

<sup>530</sup> See TVPA 2000, *supra* note 206, § 103(9) (“The term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”).

<sup>531</sup> *Id.* § 103(8).

<sup>532</sup> See *id.* § 107(b)(1)(A).

<sup>533</sup> See TVPRA 2003, *supra* note 206, § 4(a)(2).

<sup>534</sup> See TVPA 2000, *supra* note 206, § 103(8).

<sup>535</sup> See *id.* § 107(b)(1)(C).

meet the definition of severe forms of trafficking must also meet certain requirements in order to qualify for public assistance.<sup>536</sup>

### **Non-Criminalization**

Commentators stress that identifying and defining victims of trafficking in persons properly is important because they should not be treated as criminals along side their abusers. One expert argues that “states must not criminalize the act of the trafficked person and should not penalize the victim for illegal acts, such as illegal immigration or prostitution, as long as these acts have been committed in relation to the act of trafficking itself.”<sup>537</sup> He indicates that, while the Trafficking Protocol does not specifically address the non-criminalization of victims, Article 6 does establish state responsibility to protect victims of trafficking.<sup>538</sup> This responsibility includes taking measures to ensure that victims are not treated like criminals within the context of trafficking for conduct that is otherwise illegal.<sup>539</sup> For example, if a victim is apprehended and she is carrying falsified identity and travel documents, she should not be charged with document forgery because her trafficker forced her to carry such documentation and probably forged the documents himself.

### **Confidentiality**

Article 6(1) of the Trafficking Protocol indicates that states are required to protect the privacy and identity of trafficked individuals to the extent that it is appropriate and possible under their domestic laws.<sup>540</sup> This language, once again, takes into consideration the available resources of a particular country. An observer points out that this language can potentially weaken the effect of this provision instead of requiring states *absolutely* to ensure the protection of the privacy and identity of trafficked persons.<sup>541</sup> Thus, she suggests that NGO’s should lobby governments to pass domestic legislation that explicitly “forbid[s] the release of the names, the addresses or other identifying information to the public.”<sup>542</sup>

While not listing all means of protection available before, during, and after trial, Article 6(1) of the Protocol mentions that one general way of protecting victims of trafficking is to make the *proceedings* pertaining to their case confidential.<sup>543</sup> The Protocol does not, however, specify what the term “confidential” entails. “This could include, for example, the exclusion of the public from the trial or restrictions on the publishing of personal information concerning trafficked persons.”<sup>544</sup>

Article 24(2)(a) of the Transnational Organized Crime Convention complements Article 6(1) of the Trafficking Protocol by providing for the protection of the identity and whereabouts of *witnesses*

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<sup>536</sup> See *id.* § 107(b)(1)(E).

<sup>537</sup> Mattar 4, *supra* note 192, at 11.

<sup>538</sup> See Trafficking Protocol, *supra* note 3, art. 6.

<sup>539</sup> See OSCE GUIDE, *supra* note 72, at 76 (describing that trafficked victims are often prosecuted and detained, in both countries of destination and origin, for illegal migration, using false documents, leaving their country of origin illegally, or for having worked in the sex industry).

<sup>540</sup> See Trafficking Protocol, *supra* note 3, art. 6(1).

<sup>541</sup> See ANNOTATED GUIDE, *supra* note 237, at 19.

<sup>542</sup> *Id.*

<sup>543</sup> See *id.*

<sup>544</sup> OSCE GUIDE, *supra* note 72, at 84.

who agree to testify.<sup>545</sup> Specifically, Article 24(2)(a) provides for “[e]stablishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.”<sup>546</sup> While not identical, Article 24(2)(a) of the Convention is stronger than Article 6(1) of the Protocol in that it specifically focuses on the non-disclosure of witnesses’ identities *at all times* and not merely on keeping the legal proceedings, which affect them as trafficked victims, confidential. Furthermore, Article 24(2)(a) of the Convention provides for witness relocation,<sup>547</sup> which is not mentioned in Article 6(1) of the Protocol.

Article 24(2)(b) of the Transnational Organized Crime Convention indicates that States Parties should establish evidentiary safeguards in court proceedings for victims and/or witnesses that have agreed to testify.<sup>548</sup> One proposed approach is to “[permit] testimony to be given through the use of communications technology such as video links or other adequate means.”<sup>549</sup> Such measures are not mentioned in Article 6(1) of the Trafficking Protocol; however, governments should take them into consideration when devising *de jure* and *de facto* means of protecting the privacy and identity of trafficked victims.

As a general rule, states should consult *both* Article 6 of the Trafficking Protocol and Article 24 of the Transnational Organized Crime Convention and incorporate all of the aforementioned protections into their domestic anti-trafficking legislation as well as into subsequent programs and other vehicles of implementation. It should be noted, though, that Article 24 of the Convention, similar to Article 6 of the Protocol, contains language indicating that states shall take “appropriate steps within [their] means.”<sup>550</sup> Such language could potentially weaken the states’ international obligations to protect and assist victims that agree to appear as witnesses and testify in courtroom proceedings.<sup>551</sup>

### **Assistance in Court**

Article 6(2) of the Trafficking Protocol imposes an obligation upon States Parties to adopt measures, “in appropriate cases,” that would enable victims of trafficking:

- to obtain information regarding legal and administrative proceedings that pertain to them and
- to be properly assisted during criminal proceedings against their traffickers without unduly prejudicing the rights of the defendants.<sup>552</sup>

One observer points out that the phrase “in appropriate cases” could potentially weaken the entire provision as it gives the impression that governments are permitted to provide assistance to some

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<sup>545</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 24(2)(a); see also *id.* art. 24(4) (“The provisions of this article shall also apply to victims insofar as they are witnesses.”).

<sup>546</sup> *Id.* art. 24(2)(a).

<sup>547</sup> See *id.* art. 24(2)(a); see also *id.* art. 24(3) (“States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.”).

<sup>548</sup> See *id.* art. 24(2)(b).

<sup>549</sup> *Id.*

<sup>550</sup> *Id.* art. 24(1).

<sup>551</sup> See OSCE GUIDE, *supra* note 72, at 84.

<sup>552</sup> See Trafficking Protocol, *supra* note 3, art. 6(2).

trafficked victims and not to others.<sup>553</sup> Nevertheless, Article 6(2) is essential as it delineates the minimum measures of assistance that States Parties are to develop in order to aid victims with respect to legal and administrative proceedings.<sup>554</sup>

The type of information that victims are to receive under Article 6(2)(a) of the Protocol concerns their legal status and the legal issues involved in court or other (i.e., administrative) proceedings in connection with a particular trafficking case.<sup>555</sup> Although not specifically mentioned in Article 6(2)(a) of the Trafficking Protocol or in the Transnational Organized Crime Convention,<sup>556</sup> the OSCE recommends that such information is to be provided at no charge via a translator or in writing in the language of the victims involved.<sup>557</sup>

Article 6(2)(b) of the Protocol indicates that States Parties are to provide victims with “assistance” in the aforementioned legal or administrative proceedings, and, thus, protect their rights throughout the process without impeding upon the rights of the accused.<sup>558</sup> Even though Article 6(2)(b) is vague about the exact type of assistance that is to be offered to victims, it should be interpreted as assistance from lawyers.<sup>559</sup> One commentator points out that victims are to be assisted throughout the *entire* legal proceedings including the trial and sentencing hearings.<sup>560</sup> The OSCE suggests that, although not mentioned in either the Protocol or the Convention, such legal assistance to the victims should be free along with any requisite translation services.<sup>561</sup> Furthermore, in addition to legal aid, NGO service providers should also be permitted to assist victims throughout the entire court proceedings, if such aid is consistent with national legislation.<sup>562</sup>

It should be noted that Article 25(3) of the Transnational Organized Crime Convention complements Article 6(2) of the Trafficking Protocol as it requires that “[e]ach State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings in a manner not prejudicial to the rights of the defence.”<sup>563</sup> The *travaux préparatoires* explain that the general purpose of Article 25 is not only to provide for the physical protection of victims but to also protect “the rights of individuals accorded under applicable international law”<sup>564</sup> in situations such as legal and administrative proceedings.

The obligation to enable victims to present their views and concerns during legal proceedings, delineated in Article 6(2)(b) of the Protocol as well as in Article 25(3) of the Convention, is important because many domestic jurisdictions still allow for the use of the double witness rule, or

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<sup>553</sup> See ANNOTATED GUIDE, *supra* note 237, at 19.

<sup>554</sup> See Puleo Speech, *supra* note 3 (indicating that the Protocol is a “floor” and not a “ceiling” for anti-trafficking legislative and programmatic efforts).

<sup>555</sup> See Trafficking Protocol, *supra* note 3, art. 6(2)(a); see also ANNOTATED GUIDE, *supra* note 237, at 19.

<sup>556</sup> See OSCE GUIDE, *supra* note 72, at 81 (“Neither the Trafficking Protocol nor the Crime Convention oblige state parties to provide trafficked persons with free translation and legal representation during criminal proceedings against the trafficker.”).

<sup>557</sup> See *id.*

<sup>558</sup> See Trafficking Protocol, *supra* note 3, art. 6(2)(b).

<sup>559</sup> See ANNOTATED GUIDE, *supra* note 237, at 19.

<sup>560</sup> See *id.* at 20.

<sup>561</sup> See OSCE GUIDE, *supra* note 72, at 81.

<sup>562</sup> See OSCE Action Plan, *supra* note 124, at 5.

<sup>563</sup> Transnational Organized Crime Convention, *supra* note 37, art. 25(3).

<sup>564</sup> Convention and Protocol Travaux, *supra* note 68, at 9.

corroborative evidence rule, in trafficking cases. The double witness rule bars the admission of evidence provided by only one witness unless that witness's testimony is corroborated by another witness or other material evidence introduced against the accused.<sup>565</sup> One expert indicates that the application of this evidentiary rule in trafficking cases "means that we are not treating the victim of trafficking as a credible witness" and that this is a direct violation of Article 6(2)(b) of the Protocol.<sup>566</sup>

### **Rehabilitation and Reintegration in Society**

Article 6(3) of the Trafficking Protocol requires States Parties to "consider" implementing measures, "in appropriate cases," that would aid with the physical, psychological and social recovery of trafficked victims.<sup>567</sup> Commentators suggest that language such as "consider" and "in appropriate cases" could potentially weaken Article 6(3), but they point out that this provision does, in fact, "reflect a consensus that certain services are necessary."<sup>568</sup> Certain services are to be provided *at a minimum*. Such services include:

- housing
- counseling and information (specifically regarding the legal rights of victims)
- medical, psychological, and material assistance
- employment, education and training.<sup>569</sup>

Article 6(3) of the Trafficking Protocol does not mandate basic or emergency services for victims of trafficking, but such services are necessary especially when victims are first discovered by law enforcement, border guards, etc.<sup>570</sup> The OSCE advises that all of the above services are to be made available regardless of whether the victims agree to testify against their traffickers.<sup>571</sup> ECOSOC affirms this entitlement by emphasizing that "information, assistance and immediate support is not discretionary but is available as a right for *all* persons who have been identified as trafficked."<sup>572</sup>

The *travaux préparatoires* of the Protocol explain the applicability and scope of the aforementioned services:

[T]he type of assistance set forth in [Article 6(3)] 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. Paragraph 3 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.<sup>573</sup>

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<sup>565</sup> See Mattar 2, *supra* note 191, at 15.

<sup>566</sup> See *id.*

<sup>567</sup> See Trafficking Protocol, *supra* note 3, art. 6(3).

<sup>568</sup> ANNOTATED GUIDE, *supra* note 237, at 20; see also OSCE GUIDE, *supra* note 72, at 71-2. The Transnational Organized Crime Convention contains stronger language than the Protocol, thus, bolstering the importance of offering protection and assistance to trafficked victims. See Transnational Organized Crime Convention, *supra* note 37, art. 25(1) ("Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention [and Protocol], in particular in cases of threat of retaliation or intimidation.").

<sup>569</sup> See Trafficking Protocol, *supra* note 3, art. 6(3).

<sup>570</sup> See ANNOTATED GUIDE, *supra* note 237, at 20.

<sup>571</sup> See OSCE GUIDE, *supra* note 72, at 74.

<sup>572</sup> ECOSOC Report, *supra* note 58, at 9 [emphasis added].

<sup>573</sup> Convention and Protocol Travaux, *supra* note 68, at 13.

The reader should note that Article 6(3) of the Protocol seeks to involve NGOs in the states' efforts to rehabilitate victims of trafficking.<sup>574</sup> As one observer highlights, "NGOs are in the best position to assist with the physical, psychological and social recovery of trafficked persons and so 'cooperation with non-governmental organizations' is essential. NGOs can assist in providing services and also . . . they have expertise governments can use in adopting laws, policies and programs."<sup>575</sup> The OSCE also emphasizes the involvement of NGOs that specialize in offering support to trafficked individuals and notes that "[e]ffective and continuous victim assistance and protection requires that states provide relevant NGOs with sufficient resources and training opportunities. Effective victim assistance and protection also requires well-functioning cooperation between NGOs and state authorities."<sup>576</sup> Accordingly, the OSCE proposes the establishment of National Referral Mechanisms ("NRMs") that not only facilitate cooperation between government agencies and civil society within the borders of a particular state but also link such national networks with others in the region (i.e., among OSCE member states).<sup>577</sup> The main goals of an NRM are "to ensure that the human rights of trafficked persons are respected, . . . provide an effective way to refer victims of trafficking to services, . . . help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection, . . . establish national plans of action, and . . . set benchmarks to assess whether goals are being met."<sup>578</sup>

### *Housing*

Article 6(3)(a) of the Trafficking Protocol delineates a State Party's obligation to consider providing appropriate shelter to victims of trafficking.<sup>579</sup> One commentator explains:

In many countries, trafficked persons are deported immediately or held in prisons or detention centers because there is no appropriate shelter. Governments must recognize that, if trafficked persons are not provided any shelter and deported immediately, they may not report the crime to law enforcement. Thus, the lack of appropriate shelter results in revictimization and allows the traffickers to remain unpunished and continue trafficking.<sup>580</sup>

She further stresses that instead of placing trafficked victims in prisons or detention centers, governments should, at a minimum, provide for secure short-term emergency housing. Those states that have the means to provide victims with long-term housing should do so if necessary.<sup>581</sup> In cases where victims are willing to testify against their alleged traffickers, governments should

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<sup>574</sup> See Trafficking Protocol, *supra* note 3, art. 6(3).

<sup>575</sup> ANNOTATED GUIDE, *supra* note 237, at 20.

<sup>576</sup> OSCE GUIDE, *supra* note 72, at 74.

<sup>577</sup> See OSCE Action Plan, *supra* note 124, at 13-14 ("Linking the activities of NRMs with those of inter-ministerial bodies, national co-ordinators, NGOs and other relevant national institutions to form a cross-sectoral and multidisciplinary team capable of developing and monitoring the implementation of anti-trafficking policies."). The Stability Pact for South Eastern Europe also recommends similar measures and advises its member states to encourage the cooperation of government bodies and NGOs under the umbrella of formalized National Plans of Action to Combat Trafficking in Human Beings. See STABILITY PACT FOR SOUTH EASTERN EUROPE, TASK FORCE ON TRAFFICKING IN HUMAN BEINGS, GUIDELINES FOR NATIONAL PLANS OF ACTION TO COMBAT TRAFFICKING IN HUMAN BEINGS, available at <http://www.stabilitypact.org/trafficking/atap-2001-guidelines.doc>.

<sup>578</sup> THEDA KROGER ET AL., NATIONAL REFERRAL MECHANISMS; JOINING EFFORTS TO PROTECT THE RIGHTS OF TRAFFICKED PERSONS: A PRACTICAL HANDBOOK 15 (2004), available at [http://www.osce.org/odihr/item\\_11\\_13591.html](http://www.osce.org/odihr/item_11_13591.html). [hereinafter OSCE NRM HANDBOOK].

<sup>579</sup> See Trafficking Protocol, *supra* note 3, art. 6(3)(a).

<sup>580</sup> ANNOTATED GUIDE, *supra* note 237, at 20.

<sup>581</sup> See *id.*

not only provide for their legal status in accordance with Article 7 of the Trafficking Protocol (discussed below),<sup>582</sup> but should also accommodate them with appropriate housing.

The OSCE envisions that the housing staff would provide “safety, access to independent advice and counselling in a language known by the victim, first-hand medical assistance, and an opportunity for reflection delay after the experienced trauma.”<sup>583</sup> In other words, such housing could be used to fulfill most of the obligations delineated in Article 6(3) of the Trafficking Protocol. The OSCE suggests that trafficked victims could be housed in already existing facilities and crisis centers for women (in those countries where such institutions have been established) and that governmental bodies, NGOs, or other members of civil society can be in charge of such programs.<sup>584</sup> The OSCE warns that states should ensure the safety and privacy of trafficked victims housed in shelters, the confidentiality of the information obtained from trafficked victims housed in the shelters, and the safety of shelter personnel.<sup>585</sup> Lastly, the OSCE emphasizes that the obligation to provide shelter applies “regardless of [the victims’] readiness to co-operate with authorities in investigations.”<sup>586</sup>

### *Counseling and Information*

Article 6(3)(b) of the Trafficking Protocol requires States Parties to consider offering victims of trafficking counseling and information, specifically focusing on their legal rights, in a language that they can understand.<sup>587</sup> This obligation complements the aforementioned duty to assist victims in court (Article 6(2)(b) of the Protocol).<sup>588</sup> One observer elaborates on the importance of providing free legal representation and advice to victims:

Trafficked persons can only realize their right of access to justice if they have a lawyer and, given that trafficked persons have no money, they cannot hire a private, non-government-funded lawyer. Trafficked persons are typically undocumented and do not understand the foreign legal system and they may face governments that are not interested in recognizing or respecting their fundamental human rights. Few trafficked persons have any legal representation and so most of them are deported, which effectively prevents them from recovering any financial redress or realizing any of their other rights.<sup>589</sup>

The European Union addressed such concerns in a 2001 Council Framework Decision that requires member states to either incorporate specially trained personnel within their public services or to fund private victim support organizations (NGOs) for the purposes of representing victims in criminal proceedings.<sup>590</sup>

### *Medical, Psychological, and Material Assistance*

Article 6(3)(c) of the Trafficking Protocol obligates States Parties to consider providing medical, psychological, and material assistance to victims of trafficking.<sup>591</sup> Given the mental and physical

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<sup>582</sup> See Trafficking Protocol, *supra* note 3, art. 7.

<sup>583</sup> OSCE Action Plan, *supra* note 124, at 14.

<sup>584</sup> See *id.*

<sup>585</sup> See *id.*

<sup>586</sup> *Id.*

<sup>587</sup> See Trafficking Protocol, *supra* note 3, art. 6(3)(b).

<sup>588</sup> See *id.* art. 6(2)(b).

<sup>589</sup> ANNOTATED GUIDE, *supra* note 237, at 21.

<sup>590</sup> See Council Framework Decision, *supra* note 99, art. 13; see also OSCE GUIDE, *supra* note 72, at 72.

<sup>591</sup> See Trafficking Protocol, *supra* note 3, art. 6(3)(c).

abuse that trafficked victims endure as well as their complete lack of resources upon entry into an unknown country,<sup>592</sup> they often become dependent upon the state to provide much needed medical and psychological attention. Thus, the Trafficking Protocol urges governments to give serious thought to allocating funds for such services. Assets confiscated from traffickers<sup>593</sup> could be used to cover the costs of medical, psychological, and other assistance for trafficked victims. Lastly, states should consider involving NGOs when offering such services.<sup>594</sup>

The Council of Europe suggested that governments could begin to fulfill their Article 6(3)(c) obligations by establishing reception centers to provide trafficked persons with “information on their rights as well as psychological, medical, social and administrative support with a view to their reintegration into their country of origin or the host country.”<sup>595</sup> Such reception centers could serve a similar purpose, or complement, the housing accommodations conceptualized by the OSCE as discussed above.<sup>596</sup>

One side issue should be flagged with respect to medical personnel that treat victims of trafficking. In order to administer the appropriate medical treatment, doctors must acquire certain information regarding the victims (i.e., how they received the injuries that they received, etc.). This information is usually protected by the doctor-patient privilege and is strictly confidential.<sup>597</sup> Certain domestic jurisdictions though require doctors to report injuries if they are indicative of assault or abusive conduct.<sup>598</sup> Thus, if a doctor is examining a trafficked victim and s/he concludes that the victim has been the subject of physical assault or abusive conduct, s/he would be legally required to report the situation to law enforcement authorities. This would aid in identifying trafficked victims and could help ensure their safety after receiving medical treatment, provided that law enforcement is trained on trafficking and appropriate services are available. As with other situations involving battered victims (for example, domestic violence cases), there exists a real tension between reporting requirements imposed on medical personnel and the security needs of victims.<sup>599</sup>

### *Employment, Education, and Training*

Article 6(3)(d) of the Trafficking Protocol compels States Parties to consider providing employment, education, and training opportunities to trafficked individuals who are allowed to remain within their borders.<sup>600</sup> One observer warns that:

[G]overnments of countries of destination and origin often face an enormous burden in providing assistance to trafficked persons and many are financially unable to do so. In addition, some countries of destination are also countries of origin and thus face the double burden of providing assistance to non-citizens and citizens. To alleviate this burden in an equitable manner, governments of wealthier countries should establish a method for

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<sup>592</sup> See Intelligence Monograph, *supra* note 2, at 5.

<sup>593</sup> See *supra* pp. 62-66.

<sup>594</sup> See ANNOTATED GUIDE, *supra* note 237, at 21.

<sup>595</sup> Recommendation 11, *supra* note 79, § 26; see also OSCE GUIDE, *supra* note 72, at 72-73.

<sup>596</sup> See OSCE Action Plan, *supra* note 124, at 14-15; see also *supra* pp. 84-85.

<sup>597</sup> See Ann P. Wathen, *Crimes; Reporting Obligations of Health Practitioners, Physicians, and Surgeons*, 25 PAC. L.J. 571, 575 (1994).

<sup>598</sup> See *id.* at 573.

<sup>599</sup> See generally Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273 (1995).

<sup>600</sup> See Trafficking Protocol, *supra* note 3, art. 6(3)(d).

funding programs to ensure that trafficked persons are provided with employment, education and training opportunities in all countries of destination and origin.<sup>601</sup>

Article 14 of the Transnational Organized Crime Convention, discussed above, lists some of the ways in which states can financially assist other states by sharing assets. Specifically, Article 14 addresses the disposal of confiscated assets subsequent to the apprehension of transnational criminals such as human traffickers.<sup>602</sup> Confiscated assets could be shared and used to fund the aforementioned shelters envisioned by the OSCE where training for victims could be conducted that would “facilitate their future reintegration, employment and independence, as well as [improve] their competitive capabilities after the experienced trauma.”<sup>603</sup>

## **Children**

Article 6(4) of the Trafficking Protocol requires States Parties to take into account the age, gender, and special needs of trafficked victims especially those of children, when seeking to rehabilitate them.<sup>604</sup> Commentators emphasize that such sensitivity is necessary particularly in cases of sexual assault and governments should consider establishing separate units for treating child victims.<sup>605</sup> ECOSOC explains that “[t]he particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions.”<sup>606</sup>

Observers urge that, when dealing with child victims, states should not only follow their obligations under the Trafficking Protocol and the Transnational Organized Crime Convention but should also pay heed to their duties under the Convention on the Rights of the Child (“CRC”) and make decisions in the “best interests of the child.”<sup>607</sup> ECOSOC elaborates on the latter point:

The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.<sup>608</sup>

Article 6(4) of the Protocol stresses the importance of providing “appropriate housing, education and care” when dealing with trafficking cases that involve children.<sup>609</sup> The OSCE suggests that “if there is no direct threat to the safety of the child, [governments should provide] the children with access to the state educational system.”<sup>610</sup>

Article 6(4) does not specifically address situations where the testimony of child victims is necessary to prosecute traffickers. In such cases, experts indicate that special protections or

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<sup>601</sup> ANNOTATED GUIDE, *supra* note 237, at 22.

<sup>602</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 14; see also *supra* pp. 64-66.

<sup>603</sup> OSCE Action Plan, *supra* note 124, at 14.

<sup>604</sup> See Trafficking Protocol, *supra* note 3, art. 6(4).

<sup>605</sup> See ECOSOC Report, *supra* note 58, at 12-13.

<sup>606</sup> *Id.*

<sup>607</sup> CRC, *supra* note 291; see also OSCE Action Plan, *supra* note 124, at 16.

<sup>608</sup> ECOSOC Report, *supra* note 58, at 12.

<sup>609</sup> See Trafficking Protocol, *supra* note 3, art. 6(4).

<sup>610</sup> OSCE Action Plan, *supra* note 124, at 16.

alternatives to direct testimony (such as video link)<sup>611</sup> should be made available to minimize the child's exposure to his/her trafficker in the courtroom. In a comprehensive list of children's rights within the context of trafficking, ECOSOC adds that states should protect "the privacy and identity of child victims and [take] measures to avoid the dissemination of information that could lead to their identification."<sup>612</sup>

It is important for the reader to note that the term "child," as used within the context of Article 6(4), is defined in Article 3(d) of the Protocol as "any person under eighteen years of age."<sup>613</sup> This definition is complemented by the CRC: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."<sup>614</sup> While the CRC standard is broader, governments that have signed and/or ratified the Trafficking Protocol should deem trafficked individuals under the age of eighteen to be children.

As mentioned above, when drafting anti-trafficking legislation, it is important for states to refer to other international instruments that they have signed or ratified and that focus on children such as the United Nations Convention on the Rights of the Child,<sup>615</sup> the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography,<sup>616</sup> and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. C182.<sup>617</sup>

### **Physical Safety**

Article 6(5) of the Trafficking Protocol requires each State Party to attempt to provide for the physical safety of trafficked victims within their territory.<sup>618</sup> It is important to note that this provision addresses the safety of *all* victims, not just the ones that agree to testify against their traffickers.<sup>619</sup>

However, there are several concerns associated with this particular provision. First, Article 6(5) indicates that States Parties "shall endeavor" to provide for the safety of victims, which means that governments are to try to make certain efforts in order to meet the minimum standards of the Protocol but are not under an absolute obligation to provide for victim safety.<sup>620</sup> Article 6(5) does not specifically mention the possibility of relocating victims in order to provide for their physical protection regardless of whether they agree to testify against their traffickers. Furthermore, this article only covers victims for the time period that they are present within the territory of a particular state and not while they are being repatriated.<sup>621</sup> Lastly, Article 6(5) only provides for the safety of the victims themselves and not for the safety of their families and persons close to them, if and when such victims agree to testify.<sup>622</sup>

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<sup>611</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 24(2)(b).

<sup>612</sup> ECOSOC Report, *supra* note 58, at 13.

<sup>613</sup> Trafficking Protocol, *supra* note 3, art. 3(d).

<sup>614</sup> CRC, *supra* note 291, art. 1.

<sup>615</sup> See generally CRC, *supra* note 291.

<sup>616</sup> See generally CRC Protocol, *supra* note 292.

<sup>617</sup> See generally ILO Convention No. 182, *supra* note 293.

<sup>618</sup> See Trafficking Protocol, *supra* note 3, art. 6(5).

<sup>619</sup> See ANNOTATED GUIDE, *supra* note 237, at 22.

<sup>620</sup> See *id.*

<sup>621</sup> See *id.*; see also Trafficking Protocol, *supra* note 3, art. 8.

<sup>622</sup> See OSCE GUIDE, *supra* note 72, at 84.

Article 24 of the Transnational Organized Crime Convention contains more detailed language than Article 6(5) of the Trafficking Protocol and provides for relocation but solely for witnesses.<sup>623</sup> Thus, only trafficked victims that agree to testify can take advantage of this provision. Article 24(1) also covers the families and persons close to the victims who agree to come forth as witnesses. It reads as follows:

Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, *for their relatives and other persons close to them.*<sup>624</sup>

Thus, governments should take into consideration Article 24 of the Convention in conjunction with Article 6(5) of the Protocol when attempting to provide for the physical safety of trafficked victims.

The OSCE suggests that one way for states to begin fulfilling their obligations under Article 6(5) of the Protocol and Article 24 of the Convention is to “[sensitize] law enforcement authorities and officials to their responsibility for ensuring the safety and immediate well-being of victims of [trafficking].”<sup>625</sup> ECOSOC urges that such protection “not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”<sup>626</sup>

### Compensation

Article 6(6) of the Trafficking Protocol requires States Parties to ensure that trafficked victims can obtain compensation for damages suffered.<sup>627</sup> It should be noted that Article 6(6) does not provide for both compensation *and* restitution. Article 25(2) of the Transnational Organized Convention mandates States Parties to establish appropriate procedures for *both* compensation and restitution for victims.<sup>628</sup> Thus, states should read Article 6(6) of the Protocol together with Article 25(2) of the Convention and consider providing a more comprehensive procedure that addresses victims’ damages.

A good example of providing victims with avenues for compensation is the 2003 amendment of the U.S. anti-trafficking law. The Trafficking Victims Protection Reauthorization Act of 2003 (“TVPRA 2003”) grants victims a private right of action against their traffickers.<sup>629</sup> Victims can now bring a civil suit against their perpetrators and “may recover damages and reasonable fees.”<sup>630</sup> It should be noted that such a civil action is “stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.”<sup>631</sup> In addition, U.S. courts can also order defendants to make restitution to victims of certain crimes. Such restitution may be ordered “in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law.”<sup>632</sup>

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<sup>623</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 24(2)(a).

<sup>624</sup> *Id.* [emphasis added].

<sup>625</sup> OSCE Action Plan, *supra* note 124, at 5.

<sup>626</sup> ECOSOC Report, *supra* note 58, at 3.

<sup>627</sup> See Trafficking Protocol, *supra* note 3, art. 6(6). This article solely allots the “possibility” and not the “right” of compensation to victims of trafficking. See Mattar 3, *supra* note 191, at 1.

<sup>628</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 25(2).

<sup>629</sup> See TVPRA 2003, *supra* note 206, § 4(4)(A)(a).

<sup>630</sup> *Id.*

<sup>631</sup> *Id.* § 4(4)(A)(b)(1).

<sup>632</sup> 18 U.S.C. § 3663(a)(1)(A) (2002).

Another good example is the anti-trafficking law of Cyprus that allows victims to seek general, special, and punitive damages from traffickers.<sup>633</sup> When assessing whether victims are entitled to general damages, Cypriot courts are to take into consideration the following factors:

- a. the extent of the exploitation and the benefit the liable [i.e., trafficker] derived from such exploitation
- b. the future prospects of the victim and the extent to which such prospects were affected by the exploitation
- c. the culpability of the offender
- d. the relationship or the dominating position or influence of the offender with regard to the victim.<sup>634</sup>

When assessing a special damages award, Cypriot courts are to “[take] into consideration every item of expense which resulted from exploitation including costs for repatriation in the case of foreigners.”<sup>635</sup> Lastly courts can award punitive damages “when the degree of the exploitation or the degree of relationship or the dominating position of the offender [i.e., trafficker] with regard to the victim so require.”<sup>636</sup>

ECOSOC links the victims’ right to compensation with aforementioned obligations of providing witnesses with information regarding their legal status and entitlements:<sup>637</sup>

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.<sup>638</sup>

When establishing measures that address the issue of victims’ damages, governments should also ensure that the victims themselves are fully informed of their right to compensation and/or restitution.

## *Examples of Compliance and Non-Compliance*

### **Identifying Individuals as Trafficked Victims**

#### De Jure

- **Compliance:** In 2003, the government of Qatar adopted a National Plan of Action (“NPA”) to combat trafficking that calls for, among other things, conducting DNA testing to verify claimed family ties between child camel jockeys and their traffickers, performing retinal

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<sup>633</sup> See Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, No. 3(1) (2000) art. 8 (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>634</sup> See *id.* art. 8(2).

<sup>635</sup> *Id.* art. 8(2).

<sup>636</sup> *Id.* art. 8(1).

<sup>637</sup> See Trafficking Protocol, *supra* note 3, art. 6(2)(b), art. 6(3)(b).

<sup>638</sup> ECOSOC Report, *supra* note 58, at 14.

scans to prevent identity falsification, and taking X-rays in order to establish the age of camel jockeys.<sup>639</sup>

### De Facto

- **Non-compliance:** At the end of 2003, representatives of the Armenian government together with members of the local NGO community underwent training on victim identification techniques as well as general assistance. The training, conducted by the OSCE, targeted law enforcement officers, border guards, consular personnel, as well as NGO representatives that are likely to come into contact with victims. Emphasis was placed on the development of practical skills, including non-threatening interrogation techniques and sensitive treatment of victims. However despite this and other training efforts, as of June 2005, the Armenian police still does not have “any formalized or standard operating procedures . . . to follow when encountering possible victims of trafficking.” Furthermore, Armenian officials often fail to shield victims’ identities and to properly apply confidentiality measures.<sup>640</sup>
- **Non-compliance:** In June 2004, the U.S. State Department reported that, in practice, Hungarian border officials often fail to distinguish between trafficking in persons and migrant smuggling. “Trafficking victims are often detained, deported, or prosecuted for the violation of other laws, such as those relating to prostitution or illegal immigration.” In June 2005, the U.S. State Department indicated that this trend continued.<sup>641</sup>

### **Defining Individuals as Trafficked Victims**

#### De Jure

- **Non-compliance:** Malaysia does not separately define the offense of trafficking in persons within its laws and it “does not codify the difference between trafficking victims, illegal migrants and asylum seekers.” This legislative inadequacy continues as reported by the U.S. State Department in June 2005.<sup>642</sup>
- **Compliance:** According to the 2003 anti-trafficking law of the Philippines, trafficked individuals are recognized as victims and they are not to be penalized. Thus, they are eligible to receive a range of protection and assistance services that the government has made available such as temporary residence status, relief from deportation, shelter, and access to legal and medical aid.<sup>643</sup>
- **Compliance:** U.S. anti-trafficking legislation defines victims in its provisions distinguishing between individuals who were subjected to “severe forms of trafficking” and individuals who were subjected to “trafficking.”<sup>644</sup> This particular categorization exists because of the manner in which the U.S. legislation defines the offense of trafficking in persons. “Severe

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<sup>639</sup> See 2004 TIP Report, *supra* note 17, at 201.

<sup>640</sup> See Press Release, Organization for Security and Co-operation in Europe, OSCE Yerevan Workshop Focuses on Identification of Trafficking Victims (Dec. 22, 2003); 2005 TIP Report, *supra* note 5, at 57.

<sup>641</sup> 2004 TIP Report, *supra* note 17, at 147; see 2005 TIP Report, *supra* note 5, at 121.

<sup>642</sup> See 2004 TIP Report, *supra* note 17, at 101; see also 2005 TIP Report, *supra* note 5, at 151.

<sup>643</sup> See 2004 TIP Report, *supra* note 17, at 105; see also 2005 TIP Report, *supra* note 5, at 178.

<sup>644</sup> TVPA 2000, *supra* note 206, §§ 103(13)-(14).

forms of trafficking” means “(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>645</sup>

### De Facto

- **Non-compliance:** Since Malaysia does not specifically define the notion of trafficked victims within its laws, “victims, especially those who do not usually speak Bahasa Melayu, are sometimes detained.”<sup>646</sup> Furthermore, since members of the Royal Malaysian Police do not attain the proper training and language skills, they are not able to distinguish between trafficked persons and illegal migrants. Thus, “[f]oreign trafficking victims are often not recognized as victims and are treated as immigration offenders.” As of June 2005, this trend continued as the police failed to implement a formal screening process in order to properly identify victims of trafficking.<sup>647</sup>

## Non-Criminalization

### De Jure

- **Non-compliance:** India’s anti-trafficking law provides for the “rescue” of trafficked victims.<sup>648</sup> A magistrate, based on credible evidence that a woman or child has been trafficked and forced into prostitution, can order a police officer to remove such a victim from the suspected brothel and bring her before the court.<sup>649</sup> However, according to the law, such victims are to be kept in *custody* for a period not “exceeding three weeks.”<sup>650</sup> A victim can file an application with the magistrate asking to be kept in a “protective home” or to be “provided care and protection by the court,”<sup>651</sup> but the magistrate has the ultimate authority to decide whether to keep her in custody pending inquiry<sup>652</sup> or to place her in a “protective home,” “corrective institution,” or “under the supervision of a person appointed by the magistrate.”<sup>653</sup>

### De Facto

- **Non-compliance:** In India, trafficked victims are often charged as criminals.<sup>654</sup> One fact-finding mission reported that “[i]n many cases, [victims] are often initially placed in the same jail as their madams or as the traffickers. And even when victims and accused perpetrators are separated in their own jail cells or wings of the building, victims can still

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<sup>645</sup> *Id.* § 103(8).

<sup>646</sup> 2004 TIP Report, *supra* note 17, at 101.

<sup>647</sup> *Id.*; see 2005 TIP Report, *supra* note 5, at 151.

<sup>648</sup> See The Suppression of Immoral Traffic in Women and Girls Act, No. 104, § 16 (1956) (later amended 1978) (India), available at <http://www.protectionproject.org/>.

<sup>649</sup> See *id.* § 16(1).

<sup>650</sup> *Id.* § 17(3).

<sup>651</sup> *Id.* § 19.

<sup>652</sup> See *id.* § 19(b)(3).

<sup>653</sup> *Id.*

<sup>654</sup> See 2004 TIP Report, *supra* note 17, at 212; see also 2005 TIP Report, *supra* note 5, at 123.

be vulnerable to continuing intimidation and threats from their abusers via messages passed through jailors and external visitors. These threats may aim to prevent victims from telling their story, or remind them that even if they do go free and their abusers are convicted, the stigma they face in society will mean that they have nothing to which to return.”<sup>655</sup>

- **Compliance:** The U.S. State Department reported that in 2003-2004, Lithuanian police refrained from charging trafficked victims with prostitution or immigration violations. In June 2005, the U.S. State Department indicated that Lithuanian authorities continued to treat victims as victims (and not as criminals) and provided protection and support to over 300 persons who had been trafficked.<sup>656</sup>

## Confidentiality

### De Jure

- **Compliance:** Malaysia’s Women and Girls Protection Act indicates that witnesses, in a case brought under the act, are not obligated or permitted to disclose the identify of an informer (i.e., like a trafficked victim). Furthermore, such witnesses are not obligated or permitted to state any matters that might lead to the discovery of the informer’s identity.<sup>657</sup>
- **Non-compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” indicates that trafficked victims “shall have their privacy and identity protected” but does not specify the context of this protection (i.e., in court, outside of court, before or after trial, or both etc.).<sup>658</sup>

### De Facto

- **Compliance:** Legislation in Poland allows for the use of video link testimony that encompasses methods for shielding a witness’ identity. Consequently, in 2003, a total of sixteen victims testified against their traffickers; a number which rose from thirteen in 2002.<sup>659</sup>

## Assistance in Court

### De Jure

- **Compliance:** In Germany, attorneys are assigned in accordance with the law to witnesses who are questioned in connection with trafficking cases, if it is evident that the witnesses cannot take proper advantage of their rights during the interrogation and their interests will otherwise not be taken into consideration.<sup>660</sup>

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<sup>655</sup> ABA India & Bangladesh Report (unpublished), *supra* note 315, at 24.

<sup>656</sup> See 2004 TIP Report, *supra* note 17, at 155; see also 2005 TIP Report, *supra* note 5, at 145.

<sup>657</sup> See The Protection Project; Human Rights Reports: Malaysia, at <http://www.protectionproject.org/>.

<sup>658</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 26(2) (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>659</sup> See 2004 TIP Report, *supra* note 17, at 163.

<sup>660</sup> See OSCE GUIDE, *supra* note 72, at 81; see also 2005 TIP Report, *supra* note 5, at 111.

- **Non-compliance:** Lesotho's Women and Girls' Act of 1949 allows for the application of the double witness rule in cases of procurement for prostitution (Lesotho does not yet have a law defining trafficking in persons as a separate offense). Therefore, when bringing forth procurement charges, the testimony of one witness cannot be introduced unless that testimony is corroborated in some material way by other evidence, particularly evidence implicating the accused.<sup>661</sup> Experts argue that this is a direct violation of Article 6(2)(b) of the Trafficking Protocol that requires States Parties to assist trafficked victims and ensure that their views are properly represented during legal proceedings.<sup>662</sup>

#### De Facto

- **Non-compliance:** In Moldova, the government is not providing legal assistance to indigent victims of trafficking, although this obligation is delineated in law. Consequently, the Association of Women Lawyers, a domestic NGO, established the Centre for Prevention of Trafficking in Women ("CPTW"), which provides legal assistance to victims of trafficking. In particular, CPTW assists victims when they testify against their traffickers or when they are wrongfully charged as defendants, aids with obtaining new identification documents, represents victims in divorce cases and in connection with other legal matters pertaining to custody rights, ownership rights, etc., and provides them with counsel in civil cases when they seek damages from their traffickers.<sup>663</sup>

### Rehabilitation and Reintegration in Society

#### De Jure

- **Compliance:** In June 2004, the U.S. State Department reported that the Croatian government signed a Memorandum of Understanding with IOM in order to provide direct assistance to victims of trafficking.<sup>664</sup> Furthermore, as part of its National Plan of Action ("NPA") to combat trafficking, the Croatian government calls for the establishment of special programs where trafficked victims can receive psychological and social assistance such as professional and work training, assistance in finding employment, and other support in gaining financial independence.<sup>665</sup>
- **Non-compliance:** While the Russian Federation amended its Criminal Code to include the separate offense of trafficking in persons and adopted witness protection legislation, which became enforceable in January 2005, the Duma did not pass legislation specifically focusing on the protection and assistance of trafficked victims.<sup>666</sup>

#### De Facto

- **Non-compliance:** In Bangladesh, the government does not offer protection and shelter to trafficked victims, but refers them to NGOs such as the Bangladesh National Women

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<sup>661</sup> See The Protection Project; Human Rights Reports: Lesotho, at <http://www.protectionproject.org/>.

<sup>662</sup> See Mattar 2, *supra* note 191, at 15.

<sup>663</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 82; *see also* HTAT Pilot, *supra* note 148, at 86-87.

<sup>664</sup> See 2004 TIP Report, *supra* note 17, at 129.

<sup>665</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 125.

<sup>666</sup> See 2004 TIP Report, *supra* note 17, at 168; *see also* 2005 TIP Report, *supra* note 5, at 185.

Lawyers Association (“BNWLA”), which offers shelter, medical care, and counseling.<sup>667</sup> In addition to post rescue shelter, BNWLA helps victims reunite with their families as part of a larger reintegration program.<sup>668</sup> “BNWLA representatives assert that their first priority is to reunite victims with their family. This approach involves work with local government leaders and imams who are viewed as the moral leaders of various Bangladeshi communities and who hold great importance for the village members. This sensitization process undertaken by BNWLA involves engaging in extensive dialogue with the community leaders who will eventually oversee the [reintegration] of the victim and ready the community for the victim’s return.”<sup>669</sup>

- **Compliance:** In Mali, the government cooperates closely with neighboring countries, international organizations, and local NGOs in order to repatriate and reintegrate persons who have been trafficked. Between 2000 and 2003, transit centers in four major cities hosted 600 trafficked children, most from Cote d’Ivoire, before returning them home. In 2004, the transit centers received over 150 children. In December 2003, the government rescued 100 Burkinabe children from a trafficking network and placed them with a local NGO until they could be returned home. The Malian government also funds income generation projects that aim to assist with resettlement and reintegration of trafficked children.<sup>670</sup>

## Children

### De Jure

- **Compliance:** Japan’s Law for the Inquest of Prosecution of 2000 includes various methods of alleviating the trauma of victimized children when they testify in court. The law provides for the following measures: “(a) a system in which an appropriate person accompanies the witness in examinations; (b) a system that blocks the appearance of the witness from the defendant and the observers, and (c) examination of the witness through a video link.”<sup>671</sup>

### De Facto

- **Compliance:** In 2004, the Metropolitan Police in the United Kingdom, together with immigration officials, conducted a study screening the number of unaccompanied children that were entering the country at Heathrow airport and other points (Operation Paladin Child). The purpose of this effort was to identify children at risk of being trafficked into the United Kingdom and to provide them with the necessary protections.<sup>672</sup> Following Operation Paladin Child, authorities placed a permanent child protection officer on a full-time basis at Heathrow airport.<sup>673</sup> On a separate note, “[r]esponding to concerns over the

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<sup>667</sup> See 2004 TIP Report, *supra* note 17, at 210; see also 2005 TIP Report, *supra* note 5, at 63.

<sup>668</sup> See ABA India & Bangladesh Report (unpublished), *supra* note 315, at 30.

<sup>669</sup> *Id.* at 33.

<sup>670</sup> See 2004 TIP Report, *supra* note 17, at 65; see also 2005 TIP Report, *supra* note 5, at 152-53.

<sup>671</sup> The Protection Project; Human Rights Reports: Japan, at <http://www.protectionproject.org/>.

<sup>672</sup> See 2004 TIP Report, *supra* note 17, at 185; see also METROPOLITAN POLICE, METROPOLITAN POLICE SERVICE RESPONSE TO ‘EVERY CHILD MATTERS’; A GOVERNMENT GREEN PAPER ON IMPROVING SERVICES FOR CHILDREN 2 (2004) [hereinafter METROPOLITAN POLICE GREEN PAPER].

<sup>673</sup> See 2004 TIP Report, *supra* note 17, at 185.

placement of trafficked and other vulnerable children in centers where their security could not be guaranteed, the government began placing them with foster care providers.”<sup>674</sup>

## Physical Safety

### De Jure

- **Compliance:** The U.S. anti-trafficking law provides assistance and protection for victims of severe forms of trafficking and, *inter alia*, for their physical safety.<sup>675</sup> If “a victim’s safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker,” the U.S. government is required to protect the victim by preventing intimidation and reprisals by traffickers against the victim and his/her family and by not disclosing the names and information of the trafficked individual to the public.”<sup>676</sup>

### De Facto

- **Compliance:** In an effort to provide better protection to victims and address safety concerns, the Czech Republic launched a victim assistance pilot program in October 2003 that was subsequently expanded to a permanent government-funded program. In June 2004, the U.S. State Department reported that “[u]nder the pilot program, [then] involving 10 individuals, trafficking victims receive a 30-day grace period for assistance and counseling during which a victim can decide whether to cooperate with Czech police. *Foreign victims who [chose] not to cooperate [were] offered voluntary return to their home country.*” In June 2005, the U.S. State Department reported that the victim assistance program was open “to *all* foreign and Czech victims.”<sup>677</sup>

## Compensation

### De Jure

- **Compliance:** According to the laws of the Netherlands, there are three ways in which trafficked victims can claim compensation. First, upon the initiative of a judge or prosecutor, claims for compensation may be joined as civil actions to the criminal proceedings against traffickers. In this procedure, any awarded compensation comes directly from the traffickers’ assets. Second, trafficked victims can file civil actions against their traffickers separate from the criminal proceedings. Third, trafficked individuals can claim compensation from the Dutch State Fund for Victims of Violent Crime. This fund is independent from the traffickers’ assets.<sup>678</sup>

### De Facto

- **Non-compliance:** Despite the fact that there are three avenues for victim compensation in the Netherlands, difficulties arise in the actual distribution of damage awards. “According

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<sup>674</sup> *Id.*; see also 2005 TIP Report, *supra* note 5, at 222.

<sup>675</sup> See TVPA 2000, *supra* note 206, § 107(c)(1)(C).

<sup>676</sup> *Id.*

<sup>677</sup> 2004 TIP Report, *supra* note 17, at 134 [emphasis added]; see also 2005 TIP Report, *supra* note 5, at 94 [emphasis added].

<sup>678</sup> See ASI REPORT, *supra* note 150, at 81.

to a lawyer in Rotterdam, in trafficking cases compensation claims joined to the criminal procedure are rarely successful because judges regard the calculation of damages in such cases as difficult and a complicating factor.”<sup>679</sup> When victims file civil claims separately from the criminal proceedings against their traffickers, there are considerable delays and the victims face the difficulty of enforcing the court ordered awards themselves.<sup>680</sup> The most successful way of getting some compensation is a claim from the Dutch state fund (described above).<sup>681</sup>

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<sup>679</sup> *Id.*

<sup>680</sup> *See id.*

<sup>681</sup> *See id.*

## Article 7: Status of Victims of Trafficking in Persons in Receiving States

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

Article 7 of the Trafficking Protocol complements the States Parties' obligations to assist and protect victims of trafficking delineated in Article 6 above.<sup>682</sup> Article 7 encourages governments to grant a particular immigration status to victims of trafficking while present within their territories. The status can either be temporary or permanent.<sup>683</sup> It is understood that this obligation is to be undertaken by *countries of destination or transit* where victims find themselves often times without proper identification or travel documents (or with false documents).<sup>684</sup> In contrast, Article 8 of the Protocol focuses on the obligation of *countries of origin* to receive returning victims if such victims are their nationals or permanent residents.<sup>685</sup> Below is a discussion of the issues that Article 7 addresses as well as the issues that Article 7 does not explicitly address. The reader should not interpret this as an exhaustive list.

Obligations Under Art. 7	Obligations Not Addressed in Art. 7
<ul style="list-style-type: none"><li>• Encouraging States Parties to grant an immigration status or permission to remain on its territory to victims</li><li>• Addressing immigration matters within the framework of humanitarian and compassionate factors</li></ul>	<ul style="list-style-type: none"><li>• Actually requiring States Parties to grant an immigration status or permission to remain on its territory to victims</li></ul>

### Immigration Status

Many trafficked victims are forcibly brought by their traffickers to a country without any legal documentation or are subjected to other circumstances such as their paperwork expiring or their trafficker taking their documentation.<sup>686</sup> "Traffickers will confiscate the identification and travel documents from their victims, usually immediately after arrival in the final destination country. This robs the victims of their official identity, confirms their illegal entry status and makes it impossible for them to seek help or to escape to another country or destination."<sup>687</sup> As a result, victims can be subject to deportation if found by police within the course of an investigation.<sup>688</sup> Moreover, traffickers often manipulate the situation by threatening their victims with deportation should they ever leave or seek help. It is therefore not surprising that victims are reluctant to come forward and report their traffickers to authorities.<sup>689</sup>

<sup>682</sup> See Trafficking Protocol, *supra* note 3, art. 6.

<sup>683</sup> See *id.* art. 7.

<sup>684</sup> See OSCE GUIDE, *supra* note 72, at 59-60.

<sup>685</sup> See Trafficking Protocol, *supra* note 3, art. 8.

<sup>686</sup> See OSCE GUIDE, *supra* note 72, at 59.

<sup>687</sup> ICMPD TRAINING MANUAL, *supra* note 10, at 25.

<sup>688</sup> See OSCE GUIDE, *supra* note 72, at 59.

<sup>689</sup> See *id.*; see also ICMPD TRAINING MANUAL, *supra* note 10, at 25 ("Because many victims originate from countries where

Article 7(1) of the Trafficking Protocol recognizes the need to establish a legal status for trafficked victims while they remain within the territory of a State Party either on a temporary or permanent basis.<sup>690</sup> In certain countries the “immigration status” referred to in Article 7(1)<sup>691</sup> takes the form of either temporary or permanent residence (see below).<sup>692</sup>

When governments contemplate granting an immigration status (such as residence) to victims, or otherwise protecting them against deportation, it is important to focus on the following factors:

- ensuring the safety of victims and protecting them from retaliation
- preventing victims from being re-trafficked
- providing time for the victims’ recovery and reflection
- encouraging victims to cooperate with law enforcement but not premising the grant of legal status upon testimony against traffickers.<sup>693</sup>

While Article 7(1) recognizes the significance of these factors, it does not actually *require* States Parties to grant a particular immigration status.<sup>694</sup> The provision indicates that states “shall consider adopting legislative or other appropriate measures”<sup>695</sup> that address victims’ immigration status or ability to remain in the territory, but it does not make such measures a requirement under the Trafficking Protocol.

Furthermore, Article 7(1) of the Protocol suggests that governments could grant a legal status to victims of trafficking “in appropriate cases.”<sup>696</sup> While the immigration status of trafficked victims is certainly subject to each nation’s domestic policies, one observer points out that “[g]overnments need to understand that trafficked persons who face immediate deportation or arrest will not report crimes or cooperate with investigations and NGOs will be unlikely to urge their clients to contact law enforcement.”<sup>697</sup> Thus, states should give due regard to the immigration status of victims when investigating and prosecuting trafficking cases.

### *Residency Status*

One example of “immigration status” as used in Article 7(1) of the Trafficking Protocol is the temporary or permanent residence that certain domestic jurisdictions make available to victims of trafficking.<sup>698</sup> It should be noted that granting residence, either on a short term or long term basis, is not an explicit obligation under Article 7 of the Protocol but it is one way to meet its requirements. In fact, some experts argue that it is the best way to meet the requirements of Article

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the police are viewed as a force of oppression, rather than a means of assistance, they are naturally unwilling to contact the police for help.”).

<sup>690</sup> See Trafficking Protocol, *supra* note 3, art. 7(1).

<sup>691</sup> See *id.*

<sup>692</sup> Although not an exhaustive list, the following thirty-eight countries offer trafficked victims either temporary or permanent residency status: Austria, Bahrain, Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Cameroon, Canada, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong, Hungary, Israel, Italy, Kazakhstan, Macedonia, Moldova, the Netherlands, Norway, Pakistan, the Philippines, Portugal, Romania, Serbia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. See 2004 TIP Report, *supra* note 17; see also 2005 TIP Report, *supra* note 5.

<sup>693</sup> See OSCE Action Plan, *supra* note 124, at 15; see also ECOSOC Report, *supra* note 58, at 11.

<sup>694</sup> See OSCE GUIDE, *supra* note 72, at 60.

<sup>695</sup> Trafficking Protocol, *supra* note 3, art. 7(1).

<sup>696</sup> *Id.*

<sup>697</sup> ANNOTATED GUIDE, *supra* note 237, at 26.

<sup>698</sup> See *supra* note 692.

7 and to provide victims with the protection they need instead of exposing them to the possibility of being re-trafficked by automatically deporting them to their country of origin.<sup>699</sup>

Some countries agree that it is always appropriate to grant short-term residency status to victims in order to allow them to recover from their trauma, decide whether it is safe to cooperate with law enforcement, and become familiar with their rights.<sup>700</sup> In Italy, for example, trafficked victims can obtain a residence permit based upon their need for protection and not their willingness to testify.<sup>701</sup> If it is clear that an individual has been threatened with violence, or is in danger because s/he has attempted to escape or because s/he has made preliminary declarations to authorities, the Italian government issues a residence permit for a period of six months with the possibility of renewal up to a year or more.<sup>702</sup> During this time period, victims have access to the labor market, social reintegration programs, health insurance plans, and unemployment benefits.<sup>703</sup> If a victim secures a job, the permit is extended for the requisite time period.<sup>704</sup> However, if a victim no longer participates in the social integration program, his/her residence permit can be revoked.<sup>705</sup>

Other states offer long-term residency status to victims if they fit certain criteria. For example, the United States grants trafficked victims a T visa if they have been subjected to severe forms of trafficking (a statutorily-defined term that approximates the definition found in article 3 of the Trafficking Protocol), if they are physically present on U.S. territory, they are not under eighteen years of age and agree to assist law enforcement, and they would suffer extreme hardship involving unusual and severe harm upon removal from the United States. If the victim is under eighteen years of age, s/he is not required to cooperate with law enforcement in order to receive a T visa but must fulfill the other aforementioned requirements.<sup>706</sup> Once granted the T visa, individuals can apply for permanent residence in the United States.<sup>707</sup> The T visa is available for victims of trafficking as well as their families, including:

- spouses of trafficked victims
- children of trafficked victims
- parents of trafficked victims (if victims are minors).<sup>708</sup>

If trafficked victims do not receive either short term or permanent residence, the OSCE argues that they can apply for asylum as a last resort. In Article 14(1) the Trafficking Protocol refers to the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”)<sup>709</sup> and the 1967

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<sup>699</sup> See Mattar 2, *supra* note 191, at 13-14.

<sup>700</sup> See ANNOTATED GUIDE, *supra* note 237, at 26.

<sup>701</sup> See OSCE GUIDE, *supra* note 72, at 65-66; see also Legislative Decree on Immigration and Aliens, No. 286/98 (1998) (Italy), art. 18, available at <http://www.legislationline.org/view.php?document=57949> [hereinafter Italian Act].

<sup>702</sup> See Italian Act, *supra* note 701, arts. 18(1), 18(4); see also OSCE GUIDE, *supra* note 72, at 65-66.

<sup>703</sup> See Italian Act, *supra* note 701, art. 18(5); see also OSCE GUIDE, *supra* note 72, at 65-66.

<sup>704</sup> See Italian Act, *supra* note 701, art. 18(5); see also OSCE GUIDE, *supra* note 72, at 65-66.

<sup>705</sup> See Italian Act *supra* note 701, art. 18(4); see also OSCE GUIDE, *supra* note 72, at 65-66.

<sup>706</sup> See TVPA 2000, *supra* note 206, § 107(e)(1)(C). It should be noted that until recently, the U.S. required *all* victims to cooperate with law enforcement authorities and assist in the investigation and prosecution of acts of trafficking, before granting them a T visa. See TVPA 2000, *supra* note 206, § 107(e)(1)(C). This is no longer a requirement for victims under the age of eighteen. See TVPA 2003, *supra* note 206, § 4(b)(1)(A) (2003).

<sup>707</sup> See TVPA 2000, *supra* note 206, § 107(e)(1)(C).

<sup>708</sup> See *id.*

<sup>709</sup> See generally Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, available at

<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+ywwFqMvqXs +nw6aaaxFqMvqXs +nw6aaamFqA72ZR0gRfZNhFqhT0NuItFqrpGdBnqBzFqr72ZR0gRAFqwDzmmwwwww1Fqr72ZR0gR> [hereinafter Refugee Convention].

Protocol Relating to the Status of Refugees,<sup>710</sup> indicating that it does not affect the rights, obligations and responsibilities of states and individuals delineated in these particular instruments.<sup>711</sup> Thus, trafficked victims can assert their rights under the Refugee Convention, if they fall within that instrument's definition of a refugee,<sup>712</sup> and can apply for asylum in their country of destination or transit, if that country is a State Party to the Refugee Convention.

### **Immigration Issues Within the Context of Humanitarian and Compassionate Factors**

Article 7(2) of the Trafficking Protocol tailors the discussion regarding immigration matters to the particular situation of trafficked victims. This provision requires States Parties to "give appropriate consideration to humanitarian and compassionate factors" when contemplating the legal status of victims that are present within their territory.<sup>713</sup> Commentators encourage governments to pay heed to such factors and establish an immigration status specifically designed for victims of trafficking.<sup>714</sup>

One expert frames trafficking as a human security issue, rather than a state security issue, and interprets this provision to mean that states should move away from the traditional immigration law approach of automatically deporting individuals and, instead, strive to grant them either a temporary or permanent legal status.<sup>715</sup> In fact, this is presently the practice in certain domestic jurisdictions. For example, Germany's "Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic" indicates that "[a]n alien may be granted a temporary consent to remain as long as he is not under a final obligation to leave, or if there are pressing *humanitarian* or personal reasons, or important public interests, requiring his continued temporary presence in Federal territory."<sup>716</sup>

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<sup>710</sup> See generally Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, available at

<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+ywwFqMvqXs +nw6aaaxFqMvqXs +nw6aaamFqA72ZR0gRfZNhFqhT0NuItFqrpGdBnqBzFqr72ZR0gRAFqwdzmwwwwww1Fqr72ZR0gR>.

<sup>711</sup> See Trafficking Protocol, *supra* note 3, art. 14(1).

<sup>712</sup> See Refugee Convention, *supra* note 709, art. 1(A)(2) (defining refugee as a person who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.").

<sup>713</sup> See Trafficking Protocol, *supra* note 3, art. 7(2).

<sup>714</sup> See OSCE Action Plan, *supra* note 124, at 15; see also ECOSOC Report, *supra* note 58, at 11.

<sup>715</sup> See Mattar 2, *supra* note 191, at 14-15.

<sup>716</sup> Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic, § 55(3) (1999) (F.R.G.), at <http://www.legislationline.org/view.php?document=55342> [emphasis added].

## *Examples of Compliance and Non-Compliance*

### **Immigration Status**

#### De Jure

- **Compliance:** In the Netherlands, trafficked victims can apply for a residence permit for a fixed period up to a maximum of five consecutive years.<sup>717</sup> Application for such a permit “may not be rejected on account of the absence of a valid authorisation for temporary stay if it concerns an alien who is the victim of the crime of trafficking in women *or* is a witness/informant in respect thereof.”<sup>718</sup> Thus, the issuance of a temporary residence does not depend upon the victim’s willingness to testify against his/her trafficker.

#### De Facto

- **Non-compliance:** Poland grants foreign victims of trafficking a one-year temporary residence permit when they agree to testify against their traffickers. In June 2004, the U.S. State Department reported that despite training of Polish authorities on proper identification and assistance of trafficked individuals, many victims were summarily deported. In June 2005, the U.S. State Department indicated that “[d]ue in part to a lack of formal screening procedures, enforcement authorities continued to deport some potential victims.”<sup>719</sup>

### **Immigration Issues Within the Context of Humanitarian and Compassionate Factors**

#### De Jure

- **Compliance:** Immigration provisions in the Netherlands provide trafficked victims with both temporary residence permits as well as permanent residence permits. Permanent residency can be offered when *humanitarian factors* are involved such as risk of reprisals against the victims, lack of formal protection, risk of the victims being prosecuted, and the possibility of reintegration in the victims’ countries of origin.<sup>720</sup>

#### De Facto

- **Non-compliance:** While permanent residency based upon humanitarian factors is a possibility in the Netherlands, the courts construe such factors narrowly. Consequently, there have been few cases where the trafficked victims were indeed offered permanent residence.<sup>721</sup>

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<sup>717</sup> See Aliens Act 2000, No. 26 732, § 13 (2000) (Neth.), at <http://www.legislationline.org/view.php?document=57581>. It should be noted that the Dutch Aliens Act entered into force in April 2001. See MINISTRY OF JUSTICE, THE ALIENS ACT 2000 3 (2004).

<sup>718</sup> Aliens Act 2000, *supra* note 717, § 15(1)(d) (emphasis added).

<sup>719</sup> 2004 TIP Report, *supra* note 17, at 163; see also 2005 TIP Report, *supra* note 5, at 180.

<sup>720</sup> See ASI REPORT, *supra* note 150, at 73.

<sup>721</sup> See *id.*

## Article 8: Repatriation of Victims of Trafficking in Persons

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

Article 8 of the Trafficking Protocol delineates the particulars of repatriating victims of trafficking.<sup>722</sup> It affirms the right of victims to return<sup>723</sup> to:

- countries of which they are nationals or
- countries where they hold permanent residence.<sup>724</sup>

Article 8 should be read in conjunction with Article 7 of the Protocol (above), which covers situations where victims are allowed to remain in countries of destination and transit that choose to grant them a designated legal status.<sup>725</sup>

Below is a discussion of the issues related to repatriation that Article 8 focuses upon as well as other relevant issues that Article 8 omits. Once again, the reader should not interpret this as an exhaustive list.

Obligations Under Art. 8	Obligations Not Addressed in Art. 8	Obligations Under Art. 14
<ul style="list-style-type: none"> <li>• Providing victims with the right to return</li> <li>• Emphasizing the importance of victims' safety throughout the return process</li> <li>• Taking into</li> </ul>	<ul style="list-style-type: none"> <li>• Taking into account existing domestic laws in <i>states of origin</i> that protect victims</li> <li>• Explicitly calling for the creation of domestic laws in states of origin that protect victims</li> </ul>	<ul style="list-style-type: none"> <li>• Respecting the principle of <i>non-refoulement</i></li> </ul>

<sup>722</sup> See Trafficking Protocol, *supra* note 3, art. 8.

<sup>723</sup> See Mattar 3, *supra* note 191, at 1.

<sup>724</sup> See Trafficking Protocol, *supra* note 3, art. 8.

<sup>725</sup> See *id.* art. 7.

<p>consideration legal proceedings that involve victims</p> <ul style="list-style-type: none"> <li>• Suggesting that the return of victims shall preferably be voluntary</li> <li>• Requiring countries to verify the nationality or permanent residence status of victims</li> <li>• Requiring countries to provide travel documentation or other authorization for returning victims</li> <li>• Taking into account existing domestic laws in <i>receiving states</i> that protect victims</li> <li>• Taking into account existing bilateral or multilateral agreements that govern the return of victims</li> </ul>	<ul style="list-style-type: none"> <li>• Addressing the special needs of victims (especially children) within the context of return</li> <li>• Addressing the issue of statelessness</li> <li>• Allocating the cost for the return of victims</li> </ul>	
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### Right to Return

Article 8(1) of the Trafficking Protocol affirms the right of trafficked victims to return to their country of nationality or permanent residence by requiring these particular states to facilitate the return process and accept victims back within their territory.<sup>726</sup> The right to return invokes the principle of *non-refoulement*, the legal prohibition on the expulsion or return of individuals if their lives or freedoms are threatened, which is delineated in instruments such as the Refugee Convention.<sup>727</sup> It should be noted that *non-refoulement* is not explicitly mentioned in Article 8 of the Protocol, but it is mentioned in Article 14(1). Article 14(1) indicates that nothing in the Trafficking Protocol is to affect the rights and obligations delineated in the 1951 Refugee Convention and its 1967 Protocol, including the principle of *non-refoulement*.<sup>728</sup>

The *travaux préparatoires* explain that Article 8(1) of the Protocol “should be understood as being without prejudice to any domestic legislation regarding either the granting of the right of residence

<sup>726</sup> See *id.* art. 8(1).

<sup>727</sup> See Refugee Convention, *supra* note 709, art. 33(1) (“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”).

<sup>728</sup> See Trafficking Protocol, *supra* note 3, art. 14(1).

or the duration of residence.”<sup>729</sup> Victims can seek temporary or permanent residence in the transit or destination country (where available) or they can decide to return to their country of origin.

The OSCE highlights the importance of requiring States Parties, under Article 8(1), to act with “due regard for the safety” of victims as they return.<sup>730</sup> It stresses that during the return process, victims should be protected from retaliation on the part of traffickers and should not be subjected to any other harm by authorities in receiving states.<sup>731</sup> The OSCE recommends that official escorts be provided for trafficked victims during their travel.<sup>732</sup> However, if the threat of retaliation is indeed real, then governments should consider granting permanent residence, or a similar legal status, to trafficked victims.<sup>733</sup>

Lastly, Article 8(1) of the Protocol requires States Parties to return victims “without undue or unreasonable delay.”<sup>734</sup> One observer explains that this obligation means that states should ensure the victims’ safety and grant them an opportunity to take advantage of their legal rights throughout the return process and not simply deport them.<sup>735</sup>

### **Safety, Legal Proceedings, and the Voluntary Nature of Return**

Article 8(2) of the Trafficking Protocol reiterates the importance of governments acting with “due regard for the safety” of victims as they return.<sup>736</sup> The Stability Pact includes a risk assessment in its training of law enforcement. When victims wish to be repatriated, government authorities should ask the following:

- If the victims are discovered and rescued in a country of transit or destination, are the risks so grave that it is not safe for them to be repatriated?
- If so, what provisions for access to temporary residency status and IO-NGO support exist in the country in which they are identified?
- If the victims are identified in their country of origin, is it safe to allow them to return home or will they be at risk of being assaulted and/or re-trafficked?
- If it is not safe, can this risk be addressed - does IO-NGO support capacity exist to prevent this possibility?
- Are there any social, cultural, or religious factors that may make repatriation dangerous, i.e., is the victim being sent back to a family that sold her in the first place or does the faith of the victim mean that she is at risk if she is repatriated as a trafficked victim subjected to sexual exploitation?
- Could the above risks itemised at point 5 above also apply to victims encountered in their own country in cases where they have been intercepted prior to transit and where there is any suspicion or belief on the part of the victim’s family that she knew she was going to be engaged in prostitution?<sup>737</sup>

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<sup>729</sup> Convention and Protocol Travaux, *supra* note 68, at 13.

<sup>730</sup> See Trafficking Protocol, *supra* note 3, art. 8(1); see OSCE GUIDE, *supra* note 72, at 90-92; see also OSCE Action Plan, *supra* note 124, at 15.

<sup>731</sup> See OSCE GUIDE, *supra* note 72, at 92.

<sup>732</sup> See *id.* at 90 (“Travelling without an escort, [victims] are especially vulnerable to being re-captured by traffickers.”).

<sup>733</sup> See *id.* at 92.

<sup>734</sup> Trafficking Protocol, *supra* note 3, art. 8(1).

<sup>735</sup> See ANNOTATED GUIDE, *supra* note 237, at 26.

<sup>736</sup> See Trafficking Protocol, *supra* note 3, art. 8(2).

<sup>737</sup> ICMPD TRAINING MANUAL, *supra* note 10, at 54.

The Stability Pact advises officials to contact an international organization or NGO in the victim's country of origin, so that the victim is met and properly assisted upon arrival at home.<sup>738</sup> If a credible organization is chosen for this task, traffickers can then be prevented from meeting victims upon their arrival and re-trafficking them.<sup>739</sup>

In addition, Article 8(2) requires states to pay heed to "the status of any legal proceedings related to the fact that the person is a victim of trafficking."<sup>740</sup> Before preparing a victim for his or her return, officials should verify whether the victim is scheduled to testify in any criminal proceedings against alleged traffickers,<sup>741</sup> whether there are any open administrative hearings concerning the legal status of the victim,<sup>742</sup> or whether there are any civil proceedings against the accused for damages that require the presence of victims.<sup>743</sup>

Lastly, Article 8(2) of the Protocol mentions that the return of trafficked victims "shall preferably be voluntary."<sup>744</sup> Experts insist that law enforcement and other officials should remember that trafficked individuals remain victims of crime and due regard should be given to their vulnerability.<sup>745</sup> Their consent to return should never be assumed.<sup>746</sup> At all times, decisions made in connection with their repatriation should be based upon their consent and, in certain circumstances, such consent must be in writing. For example, when arranging with an international organization or NGO to meet a trafficked victim upon her arrival home (mentioned above), "[t]he victim should always be consulted and her permission sought and confirmed in writing."<sup>747</sup> This is important because "the victim may not wish the fact of her exploitation as a prostitute to be disclosed to any official body in her home country. There may be religious or socio-cultural factors that effect the proposal."<sup>748</sup>

## **Verification**

Article 8(3) of the Trafficking Protocol requires countries of origin to verify the legal status of trafficked victims when requested by destination or transit countries (i.e., receiving countries).<sup>749</sup> The verification should indicate whether the trafficked victim is either a national of the country of origin or has the right to be a permanent resident in the country of origin.<sup>750</sup> Article 8(3) warns that such verification should be undertaken without "undue or unreasonable delay."<sup>751</sup> The *travaux préparatoires* of the Protocol indicate that a return cannot take place until the country of origin verifies the nationality or the permanent residence of the trafficked victim.<sup>752</sup>

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<sup>738</sup> See *id.*

<sup>739</sup> See *id.*

<sup>740</sup> Trafficking Protocol, *supra* note 3, art. 8(2).

<sup>741</sup> See *id.* arts.6 (1) & 6(2) (discussing the involvement of trafficked victims in legal proceedings against alleged traffickers).

<sup>742</sup> See *id.* art. 7 (discussing the legal status of trafficked victims in receiving states).

<sup>743</sup> See discussion *supra* pp. 89-90 regarding victim compensation.

<sup>744</sup> Trafficking Protocol, *supra* note 3, art. 8(2).

<sup>745</sup> See ICMPD TRAINING MANUAL, *supra* note 10, at 54.

<sup>746</sup> See *id.*

<sup>747</sup> *Id.*

<sup>748</sup> *Id.* at 55.

<sup>749</sup> See Trafficking Protocol, *supra* note 3, art. 8(3).

<sup>750</sup> See *id.*

<sup>751</sup> *Id.*

<sup>752</sup> See Convention and Protocol Travaux, *supra* note 68, at 14.

## Documentation

Article 8(4) of the Trafficking Protocol discusses the issuance of travel documentation or other requisite authorization for returning victims.<sup>753</sup> Upon request from a destination country, a country of origin (i.e., a country where the victim is a national or has permanent residence) is required to produce travel documents for the victim that wishes to return or grant him or her any other authorization that would facilitate his/her return.<sup>754</sup> The *travaux préparatoires* explain that “‘travel documents’ include any type of document required for entering or leaving a State under its domestic law.”<sup>755</sup> In cases where the victims are minors, states should issue the proper travel documents as well as any other requisite documentation pertaining to their unaccompanied travel back home.<sup>756</sup>

## Protection of Victims under Domestic Laws

Article 8(5) of the Trafficking Protocol notes that the right to return is not meant to prejudice any other right afforded to trafficking victims in the domestic legislation of destination countries.<sup>757</sup> If countries of destination establish certain rights for victims in already existing anti-trafficking legislation, such rights are not to be diminished or replaced by the right to return described in Article 8 of the Protocol.<sup>758</sup>

Here the Protocol can be interpreted to cross-reference certain domestic legislation in *destination countries* that ensures the protection, assistance, and rehabilitation of trafficked victims (as described in Article 6 above).<sup>759</sup> Article 8 does not, however, emphasize the same sort of relationship to existing protective legislation in *states of origin*.<sup>760</sup> Moreover, Article 8 does not explicitly call for the creation of such protective legislation in *states of origin*.<sup>761</sup> ECOSOC and the OSCE stress the need for such support and assistance for trafficked victims upon their return to their country of origin.<sup>762</sup> It should be noted, though, that the Trafficking Protocol provides a “floor” delineating the *minimum* obligations that must be undertaken in order to effectively combat trafficking.<sup>763</sup> Thus, States Parties are permitted to go beyond the obligations of Article 8 and establish a link between the right to return and protective legislation in states of origin, and not just destination states.

## Bilateral or Multilateral Agreements Regarding Return

Lastly, Article 8(6) of the Trafficking Protocol indicates that the right to return is not meant to prejudice any other rights or obligations that are delineated in bilateral or multilateral agreements

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<sup>753</sup> See Trafficking Protocol, *supra* note 3, art. 8(4).

<sup>754</sup> See *id.*

<sup>755</sup> Convention and Protocol Travaux, *supra* note 68, at 14.

<sup>756</sup> See OSCE Action Plan, *supra* note 124, at 16.

<sup>757</sup> See Trafficking Protocol, *supra* note 3, art. 8(5).

<sup>758</sup> See *id.* art. 8.

<sup>759</sup> See *id.* art. 6.

<sup>760</sup> See *id.* art. 8.

<sup>761</sup> See *id.*

<sup>762</sup> See ECOSOC Report, *supra* note 58, at 11 (“Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficked victims.”); see also OSCE Action Plan, *supra* note 124, at 15.

<sup>763</sup> See Puleo Speech, *supra* note 3.

that either partially or wholly govern the return of victims of trafficking.<sup>764</sup> The *travaux préparatoires*, however, indicate that such agreements include “both agreements that deal specifically with the subject matter of the Protocol [i.e., trafficking in persons] and more general readmission agreements that include provisions dealing with illegal migration.”<sup>765</sup> Furthermore, the right to return, as described in Article 8 of the Trafficking Protocol, is not to prejudice any other obligations under customary international law with respect to the return of migrants.<sup>766</sup>

## Children

Article 8 of the Trafficking Protocol does not tailor the right to return to victims that have special needs such as children.<sup>767</sup> The OSCE emphasizes the importance of deciding on the repatriation of a child victim of trafficking only after having taken account of all the circumstances of the specific case and if there is a family or special institution in the country of origin to ensure the child’s safety, protection, rehabilitation, and reintegration.<sup>768</sup>

ECOSOC stresses that, in situations of repatriation, governments should focus on the best interests of the child and undertake the following steps:

- ensure the rapid identification of child victims
- ensure that trafficked children are not subjected to criminal procedures or sanctions
- take steps to identify and locate family members (in cases where children are not already accompanied by a parent or guardian)
- where return is not possible, establish adequate care that respects the rights and dignity of child victims
- where trafficked children are capable of forming their own opinions, protect their right to express themselves (especially concerning their return)
- provide trafficked children with appropriate physical, psychological and legal support
- provide trafficked children with shelter, health-care and education
- protect the rights of children at all stages of criminal proceedings against alleged traffickers as well as during compensation hearings
- protect the privacy and identity of trafficked children by limiting the dissemination of their personal information
- ensure that the staff caring for trafficked children are adequately and properly trained.<sup>769</sup>

When dealing with the return of children that have been victimized by trafficking, the OSCE further advises states to consult international instruments such as:

- guidelines issued by the United Nations High Commissioner for Refugees for the protection of unaccompanied minors<sup>770</sup>
- the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography<sup>771</sup>

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<sup>764</sup> See Trafficking Protocol, *supra* note 3, art. 8(6).

<sup>765</sup> Convention and Protocol Travaux, *supra* note 68, at 14.

<sup>766</sup> See *id.*

<sup>767</sup> See Trafficking Protocol, *supra* note 3, art. 8.

<sup>768</sup> See OSCE Action Plan, *supra* note 124, at 16.

<sup>769</sup> See ECOSOC Report, *supra* note 58, at 13.

<sup>770</sup> See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, GUIDELINES ON POLICIES AND PROCEDURES IN DEALING WITH UNACCOMPANIED CHILDREN SEEKING ASYLUM 14 (1997) (discussing the repatriation of unaccompanied minors).

<sup>771</sup> See generally CRC Protocol, *supra* note 292.

- any other bilateral or regional agreements outlining fundamental principles of good reception of unaccompanied children.<sup>772</sup>

## Statelessness

One commentator calls attention to the fact that Article 8 of the Trafficking Protocol does not refer to the problem of statelessness and the right of stateless persons to return to the country where they last resided.<sup>773</sup> She describes the problem in the following manner:

Some trafficked persons come from communities in which childbirths are not registered and others travel with false documents. In both situations, the trafficked persons do not have any legitimate travel documents and may find it very difficult to obtain new ones. As a result, countries of destination are sometimes faced with the situation in which no government will accept the trafficked person as a citizen, leaving the person stateless.<sup>774</sup>

Since the Trafficking Protocol does not address the issue of statelessness, governments should grant stateless persons the appropriate rights<sup>775</sup> and seek guidance from the 1954 United Nations Convention Relating to the Status of Stateless Persons (“Convention on Statelessness”).<sup>776</sup>

The Convention on Statelessness defines a stateless person as “a person who is not considered as a national by any State under the operation of its law”<sup>777</sup> and protects his/her rights within various degrees depending upon the circumstances.<sup>778</sup> The Convention does not apply to the following individuals:

- persons who are protected or assisted by United Nations organs other than the High Commissioner for Refugees
- persons who are recognized by countries in which they have taken up residence
- persons who have committed crimes against peace, war crimes, or crimes against humanity
- persons who have committed serious non-political crimes before entering the territory of the countries in which they currently reside
- persons guilty of acts contrary to the purposes and principles of the United Nations.<sup>779</sup>

Commentators point out that, over the years, the United Nations has accepted a two-pronged definition of statelessness. They explain that there are two types of statelessness:

- *de jure* statelessness, as described by the 1954 Convention on Statelessness above, where persons are not recognized as nationals under the laws of any state

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<sup>772</sup> See OSCE Action Plan, *supra* note 124, at 16.

<sup>773</sup> See, e.g., Trafficking Protocol, *supra* note 3, art. 8; HUMAN RIGHTS WATCH, OWED JUSTICE: THAI WOMEN TRAFFICKED INTO DEBT BONDAGE IN JAPAN 39 (2000), available at <http://www.hrw.org/reports/2000/japan/6-sec-6-7-8.htm> [hereinafter 2000 HRW JAPAN REPORT].

<sup>774</sup> ANNOTATED GUIDE, *supra* note 237, at 27-28.

<sup>775</sup> See *id.* at 28.

<sup>776</sup> See generally United Nations Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117, available at [http://www.unhcr.ch/html/menu3/b/o\\_c\\_sp.htm](http://www.unhcr.ch/html/menu3/b/o_c_sp.htm) [hereinafter Convention on Statelessness].

<sup>777</sup> *Id.* art. 1(1).

<sup>778</sup> The provisions of the Convention on Statelessness delineate various standards of protection obligating States Parties to grant stateless persons staying within their territory “treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances,” to protect the rights of stateless persons and treat them as if they were “their nationals,” and “to give sympathetic consideration” in certain circumstances. See, e.g., *id.*, arts. 17, 23, 28. These are a few examples of the standards of protection offered to stateless persons with respect to their right to earn wages, receive welfare, obtain housing, collect public relief, secure travel documents, etc. See *id.*, arts. 17, 20, 21, 23, 28.

<sup>779</sup> See *id.* art. 1(2).

- de facto statelessness, where persons attain an ineffective nationality or cannot establish their nationality.<sup>780</sup>

De jure statelessness may be further categorized as original or subsequent. Original de jure statelessness results where persons do not acquire a nationality under the laws of any state at birth.<sup>781</sup> Subsequent de jure statelessness occurs when persons become stateless later in life by losing their nationality without acquiring another.<sup>782</sup> As explained above, trafficked victims can fall within any of these categories depending upon their circumstances (i.e., born without a designated nationality, traveling with false documentation, etc.).

## Cost

Lastly, Article 8 of the Trafficking Protocol does not specify which parties are to bear the cost of returning trafficked victims to their countries of nationality or permanent residence.<sup>783</sup> Experts indicate that victims should not have to pay for their own repatriation. The OSCE suggests that “[t]he costs for repatriations should be borne by the states. For this purpose, states should cooperate in order to establish a system to finance repatriations.”<sup>784</sup> Money from confiscated proceeds of the crime of trafficking should be designated to cover repatriation costs and resource rich countries should donate funds to developing countries for the repatriation of victims.<sup>785</sup> Bearing the cost for return is part of a comprehensive program of resettlement, repatriation, and reintegration of trafficked victims.

## *Examples of Compliance and Non-Compliance*

### **Right to Return**

#### De Jure

- **Compliance:** U.S. anti-trafficking legislation indicates that “[t]he Secretary of State and the Administrator of the United States Agency for International Development [“USAID”], in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children.”<sup>786</sup>

#### De Facto

- **Compliance:** Thai embassy officials in Japan aid women *who are Thai nationals* and who have been trafficked into Japan. Embassy officials issue CI papers and help the trafficked

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<sup>780</sup> See Rachel Settlege, *No Place to Call Home Stateless Vietnamese Asylum-Seekers in Hong Kong*, 12 GEO. IMMIGR. L.J. 187, 190 (1997); see generally 2000 HRW JAPAN REPORT, *supra* note 773.

<sup>781</sup> See PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 161 (2nd ed. 1979); see also Settlege, *supra* note 780, at 189-90.

<sup>782</sup> See WEIS, *supra* note 781, at 162; see also Settlege, *supra* note 780, at 190.

<sup>783</sup> See Trafficking Protocol, *supra* note 3, art. 8.

<sup>784</sup> OSCE GUIDE, *supra* note 72, at 92.

<sup>785</sup> See, e.g., *supra* text accompanying notes 511-12.

<sup>786</sup> TVPA 2000, *supra* note 206, § 107(a)(1).

women raise funds to cover their travel back to Thailand. Usually such victims are able to return home within a couple of weeks. “In some cases, Embassy officials have even gone to considerable lengths to help women escape from debt bondage in snack bars or brothels, and they often work closely with Japanese NGOs, referring women to private women’s shelters when they need a place to stay while they await repatriation.” This positive trend continued as of June 2005 but repatriation funds are limited.<sup>787</sup>

## Safety, Legal Proceedings, and the Voluntary Nature of Return

### De Jure

- **Compliance:** The Romanian anti-trafficking law guarantees the safety of victims returning to their country of origin and assures their transportation to the borders of Romania.<sup>788</sup>

### De Facto

- **Non-compliance:** In 2002, it was reported that very few women who had been trafficked from Nigeria to countries like Italy voluntarily returned.<sup>789</sup> In fact, a “group of approximately 160 women were deported from Italy *en masse*.”<sup>790</sup> IOM runs a program in conjunction with a local Nigerian NGO focused on voluntary repatriation. During a one-year period, this program had assisted only nine women returning to Nigeria. In June 2005, the U.S. State Department reported that the Italian government “continued to implement tough immigration laws in response to a significant influx of illegal immigrants. As a result, there were continued reports of authorities inadvertently deporting potential victims before they could be adequately screened and identified as having been trafficked.” However, “[i]n 2004, the government funded *voluntary repatriation* and six month reintegration assistance for 66 victims.”<sup>791</sup>

## Verification

### De Jure

- **Compliance:** The Romanian anti-trafficking law requires Romanian embassies and consular services abroad to assist victims of trafficking who are Romanian citizens upon request.<sup>792</sup> This would necessarily include a verification process.

### De Facto

- **Compliance:** In 2003, the Ministry of Labor and Social Affairs in Afghanistan together with UNICEF “established a transit center and a family verification system to assist in reuniting trafficked children with their parents. By March 2004, 219 children had been repatriated

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<sup>787</sup> 2000 HRW JAPAN REPORT, *supra* note 773, at 14; *see also* 2005 TIP Report, *supra* note 5, at 213.

<sup>788</sup> *See* Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 37 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>789</sup> *See* ASI REPORT, *supra* note 150, at 162.

<sup>790</sup> *Id.* at 160.

<sup>791</sup> *See id.* at 162; *see also* 2005 TIP Report, *supra* note 5, at 130 [emphasis added].

<sup>792</sup> *See* Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 28 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

from Saudi Arabia.” In June 2005, it was reported that Afghan officials continued to operate the transit center and to make use of the “innovative family tracing and reunification systems.”<sup>793</sup>

## Documentation

### De Jure

- **Compliance:** The Romanian anti-trafficking law provides that “[t]he Ministry of Foreign Affairs shall issue, within a reasonable period of time and without unjustified delays, through the diplomatic missions and consular bureaus of Romania, if need may be with a view to repatriation, identification documents to Romanian citizens victims of trafficking of trafficking in human beings.”<sup>794</sup> The law also provides assistance to non-citizen victims found on the territory of Romania in obtaining travel documentation or temporary identification through the Consular Relations Directorate of the Ministry of Foreign Affairs, or through other competent government branches, so that they may return to their country of origin.<sup>795</sup>

### De Facto

- **Compliance:** Efforts by Romanian embassies abroad, in accordance with the above anti-trafficking provisions, have resulted in the repatriation of 107 trafficked adults and twenty-five children from countries such as Italy, BiH, France, Spain, and Croatia in 2003-04. In 2004-05 Romanian embassies assisted with the repatriation of a total number of 350 victims of trafficking.<sup>796</sup>

## Protection of Victims under Domestic Laws

### De Jure

- **Compliance:** While U.S. anti-trafficking legislation requires the U.S. Secretary of State as well as government agencies like USAID to cooperate with NGOs in order to safely return willing victims to their homeland,<sup>797</sup> these efforts are not to replace or in any way diminish the protections and assistance offered to trafficked victims while they are present on U.S. territory (i.e., benefits, services, etc.).<sup>798</sup>

### De Facto

- **Compliance:** In June 2005, the U.S. Department of State reported that the Australian government “provided all suspected trafficking victims with short-term temporary shelter, medical care, and counseling. If these victims were determined by police to be able and willing to aid in a criminal investigation, they were given social security benefits, housing,

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<sup>793</sup> 2004 TIP Report, *supra* note 17, at 208; 2005 TIP Report, *supra* note 5, at 51.

<sup>794</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 29 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>795</sup> *See id.* art. 39.

<sup>796</sup> *See* 2004 TIP Report, *supra* note 17, at 167; *see also* 2005 TIP Report, *supra* note 5, at 183.

<sup>797</sup> *See* TVPA 2000, *supra* note 206, § 107(a)(1).

<sup>798</sup> *See id.* § 107(b)(1).

medical treatment, legal assistance, social support, and vocational training. Australia's streamlined police investigation and immigration referral procedures resulted in an increase in the number of suspected trafficking victims referred for visa determinations."<sup>799</sup>

## **Bilateral or Multilateral Agreements Regarding Return**

### De Jure

- **Compliance:** U.S. anti-trafficking legislation requires that "the Secretary of State and the Administrator of the United States Agency for International Development take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking, including stateless persons."<sup>800</sup>

## **Children**

### De Jure

- **Compliance:** In the United Kingdom, the Metropolitan Police issued a document entitled "Metropolitan Police Service Response to 'Every Child Matters'; a Government Green Paper on Improving Services for Children," which provides guidelines for better identifying and protecting children that have been trafficked into the country. The paper was based upon a study conducted at Heathrow airport as well as other points of entry that monitored the flow of unaccompanied children into the United Kingdom. Taking into consideration the best interests of the child, the document addresses, *inter alia*, the issue of child asylum seeking.<sup>801</sup>

### De Facto

- **Compliance:** In 2004, the Metropolitan Police in the United Kingdom, together with immigration officials, conducted a study screening the number of unaccompanied children entering the country at Heathrow airport and other points (Operation Paladin Child). The purpose of this effort was to identify children at risk of being trafficked into the United Kingdom and to provide them with the necessary protections.<sup>802</sup> Following Operation Paladin Child, authorities placed a full-time permanent child protection officer at Heathrow airport.<sup>803</sup>

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<sup>799</sup> See 2005 TIP Report, *supra* note 5, at 58.

<sup>800</sup> See TVPA 2000, *supra* note 206, § 107(a)(2).

<sup>801</sup> See METROPOLITAN POLICE GREEN PAPER, *supra* note 672, at 3.

<sup>802</sup> See 2004 TIP Report, *supra* note 17, at 185; see also METROPOLITAN POLICE GREEN PAPER, *supra* note 672.

<sup>803</sup> See 2004 TIP Report, *supra* note 17, at 185.

## Statelessness

### De Jure

- **Compliance:** The provisions of the U.S. anti-trafficking legislation dealing with reintegration, resettlement, and the protection and assistance of victims take into consideration the rights and needs of stateless persons who have been trafficked.<sup>804</sup>

### De Facto

- **Non-compliance:** In 2000, Human Rights Watch reported that some of the Thai victims trafficked to Japan were members of particular hill tribes in northern Thailand. While on the territory of Thailand, these women were not granted citizenship or permanent residence status.<sup>805</sup> Thus, when they were trafficked to Japan and sought to return to Thailand, they were considered to be stateless persons. The Thai government, while aiding Thai nationals that were trafficked to Japan in their repatriation, did not extend the same assistance to hill tribe women because they did not have official Thai citizenship before they left the country.<sup>806</sup>

## Cost

### De Jure

- **Non-compliance:** The Romanian anti-trafficking law indicates that “[i]n case victims of trafficking are brought to Romania by a transportation company, in awareness of the illicit character of this activity, that company shall have the obligation to provide accommodation and meals for those victims for the duration established by the Ministry of Interior and *shall bear the costs of their transportation to the Romanian border, according to the law.*”<sup>807</sup> This provision, on its face, is not in compliance with the Trafficking Protocol that would place such a responsibility upon the Romanian state. The law could be clarified and could indicate that the Romanian government is responsible for ensuring that transport companies comply with their obligation to cover the costs of repatriation. Only then the legislation would be compliant with the Trafficking Protocol.

### De Facto

- **Non-compliance:** In Poland, there is no specific government assistance set aside for the repatriation of trafficked victims, although they are eligible for unemployment and welfare benefits.<sup>808</sup> In contrast, IOM and La Strada (NGO) have established a program that assists those victims who wish to return safely and legally to their country of origin.<sup>809</sup>

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<sup>804</sup> See TVPA 2000, *supra* note 206, §§ 105(d)(4), 107(a)(1)-(2).

<sup>805</sup> See 2000 HRW JAPAN REPORT, *supra* note 773, at 11-12.

<sup>806</sup> See *id.* at 14-15.

<sup>807</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 40 (Rom.), at <http://www.legislationline.org/view.php?document=55257> [emphasis added].

<sup>808</sup> See 2004 TIP Report, *supra* note 17, at 163; see also 2005 TIP Report, *supra* note 5, at 180.

<sup>809</sup> See IOM: Assisted Voluntary Return and Reintegration for Victims of Trafficking in Poland (TPO), at [www.iom.int/](http://www.iom.int/).

- **Compliance:** In June 2005, the U.S. State Department reported that Morocco “cooperated with Italy and Spain to repatriate an estimated 6,000 Moroccan minors living illegally in both European countries, some of them likely trafficking victims. In cooperation with Spain and Belgium, it established shelters and provided a wide range of assistance for returnees. The government also repatriated 1,460 Nigerian victims.”<sup>810</sup>

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<sup>810</sup> See 2005 TIP Report, *supra* note 5, at 160-61.

## C. PREVENTION, COOPERATION, AND OTHER MEASURES

### Article 9: Prevention of Trafficking in Persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
  - (a) To prevent and combat trafficking in persons; and
  - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article, shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 9 of the Trafficking Protocol requires States Parties to establish means of preventing trafficking in persons. Such means include policies, programs, and other measures that seek to raise public awareness regarding trafficking, alleviate factors that contribute to the vulnerability of certain groups that are targeted by traffickers, and discourage the demand for trafficked persons.<sup>811</sup> Below is a summary of the issues that are specifically addressed in Article 9, as well as the issues that have been omitted. The reader should not interpret this as an exhaustive list.

Obligations Under Art. 9	Obligations Not Addressed in Art. 9
<ul style="list-style-type: none"> <li>• Establishing policies, programs, and other measures that prevent and combat trafficking as well as protect affected individuals from revictimization</li> <li>• Taking into consideration measures such as research, information, mass media campaigns, and social and economic initiatives to prevent trafficking</li> <li>• Cooperating with NGOs, other organizations, and elements of civil society when establishing mechanisms of prevention</li> <li>• Taking steps to alleviate factors that make individuals vulnerable to trafficking (i.e., poverty, underdevelopment, and lack of opportunity)</li> <li>• Adopting legislative, educational,</li> </ul>	<ul style="list-style-type: none"> <li>• Ensuring that preventive measures are not punitive against trafficked victims</li> <li>• Identifying the audiences for information and mass media campaigns regarding trafficking (i.e., potential victims, especially children, the general public, authorities, and professionals who are likely to come into contact with trafficked victims)</li> <li>• Addressing other possible (more specific) factors that directly or indirectly contribute to the vulnerability of certain individuals becoming trafficked (i.e., women's inequality in the labor market, violence against women, lack of access to the education system, globalization, increased movement of people,</li> </ul>

<sup>811</sup> See Trafficking Protocol, *supra* note 3, art. 9.

social, and cultural measures to discourage the demand for trafficked persons	economic exploitation, advancements in technology and communications, economic crises, regional armed conflicts, and rise in organized crime)
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### **Preventive Policies, Programs, and Other Measures**

Article 9(1) of the Trafficking Protocol imposes an obligation on States Parties to establish comprehensive policies, programs, and other measures that aim to:

- prevent and combat trafficking in persons
- protect trafficked persons from being revictimized.<sup>812</sup>

ECOSOC suggests that when creating preventive initiatives, states should pay heed to the particular experiences of governments that have been faced with trafficking problems thus far.<sup>813</sup> Furthermore, ECOSOC stresses the importance of relying upon accurate information regarding trafficking in persons, such as its causes and consequences.<sup>814</sup>

An issue that is not directly addressed in Article 9 is the importance of ensuring that preventive measures do not have a punitive effect upon the rights of individuals. For example, in their attempt to prevent the trafficking phenomenon from occurring, certain states have impeded upon the right of individuals to freely travel (i.e., freedom of movement). One expert explains:

It has been reported . . . that Indonesian girls are trafficked from villages in Java, Sumatra, and other islands to Saudi Arabia, where they are forced into domestic labor. Women are also trafficked from Sri Lanka to work as maids. The government of Bangladesh, which is a country of origin for trafficking of women, in response to the growing problem of abuse of domestic servants in the countries of the Middle East, has banned single, unskilled females from traveling alone to most countries of the Middle East. The United Arab Emirates, which is a country of destination for many women who are trafficked for the purpose of prostitution, issued a special decree prohibiting single women from the Newly Independent States of Central Asia under the age of 31 from entering the United Arab Emirates unless accompanied by male relatives or unless visiting the United Arab Emirates for business purposes.<sup>815</sup>

Thus, while not particularly obligated by Article 9 of the Trafficking Protocol, States Parties should strive to ensure that preventive measures do not curtail the rights of individuals in general.

### **Research, Information, Mass Media Campaigns, and Other Initiatives**

Article 9(2) of the Trafficking Protocol *encourages* States Parties to undertake measures such as research, information, mass media campaigns, and social and economic initiatives in order to prevent trafficking from occurring.<sup>816</sup> It is worthwhile to note that Article 9(2) does not require states to adopt the aforementioned preventive measures; they are suggestions. Nevertheless, such initiatives have proven to be useful in developing comprehensive anti-trafficking strategies.

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<sup>812</sup> See *id.* art. 9(1).

<sup>813</sup> See ECOSOC Report, *supra* note 58, at 11.

<sup>814</sup> See *id.*

<sup>815</sup> Matar 4, *supra* note 192, at 4-5.

<sup>816</sup> See Trafficking Protocol, *supra* note 3, art. 9(2).

## *Research*

One commentator mentions that researching the trafficking issue is important because it enables governments to develop proper policies and responses to this problem:

For example, research needs to be done in countries of destination to assess the manner in which restrictive immigration laws facilitate trafficking by preventing people from entering legally to work at jobs begging for workers. Research is also needed on best practices regarding prevention and reintegration.<sup>817</sup>

Others have indicated that research is needed in order to properly identify targeted groups of individuals in countries of origin.<sup>818</sup> “A comprehensive approach requires research on the causes of trafficking, the scale of the problem, the routes and methods used by traffickers, the needs of trafficked persons, as well as on the effectiveness of state anti-trafficking measures.”<sup>819</sup>

## *Public-Awareness Campaigns*

Article 9(2) of the Trafficking Protocol recommends developing information and mass media campaigns regarding trafficking.<sup>820</sup> While this provision mentions such means of raising public-awareness, it does not specifically identify the audiences to be targeted, such as:

- potential victims of trafficking (especially children)
- general public
- authorities and professionals who are likely to come into contact with trafficked persons.

Distributing information and conducting mass media campaigns can be effective mechanisms of prevention, as they educate potential migrants about their legal rights once they are overseas and the particulars of migration, so that they can decide whether or not their prospective travel and work plans are realistic and safe.<sup>821</sup> Such campaigns can be effective if the correct information is conveyed in an appropriate manner. The OSCE suggests that such campaigns should include “information about the phenomenon of trafficking, about existing possibilities and requirements for legal migration and employment in destination countries, as well as information about earning possibilities in order to give potential migrants a basis upon which to evaluate job offers.”<sup>822</sup> Furthermore, the OSCE stresses the importance of addressing the risk of HIV/AIDS that is associated with working in the sex industry.<sup>823</sup> One commentator suggests that such campaigns should be linked to service providers and other means of obtaining information.<sup>824</sup> Lastly, the OSCE emphasizes the need to reach children and young persons, who are particularly vulnerable, by conducting trafficking awareness campaigns in schools and universities and by working

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<sup>817</sup> ANNOTATED GUIDE, *supra* note 237, at 29.

<sup>818</sup> See OSCE GUIDE, *supra* note 72, at 17; *see also* ECOSOC Report, *supra* note 58, at 7; Intelligence Monograph, *supra* note 2, at 43-44.

<sup>819</sup> See OSCE GUIDE, *supra* note 72, at 95; *see also* OSCE Action Plan, *supra* note 124, at 8; ECOSOC Report, *supra* note 58, at 7-8.

<sup>820</sup> See Trafficking Protocol, *supra* note 3, art. 9(2).

<sup>821</sup> See OSCE GUIDE, *supra* note 72, at 17; *see also* Intelligence Monograph, *supra* note 2, at 43.

<sup>822</sup> OSCE GUIDE, *supra* note 72, at 17.

<sup>823</sup> *See id.*

<sup>824</sup> See ANNOTATED GUIDE, *supra* note 237, at 29.

directly with families.<sup>825</sup> This would ensure that individuals in danger of being targeted are sufficiently informed and are less likely to fall prey to traffickers' deceptive methods.

The OSCE recommends that, in addition to focusing upon potential victims, information and mass media campaigns should reach broader audiences, such as the general public, law enforcement officials, and other professionals who are likely to come into contact with trafficked individuals.<sup>826</sup>

The latter category of "other professionals" includes:

- immigration authorities
- consular and diplomatic personnel
- policy makers
- medical officials
- social service workers
- teachers
- persons associated with places of worship
- employment authorities
- actors within the private sector
- members of the media.<sup>827</sup>

### **Cooperation with NGOs, Other Organizations, and Elements of Civil Society**

Article 9(3) of the Trafficking Protocol requires States Parties, where appropriate, to cooperate with NGOs, other organizations, and relevant elements of civil society when developing mechanisms for preventing trafficking in persons.<sup>828</sup> As this provision promotes the involvement of NGOs in preventive endeavors, ECOSOC suggests that governments provide funding to NGOs in order to facilitate their cooperation.<sup>829</sup>

### **Root Causes**

Article 9(4) of the Trafficking Protocol obligates States Parties to take measures (or to strengthen already existing measures) in order to alleviate factors that make individuals vulnerable to trafficking such as poverty, underdevelopment, and lack of opportunity.<sup>830</sup> Observers point out that the language in Article 9(4) makes it mandatory for states to address underlying causes of trafficking in persons. This obligation can be fulfilled through various means. For example, destination countries could provide strategic development and other aid.<sup>831</sup>

Article 9(4) indicates that governments can address the aforementioned debilitating factors by cooperating with one another on a bilateral or multilateral level.<sup>832</sup> For example, the OSCE recommends that South Eastern European countries:

[M]ake use of bilateral, regional and international co-operation, including development co-operation, to eliminate the root causes of trafficking in human beings, especially women.

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<sup>825</sup> See OSCE GUIDE, *supra* note 72, at 17; see also OSCE Action Plan, *supra* note 124, at 11.

<sup>826</sup> See OSCE GUIDE, *supra* note 72, at 17.

<sup>827</sup> See OSCE Action Plan, *supra* note 124, at 10.

<sup>828</sup> See Trafficking Protocol, *supra* note 3, art. 9(3).

<sup>829</sup> See ECOSOC Report, *supra* note 58, at 11.

<sup>830</sup> See Trafficking Protocol, *supra* note 3, art. 9(4).

<sup>831</sup> See ANNOTATED GUIDE, *supra* note 237, at 30.

<sup>832</sup> See Trafficking Protocol, *supra* note 3, art. 9(4).

For this purpose, states should also make use of and support existing regional co-operation initiatives, such as the Stability Pact and its Task Forces on Gender and Trafficking in Human Beings.<sup>833</sup>

### *Gender Inequality and Additional Factors*

Although not mentioned in Article 9(4) of the Trafficking Protocol, commentators suggest that states should also address other, more specific factors that are at the root of the trafficking problem. These additional factors spring from the basic inequality that women generally experience in countries of origin,<sup>834</sup> including:

- inequality in the labor market
- violence against women
- lack of access to the education system (on the part of girls).<sup>835</sup>

There are numerous other direct or indirect causes of trafficking that affect countries of origin or destination and that are not necessarily tied to gender inequality, such as:

- globalization
- increased movement of people
- economic exploitation
- advancements in technology and communication
- economic crises
- regional armed conflicts
- rise in organized crime.<sup>836</sup>

Thus, the reader should not interpret the analysis below as an exhaustive list. However, these three causative factors are worth highlighting because they represent clear-cut situations where women's opportunities are limited and they can easily fall prey to traffickers. While Article 9(4) of the Trafficking Protocol lists "lack of equal opportunity" as a factor that makes persons vulnerable to trafficking,<sup>837</sup> this language could prove to be too vague when states attempt to identify and address the exact causes of this phenomenon. Thus, designating a series of factors to a category (i.e., "gender inequality") and discussing specifically how such factors have a direct effect on a particular group of individuals (i.e., women) is helpful.<sup>838</sup>

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<sup>833</sup> OSCE GUIDE, *supra* note 72, at 36; *see also* Stability Pact for South Eastern Europe, at <http://www.stabilitypact.org>.

<sup>834</sup> Observers point out that women in countries of origin have been (and are) a traditionally disadvantaged group. They are affected by gender-based inequality on most, if not all, levels: social, political, and economic. Commentators indicate that this is yet another reason why women are more susceptible to being trafficked. The overall inferior treatment of women in countries of origin, their general lack of opportunities, and the absence of mechanisms that are meant to protect and support women's rights, make women increasingly vulnerable to trafficking. *See* ECOSOC Report, *supra* note 58, at 12; *see also* OSCE GUIDE, *supra* note 72, at 20, 34.

<sup>835</sup> *See* OSCE GUIDE, *supra* note 72, at 20-32; *see also* OSCE Action Plan, *supra* note 124, at 8-10; ECOSOC Report, *supra* note 58, at 3, 11-12.

<sup>836</sup> *See* Cerone, *supra* note 1, at 42, 97; *see also* ICMPD TRAINING MANUAL, *supra* note 10, at 13.

<sup>837</sup> *See* Trafficking Protocol, *supra* note 3, art. 9(4).

<sup>838</sup> For a more in-depth discussion of gender inequality issues and a mechanism for assessing a country's compliance with the quintessential international instrument that protects women's rights, CEDAW, the reader should refer to AMERICAN BAR ASSOCIATION CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE, THE CEDAW ASSESSMENT TOOL: AN ASSESSMENT TOOL BASED ON THE CONVENTION TO ELIMINATE ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) (2002), available at <http://www.abanet.org/ceeli/publications/cedaw/home.html>.

## Women's Inequality in the Labor Market

The unequal treatment of women within the labor market is a specific manifestation of gender-based discrimination; one that has been highlighted as a contributing factor to the trafficking phenomenon.<sup>839</sup>

The OSCE indicates that women in countries of origin are discriminated against in various ways within the employment realm. First, their access to the labor market is limited and vocational training is not as available to women as it is to men.<sup>840</sup> Questions regarding the private lives of women arise when they seek jobs, such as the extent of their family obligations and the marital status of their children.<sup>841</sup> In certain cases, employers do not offer positions to women because they are either too young (i.e., of child bearing age) or too old (i.e., untrainable and without work potential).<sup>842</sup>

Once hired, women face more obstacles. Gender stereotypes dominate as certain jobs are seen as traditionally "female" (i.e., nurses, teachers, etc.).<sup>843</sup> Generally, such positions come with lower pay and less security,<sup>844</sup> factors which add to the already existing gender-gap in wages.<sup>845</sup> Furthermore, certain countries have passed over-protective legislation that prohibits women from being assigned to night shifts or that foresees maternity leave instead of paternity leave.<sup>846</sup> Lastly, long-term unemployment numbers tend to be higher among women than men.<sup>847</sup>

In addition to the aforementioned limitations, there often are no available means for proper legal recourse. The OSCE indicates that most countries of origin do not formally define gender-based discrimination within their legislation, do not have a complete understanding of indirect and structural discrimination against women, and do not provide temporary special measures to alleviate the hardship that women face in the labor market or otherwise.<sup>848</sup>

All of these constraints marginalize women considerably and decrease their economic opportunities. Faced with an unpromising future, women can fall prey to false representations of better employment overseas and can, thus, become easily trapped by traffickers.<sup>849</sup> In order to avoid such victimization, the OSCE recommends that states take measures to increase women's access to the labor market, eliminate gender-based discrimination in the work place and guarantee women's right to equal pay for equal work (thus following through with certain key obligations delineated in international instruments such as CEDAW).<sup>850</sup>

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<sup>839</sup> See OSCE GUIDE, *supra* note 72, at 26-28; see also OSCE Action Plan, *supra* note 124, at 9; ECOSOC Report, *supra* note 58, at 11.

<sup>840</sup> See OSCE GUIDE, *supra* note 72, at 27.

<sup>841</sup> See *id.*

<sup>842</sup> See *id.*

<sup>843</sup> See *id.* at 28.

<sup>844</sup> See *id.*

<sup>845</sup> See *id.* at 27.

<sup>846</sup> *Id.*

<sup>847</sup> See *id.* at 26.

<sup>848</sup> See *id.* at 27.

<sup>849</sup> See *id.* at 26-28; see also OSCE Action Plan, *supra* note 124, at 9; ECOSOC Report, *supra* note 58, at 11.

<sup>850</sup> See OSCE Action Plan, *supra* note 124, at 9; see also CEDAW, *supra* note 35, art. 11.

## Violence against Women

Observers indicate that violence against women (specifically domestic violence) contributes to increased numbers of trafficked victims.<sup>851</sup> This is particularly true in developing countries, where women who are subjected to repeated abuse by their violent partners desperately seek to flee abroad.<sup>852</sup> These women easily fall into the hands of traffickers when they cannot depend upon their domestic legal system for protection or support.<sup>853</sup>

The OSCE explains that domestic violence is not properly addressed in most countries of origin and that it stems from women's low social and economic standing relative to men. A victim of domestic violence cannot assert her rights when there are no legal provisions to offer her protection<sup>854</sup> and she cannot depend upon law enforcement authorities to protect her when there are no mechanisms to restrain her violent partner (i.e., restraining orders, etc.) or laws are not enforced against batterers.<sup>855</sup> In addition, awareness of domestic violence may be lacking in source countries and there are no proper support networks that victims can tap into in order to break away from their partners.<sup>856</sup> Furthermore, society does not recognize domestic violence as a problem and women, for the most part, refrain from filing reports because of shame, various customs and traditions, or because "they are used to this kind of life" and do not consider themselves victims of domestic violence.<sup>857</sup> Lastly, most women do not have the same earning capacity as men and they become financially dependent upon partners, who continue to abuse them.<sup>858</sup> Simply put, if women are economically dependent on men and cannot enforce their right to protection against abuse, then they become vulnerable to traffickers. Consequently, the OSCE recommends that states develop effective responses to domestic violence (which is one form of violence against women) in order to ensure that victims do not turn to traffickers for answers, thus, trading one precarious situation for another.<sup>859</sup>

As the Trafficking Protocol does not specifically highlight domestic violence as a causative factor of trafficking, governments may turn to other international instruments for guidance (especially if they have signed or ratified those instruments). States have an obligation under international law to take reasonable steps and measures to prevent, prosecute, and punish acts of violence against women and to ensure adequate remedies for victims of such violence. CEDAW<sup>860</sup> protects women's rights including their right to be free from violence. In 1992, the CEDAW Committee<sup>861</sup> incorporated gender-based violence into the treaty's general definition of "discrimination against

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<sup>851</sup> See OSCE GUIDE, *supra* note 72, at 22-23; see OSCE Action Plan, *supra* note 124, at 9; see SEBASTIAN LAZAROIU & MONICA ALEXANDRU, WHO IS THE NEXT VICTIM? VULNERABILITY OF YOUNG ROMANIAN WOMEN TO TRAFFICKING IN HUMAN BEINGS 5, 37-39 (2004), available at <http://www.iom.int/iomwebsite/Publication/ServletSearchPublication?event=detail&id=3171> [hereinafter IOM ROMANIA STUDY].

<sup>852</sup> See IOM ROMANIA STUDY, *supra* note 851, at 39.

<sup>853</sup> See OSCE GUIDE, *supra* note 72, at 22-23.

<sup>854</sup> See *id.*

<sup>855</sup> See *id.*

<sup>856</sup> See *id.*

<sup>857</sup> See *id.*

<sup>858</sup> See *id.*

<sup>859</sup> See *id.*

<sup>860</sup> See generally CEDAW, *supra* note 35.

<sup>861</sup> See generally Committee on the Elimination of Discrimination against Women, at <http://www.unhcr.ch/html/menu2/6/cedw.htm> [hereinafter CEDAW Committee].

women.”<sup>862</sup> As domestic violence is a form of gender-based violence,<sup>863</sup> and, thus, discriminatory, victims who suffer abuse at the hands of their partners can now seek protection under CEDAW. Conversely, states that are parties to CEDAW are under an obligation to address the issue of domestic violence within their territory.<sup>864</sup> If the issue of domestic violence is properly addressed, abused women are less susceptible to becoming victims of trafficking.

### **Lack of Access to the Education System on the Part of Girls**

Another contributing factor to trafficking in persons is lack of access to the education system on the part of girls in countries of origin.<sup>865</sup> The fewer opportunities girls have to obtain an education and/or to take advantage of vocational training, the less chance they have of becoming employed. The fewer chances they have of becoming employed, the more susceptible they are to being trafficked.<sup>866</sup>

While the Trafficking Protocol does not address this issue, states can make use of instruments like CEDAW, which go into greater detail on the subject. Article 10 of CEDAW indicates the following:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

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<sup>862</sup> CEDAW, *supra* note 35, art. 1 (“[T]he term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”); *see also* CEDAW Gen. Rec. No. 19, *supra* note 370, at para. 6 (“The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”).

<sup>863</sup> *See* SOURCEBOOK ON VIOLENCE AGAINST WOMEN 481-82 (Claire M. Renzetti et al eds., 2001) (“Violence against women is almost certainly the most pervasive human rights violation in the world. . . . This violence includes domestic violence, rape, sexual assault, forced prostitution, female genital mutilation, female infanticide, and sexual harassment.”).

<sup>864</sup> *See* CEDAW, *supra* note 35, art.2 (describing States Parties obligation to eliminate *all* forms of discrimination against women). For a more complete analysis of the protections available to domestic violence victims in CEDAW *see* Andreea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U. J. GENDER. SOC. POL.’Y & L. 309, 326-33 (2004), available at <http://www.wcl.american.edu/journal/genderlaw/12/12-2.cfm>.

<sup>865</sup> *See* OSCE Action Plan, *supra* note 124, at 8; *see also* ECOSOC Report, *supra* note 58, at 12.

<sup>866</sup> *See* IOM ROMANIA STUDY, *supra* note 851, at 39.

- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.<sup>867</sup>

If governments follow through with such obligations, the gender gap would narrow and girls would be provided the same educational and vocational opportunities as boys. With greater access to education, girls would not be as vulnerable to the trafficking phenomenon as they have been thus far.<sup>868</sup>

As a side comment, it should be noted that, while in school, girls are currently faced with deeply rooted gender-stereotypes incorporated in their school books and other teaching materials.<sup>869</sup> CEDAW prohibits the promotion of such stereotypes and requires their removal from the curricula.<sup>870</sup>

## Demand

Article 9(5) of Trafficking Protocol requires States Parties to adopt measures (or strengthen already existing measures) in order to effectively discourage the demand for trafficked persons.<sup>871</sup> Observers indicate that the demand for sex, forced labor, and illicitly traded human organs are the main causes of the trafficking phenomenon.<sup>872</sup> They encourage states to follow through with their obligations delineated in Article 9(5) of the Trafficking Protocol by:

- analyzing the factors that generate the demand for trafficked persons
- taking strong legislative, policy and other measures to address demand
- utilizing the media in order to reduce demand and promote zero tolerance towards all forms of trafficking.<sup>873</sup>

One study conducted under the auspices of the International Organization for Migration (“IOM”) suggests that trafficking is demand driven and lists some of the factors that could explain the exploitative conditions of the victims:

- the unregulated nature of the labor market in which victims find themselves working

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<sup>867</sup> CEDAW, *supra* note 35, art. 10.

<sup>868</sup> See Intelligence Monograph, *supra* note 2, at 21-23 (reporting an increase in the number of children that are being trafficked for the purposes of labor or the sex industry).

<sup>869</sup> See OSCE GUIDE, *supra* note 72, at 28.

<sup>870</sup> See CEDAW, *supra* note 35, art. 10(c).

<sup>871</sup> See Trafficking Protocol, *supra* note 3, art. 9(5).

<sup>872</sup> See ECOSOC Report, *supra* note 58, at 3, 11; see also OSCE Action Plan, *supra* note 124, at 11.

<sup>873</sup> See ECOSOC Report, *supra* note 58, at 12; see also OSCE Action Plan, *supra* note 124, at 11.

- the abundant supply of labor that is susceptible to exploitation
- the malleability of social norms influencing the behavior of persons who make use of trafficked victims.<sup>874</sup>

More concretely, the demand for domestic work, coerced child bearing, work in the “exotic” industry (prostitution and other sexual services), as well as cheap labor perpetuate trafficking in persons.<sup>875</sup> These are some of the factors that states should take into consideration when addressing demand and designing domestic anti-trafficking initiatives.

### *Examples of Compliance and Non-Compliance*

#### **Preventive Policies, Programs, and Other Measures**

##### De Jure

- **Compliance:** Albania developed a National Plan of Action (“NPA”) to combat trafficking in persons that was adopted via the “National Strategy Against Trafficking in Human Beings,” Decree No. 674, in December 2001. The NPA was implemented over a three-year period, 2001-2004, and had three phases: 1) the first phase (2001- June 2002) focused on measures that would have a direct impact on suppressing trafficking activities, such as researching the trafficking problem in Albania, preparing victim protection programs and awareness-raising programs, training police and prosecutors, creating a special anti-trafficking police force, and establishing an international anti-trafficking center in Vlora; 2) the second phase (July 2002-June 2003) focused on longer term preventive measures, such as researching and collecting data on trafficking, drafting a witness protection law, signing bilateral agreements regarding the return or transfer of victims to their country of origin or neighboring countries, developing school programs regarding the dangers of trafficking as well as STI and HIV/AIDS, creating centers for trafficked victims, and facilitating cooperation between police, international organizations, NGOs, and policy makers; and 3) the third phase (July 2003-September 2004) focused on developing programs that foster the economic empowerment of women and the prevention of domestic violence. In 2004, the government adopted “a newly improved Strategic Framework and National Action Plan that outlines a comprehensive and targeted approach to trafficking.”<sup>876</sup>
- **Non-compliance:** Croatia’s first NPA was adopted in 2002 and included measures to harmonize domestic legislation with the Transnational Crime Convention and the Trafficking Protocol, assist and protect trafficked victims, prevent trafficking, educate the public about the phenomenon, and promote international cooperation. The NPA was developed by an anti-trafficking working group within the Croatian Ministry of Interior, in consultation with NGOs and international organizations.<sup>877</sup> The OSCE indicated that the

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<sup>874</sup> See Bridget Anderson & Julia O’Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, IOM MIGRATION RESEARCH SERIES 43-44 (2003), available at [http://www.iom.int/DOCUMENTS/PUBLICATION/EN/mrs\\_15\\_2003.pdf](http://www.iom.int/DOCUMENTS/PUBLICATION/EN/mrs_15_2003.pdf).

<sup>875</sup> See ICMPD TRAINING MANUAL, *supra* note 10, at 16.

<sup>876</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 35-36; see LARA PROJECT - CRIMINAL LAW REFORM AGAINST TRAFFICKING IN HUMAN BEINGS, FINAL REGIONAL SEMINAR ON CRIMINAL LAW REFORM TO PREVENT AND COMBAT TRAFFICKING IN HUMAN BEINGS IN SOUTH-EASTERN EUROPE, COMPARATIVE TABLE ON LEGISLATIVE REFORM AND NATIONAL PLAN OF ACTION 3-6 (2003) [hereinafter LARA PROJECT]; see also 2005 TIP Report, *supra* note 5, at 53.

<sup>877</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 124-25.

section of the NPA delineating preventative measures was “very general and did not include information about more concrete actions to be taken.” It should be noted that on December 15, 2004, the government of Croatia adopted a National Strategy for the Suppression of Trafficking in Persons for 2005-2008 and an Operational Plan for the Suppression of Trafficking in Persons for 2005. International organizations such as the OSCE had not yet commented on these two new documents as of the date of this writing.<sup>878</sup>

### De Facto

- **Compliance:** As of November 2003, Croatian authorities had not allocated a budget or proposed estimated costs for their country’s first NPA. In 2004, however, Croatia “increased its support of prevention efforts by funding new anti-trafficking awareness campaigns. The government co-funded with NGOs several prevention programs, a shelter, a hotline, a public awareness campaign, and law enforcement training;” all vital NPA components.<sup>879</sup>
- **Compliance:** In June 2004, the U.S. State Department indicated that “[o]wing to revenues from its petroleum sector, the government [of Equatorial Guinea] has sufficient funding to support prevention and protection programs, but it failed to take action in these areas, largely due to lack of capacity in the public sector and civil service. The country’s borders are porous, corruption is rife, and there is no systematic monitoring or reporting on trafficking.” In June 2005, the U.S. State Department reported that the government of Equatorial Guinea “committed \$3-4 million in funding for UNICEF anti-trafficking projects” and its “efforts to raise public awareness about trafficking increased significantly over the last year.”<sup>880</sup>

## **Research, Information, Mass Media Campaigns, and Other Initiatives**

### De Jure

- **Compliance:** The 2001 NPA of the Former Yugoslav Republic of Macedonia called for the establishment of a central database to track individuals and groups that commit the act of trafficking in persons, reported cases, misdemeanor and offense records, indictments brought by the public prosecutor’s office, and criminal convictions. The information was to be cross-referenced according to age, sex, nationality, and social origin. In 2004, a draft National Strategy for Combating Trafficking in Children called for the creation of a similar database that would keep track of minor victims and would foster inter-agency cooperation.<sup>881</sup>
- **Compliance:** Sweden’s Plan of Action against trafficking in women establishes a commission that is to collect information regarding the trafficking of women into and out

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<sup>878</sup> *Id.* at 126; see 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 134.

<sup>879</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126; see also 2005 TIP Report, *supra* note 5, at 90.

<sup>880</sup> 2004 TIP Report, *supra* note 17, at 53; 2005 TIP Report, *supra* note 5, 101.

<sup>881</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 179; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 139-40.

of Sweden and to research possibilities of preventing this trade. The commission is also tasked with submitting regular reports to the Swedish government.<sup>882</sup>

### De Facto

- **Compliance:** In 2003, the government of Colombia cooperated with the International Organization for Migration (“IOM”) to launch a preventive campaign aimed at providing information to potential victims of trafficking in persons. The campaign included TV and radio announcements, a series of three posters displayed on the streets of Bogotá, in the underground public transportation system of Medellín, and other regions affected by trafficking, as well as the establishment of three telephone hotlines that provide information nationally and internationally. In June 2005, it was reported that the government’s anti-trafficking interagency committee continued with such preventive measures and prepared information campaigns, promoted training, and coordinated information exchanges.<sup>883</sup>
- **Compliance:** In 2000, the Netherlands appointed a National Rapporteur on Trafficking in Persons in accordance with Article 250(a) of the Criminal Code. The rapporteur is independent and is tasked with gathering information and making recommendations on offenders, trafficked victims, the manner in which the Dutch authorities conduct investigations and legal proceedings against traffickers, the measures taken to assist victims, the rate of repatriation, and changes in the nature of the trafficking phenomenon and its causes. The rapporteur is also responsible for fostering international cooperation in order to curb trafficking, which includes promoting consensus on the collection and management of data. The rapporteur and his/her staff of researchers are authorized to consult the police and criminal records.<sup>884</sup>
- **Non-compliance:** In Poland, the government funds some but not all preventive measures. The NGO La Strada (*not* the Polish government) conducts a comprehensive public-awareness campaign that consists of press interviews, press conferences, seminars, international conventions, and practical training sessions for professionals who are likely to come into contact with trafficked victims. La Strada also educates individuals who are susceptible to becoming trafficked through leaflets, lectures, video presentations, and school visits. Lastly, La Strada has established a telephone hotline that offers advice and reliable information to women who are considering migrating to Western Europe.<sup>885</sup>

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<sup>882</sup> See Trafficking in Women: Plan of Action of the National Criminal Investigation Department, § 1 (Swed.), at <http://www.legislationline.org/view.php?document=55440>.

<sup>883</sup> See Press Release, International Organization for Migration (“IOM”), Colombia: Counter-Trafficking Campaign Launched Aug. 5, 2003, at [http://www.libertadlatina.org/LatAm\\_Colombia\\_Anti\\_Traffic\\_Campaign\\_08052003.htm](http://www.libertadlatina.org/LatAm_Colombia_Anti_Traffic_Campaign_08052003.htm); see also 2005 TIP Report, *supra* note 5, at 85.

<sup>884</sup> See Council of Europe; National Legislation: the Netherlands, at [http://www.coe.int/T/E/human\\_rights/Trafficking/3\\_Documents/National\\_laws/EG\(2002\)2VolII\\_E.asp#P3088\\_223239](http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/National_laws/EG(2002)2VolII_E.asp#P3088_223239); see also CRIMINAL CODE [CRIM. C.] art. 250(a) (Neth.).

<sup>885</sup> See La Strada Poland: Our Activities, at <http://free.ngo.pl/lastrada/>.

## Cooperation with NGOs, Other Organizations, and Elements of Civil Society

### De Jure

- **Compliance:** Ukraine's NPA stresses cooperation between government authorities and NGOs in the fight against trafficking.<sup>886</sup>
- **Compliance:** The provisions in the U.S. anti-trafficking legislation dealing with prevention of trafficking in persons incorporate a "consultation requirement" for the President of the United States whereby s/he "shall consult with appropriate nongovernmental organizations with respect to the establishment and conduct of [preventive] initiatives."<sup>887</sup>

### De Facto

- **Compliance:** In 2003, the government of Lithuania conducted two campaigns in cooperation with the Nordic Council of Ministers, international organizations, and NGOs that focused on informing and educating the public about trafficking issues. The campaigns included the development of school curricula regarding trafficking prevention, preparation of a guide for teachers, and distribution of a brochure that warned targeted groups about the dangers of trafficking. In June 2005, the U.S. State Department reported that Lithuanian authorities continued these efforts in cooperation with civil society as the "government and local NGOs organized a series of educational events for more than 200 boarding school students who are particularly at risk for trafficking." Furthermore, the government subsidized half of the annual budget of a local NGO that distributed over 82,000 anti-trafficking brochures and posters throughout Lithuania and implemented over ten prevention programs in 2004.<sup>888</sup>

## Root Causes

### De Jure

- **Compliance:** The Romanian "Law on the Prevention and Combat of Trafficking in Human Beings" calls upon the Ministry of Labor and Social Solidarity to "work out and enforce special measures for the integration into the labor market of persons highly at risk of becoming trafficking victims, especially women in very poor areas and social outcasts." These measures include information and vocational training for potential victims, information programs for employers so that they are aware of these disadvantaged groups, and incentives for companies to hire individuals who are at risk of being trafficked as well as trafficked victims who graduate from vocational training programs.<sup>889</sup>

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<sup>886</sup> See OSCE GUIDE, *supra* note 72, at 98.

<sup>887</sup> TVPA 2000, *supra* note 206, § 106(c).

<sup>888</sup> See 2004 TIP Report, *supra* note 17, at 156; 2005 TIP Report, *supra* note 5, at 145.

<sup>889</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 6 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

## De Facto

- **Non-compliance:** In India, poverty, the breakdown of traditional livelihoods, lack of education and skills for women and children, natural disasters, the breakdown of the family unit due to armed conflict, the low social status of women, and gender-discrimination practices are several factors that contribute to the trafficking of women and girls for the purposes of sexual exploitation.<sup>890</sup> In response, NGOs, *not the Indian government*, have developed vocational and non-formal education programs for formerly trafficked individuals so that they can acquire business skills and become financially independent. Some of the programs focus on the arts and crafts industry.<sup>891</sup> One fact finding mission noted that “[t]he participants in these programs are typically not provided with opportunities to manage the non-manual labor aspects of income generation. For instance, the director of a BNWLA-run [NGO] embroidery vocational program manages the business side of the program, including the sales to various handicraft merchants and emporiums and the calculations of profit margins. Though the participants sometimes receive classes from skilled designers in the area, it is evident that their primary responsibility in the program is the manual production of embroidery- not learning the basic business skills that would allow them to avoid total dependency on the program managers.”<sup>892</sup> In contrast, other NGO-run programs treat former victims as true entrepreneurs. The Indian NGO “Sanlaap, in cooperation with the International Organization for Migration (IOM), runs a program entitled Economic Rehabilitation of Trafficking Victims (ERTV), which aims to build the economic capacity and intellectual skills of rescued trafficking victims through the involvement of Indian corporations and cooperatives. The ERTV employs a system of franchising, whereby former trafficking victims are initially given employment at and then ownership of parlors and kiosks that carry the products of participating Indian corporations and cooperatives. It includes a micro-credit and savings component, to teach participants to manage seed money for the start-up of their own kiosks. It also provides participants with the education, training, opportunity, and freedom to make short-term and long-term business calculations, such as inventory and product marketing decisions, sales and profit determinations, and marketing and growth strategies.”<sup>893</sup>

## Demand

### De Jure

- **Non-compliance:** While Macedonia’s NPA seeks to address the root causes of trafficking such as violence against women and children, poor economic conditions, and discrimination, it does not highlight plans to address the demand for trafficked victims. Addressing demand is particularly important since the U.S. State Department indicated in June 2005 that Macedonia is “a country of transit, and, to a lesser extent, *destination* for

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<sup>890</sup> See The Protection Project; Human Rights Reports: India, at <http://www.protectionproject.org/>; see ABA India & Bangladesh Report (unpublished), *supra* note 315, at 31.

<sup>891</sup> See ABA India & Bangladesh Report (unpublished), *supra* note 315, at 31-32.

<sup>892</sup> *Id.* at 32.

<sup>893</sup> *Id.* at 32-33.

women and children trafficked for the purpose of sexual exploitation from the former Soviet Union and Eastern and Southeastern Europe.”<sup>894</sup>

### De Facto

- **Compliance:** In June 2004, the U.S. Department of State reported that Finland’s Ministry for Social Affairs ran an anti-trafficking campaign focusing on demand reduction. In June 2005, the U.S. State Department elaborated that these efforts continued and, in fact, this campaign was a *regional* demand-reduction campaign that included the distribution of “leaflets and posters in airports, harbors, and other ports-of-entry to raise awareness on the part of Finish nationals going to red-light districts in other countries, such as Estonia.”<sup>895</sup>
- **Compliance:** In January 2004, the city of Madrid cooperated with federal government authorities in Spain in order to run a demand oriented anti-trafficking campaign. The campaign aimed to educate clients of trafficked victims that were forced into prostitution.<sup>896</sup>
- **Compliance:** As part of its preventive measures, the government of Sweden has sought to raise awareness among member states of the European Union regarding the issue of trafficking in persons. These particular efforts were aimed at reducing the demand for trafficked individuals.<sup>897</sup>

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<sup>894</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 179; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 138-39; 2005 TIP Report, *supra* note 5, at 146 [emphasis added].

<sup>895</sup> See 2004 TIP Report, *supra* note 17, at 138; see also 2005 TIP Report, *supra* note 5, at 105.

<sup>896</sup> See 2004 TIP Report, *supra* note 17, at 176.

<sup>897</sup> See *id.* at 178.

### Article 10: Information Exchange and Training

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

Article 10 of the Trafficking Protocol delineates further preventative measures that States Parties are required to undertake in order to combat trafficking in persons. Such measures include:

- cooperating with one another and exchanging information in order to track victims and pinpoint the activities of traffickers
- training officials that are likely to come into contact with victims and their traffickers.<sup>898</sup>

The chart below is a more in-depth summary of the issues that Article 10 touches upon, as well as issues that Article 10 neglects to identify. The reader should not interpret this as an exhaustive list.

Obligations Under Art. 10	Obligations Not Addressed in Art. 10	Obligations Under the Transnational Organized Crime Convention
<ul style="list-style-type: none"> <li>• Governments cooperating with one another and exchanging information in order to identify individuals that cross borders illegally and that are trafficked, their documents as well as the means used by organized criminal groups to recruit and transport trafficked victims</li> </ul>	<ul style="list-style-type: none"> <li>• Upholding individuals' rights, such as their freedom of movement and right to privacy when applying the measures delineated in Article 10(1)</li> <li>• Focusing on the trafficking activities of organized criminal groups <i>and</i> individual family members, relatives, friends etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Specifically indicating the type of measures states should devise in order to detect the illicit activity of traffickers</li> </ul>

<sup>898</sup> See Trafficking Protocol, *supra* note 3, art. 10.

<ul style="list-style-type: none"> <li>• requiring States Parties to devise measures for detecting the illicit activity of traffickers</li> <li>• Training law enforcement, immigration, and other officials that are likely to come into contact with victims and traffickers</li> <li>• Complying with requests that restrict the use of information shared</li> </ul>		
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**Upholding the Rights of Individuals**

Before discussing the obligations delineated in Article 10(1) of the Protocol, it should be noted that this particular provision does not address issues such as upholding individuals’ freedom of movement when undertaking various measures to identify trafficked victims, their traffickers, travel documents, means and methods of trafficking, trafficking routes, and various illicit networks.<sup>899</sup> One commentator stresses that it is important for such preventative measures to be:

applied in a non-discriminatory manner and must not infringe upon the right of individuals to enter and leave their country freely, which is found in article 12 of the International Covenant on Civil and Political Rights. Governments must not adopt any laws or measures that would prevent anyone, particularly women, from leaving the country for the purpose of ‘protecting’ them from being trafficked.<sup>900</sup>

Furthermore, Article 10(1) does not stress the importance of properly identifying trafficked victims while protecting their privacy and identity. This obligation is outlined in Article 6(1) of the Protocol.<sup>901</sup> Thus, states should undertake the measures described in Article 10(1) in conjunction with the obligation in Article 6(1). When cooperating with one another and exchanging information in order to identify and distinguish victims from their traffickers, government officials should keep the personal information of the victims confidential in order to ensure their safety.

**Cooperation and Information Exchange**

Article 10(1) of the Protocol encourages bi-lateral and multi-lateral cooperation among States Parties and requires them, where appropriate, to exchange information in order to trace trafficking patterns, enabling them to anticipate and prevent traffickers from furthering their illicit goals. Specifically, Article 10(1) requires state officials to identify trafficked victims, traffickers, and types of travel documents they use, and to piece together a more complete picture of the illicit activities and trafficking networks of organized criminal groups. <sup>902</sup>

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<sup>899</sup> See *id.* art. 10(1).  
<sup>900</sup> ANNOTATED GUIDE, *supra* note 237, at 31; see also ICCPR, *supra* note 266, art. 12 (2) (“Everyone shall be free to leave any country, including his own.”).  
<sup>901</sup> See Trafficking Protocol, *supra* note 3, art. 6(1).  
<sup>902</sup> See *id.* art. 10(1).

## *Identifying the Trafficked and Their Traffickers*

Specifically, Article 10(1)(a) of the Trafficking Protocol requires governments to work together in order to determine exactly who is attempting to cross borders illegally (i.e., by using someone else's paperwork or traveling without documentation altogether) and identify whether they are traffickers or victims of trafficking.<sup>903</sup>

### **Traffickers**

Identifying traffickers entails, to a large extent, tracing the activities of organized crime groups. One commentator indicates that trafficking in persons has proven to be a "source of strength for organized crime" and that various networks are involved, such as:

- major criminal syndicates
- crime rings and loosely connected criminal networks
- smaller crime groups.<sup>904</sup>

The major criminal syndicates are generally organized crime groups that conduct their illicit activities globally.<sup>905</sup> The crime rings and loosely connected criminal networks are usually run by one family, or by an extended family, within the borders of a particular nation, and they focus on different aspects of the trafficking process (i.e., laundering the proceeds of trafficking, etc.).<sup>906</sup>

Husband and wife teams can also qualify as traffickers when they lure young women into their homes with promises of school and job opportunities and force them into servitude.<sup>907</sup> Furthermore, married couples have also been discovered to recruit young women and force them to work in strip clubs and bars.<sup>908</sup>

Lastly, attention should be paid to government officials who are complicit in trafficking. Oftentimes, police officers and customs officials turn a blind eye to the illicit activities of traffickers or tip off traffickers regarding police raids in exchange for bribes.<sup>909</sup> Government authorities have also been known to accept bribes and help with the issuance of false travel and identity documents.<sup>910</sup> Additionally, consular and embassy officials have participated directly in the trafficking of persons for the purpose of sexual exploitation and domestic servitude.<sup>911</sup>

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<sup>903</sup> See *id.* art. 10(1)(a).

<sup>904</sup> See Intelligence Monograph, *supra* note 2, at 13.

<sup>905</sup> See *id.*

<sup>906</sup> See *id.*

<sup>907</sup> See Andrew Cockburn, *21<sup>st</sup> Century Slaves*, NAT'L GEOGRAPHIC, Sept. 2003, at 25 (describing the case of Louisa Satia and Kevin Waton Nanji who were each sentenced to nine years imprisonment for luring a fourteen year old girl from Cameroon with promises of schooling, isolating her in their Maryland home, raping her, and forcing her to work as their servant for three years).

<sup>908</sup> See *id.* (describing the case of Sadar and Nadira Gasanov who were each sentenced to five years imprisonment for recruiting women from Uzbekistan with promises of jobs, seizing their passports, and forcing them to work in West Texas strip clubs and bars).

<sup>909</sup> See 2002 HRW BIH REPORT, *supra* note 160, at 19.

<sup>910</sup> See *id.* at 38.

<sup>911</sup> See Smith & Mattar, *supra* note 26, at 173.

## Trafficked Victims

Identifying victims of trafficking is a difficult task. The U.S. State Department's Office to Monitor and Combat Trafficking in Persons issued certain guidelines for law enforcement personnel, service providers, and the general public that seek to aid with the identification of trafficked victims.<sup>912</sup> While the guidelines are detailed and deserve a full read, some of the highlights include indicators regarding possible establishments where trafficked victims are kept, as well as who might be a trafficked victim.

According to the guidelines, a place is suspect if:

- it is a heavily secured commercial establishment with barred windows, locked doors, and electronic surveillance, in an isolated location where victims are never seen leaving the premises unless escorted
- victims live on the premises (like a brothel or work site), are prohibited from leaving, and/or are driven to and from the premises by a guard
- it is frequented by a stream of men arriving and leaving the premises.<sup>913</sup>

According to the guidelines, a person is suspected of being trafficked if:

- s/he is kept under surveillance when taken to a doctor, hospital, or clinic for treatment (trafficker may act as translator)
- s/he shows signs of poor physical health, such as malnutrition, dehydration, poor personal hygiene, sexually transmitted diseases, diabetes, cancer, heart disease, or any other illnesses left untreated
- s/he shows signs of poor mental health such as post-traumatic stress and other psychological disorders
- s/he shows signs of ill treatment such as rape, sexual abuse, bruising, and broken bones
- s/he does not have his/her own identity or travel documents
- s/he has very little or no money and a trafficker or pimp controls all the money
- s/he is extremely nervous, especially if their "translator" (i.e., trafficker) is present.<sup>914</sup>

The above should not be interpreted as exhaustive lists, and states should strive to develop their own criteria for identifying trafficked victims based on the particulars of the trafficking activities occurring across and within their borders.

## Trafficking vs. Smuggling

It is crucial to distinguish traffickers and trafficked victims from smugglers of migrants, smuggled persons, illegal immigrants, legal immigrants, and other persons crossing border checkpoints at any given moment.<sup>915</sup> ECOSOC stresses that it is important to determine whether persons have been coerced, deceived, or otherwise forced for purposes of exploitation, in order to correctly identify them as victims of trafficking:

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process - such deception,

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<sup>912</sup> See generally U.S. State Department Identification Guidelines, *supra* note 520.

<sup>913</sup> See *id.* at 2.

<sup>914</sup> See *id.* at 2-3.

<sup>915</sup> See IOM ROMANIA STUDY, *supra* note 851, at 11-12; see also Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 93-94 (2001).

force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place.<sup>916</sup>

Furthermore, the relationship between migrants and smugglers usually ends once the point of destination is reached while, for most victims of trafficking, the exploitation begins or intensifies once they have arrived in their countries of destination.<sup>917</sup>

The issue of combating migrant smuggling and upholding the rights of smuggled persons is addressed in a separate protocol that is also related to the Transnational Organized Crime Convention.<sup>918</sup> The Migrant Smuggling Protocol together with the Trafficking Protocol supplement the Transnational Organized Crime Convention and should be treated as a treaty regime. Countries are encouraged to sign and ratify all such documents together.<sup>919</sup>

### *Identifying the Travel Documents of the Trafficked*

Article 10(1)(b) of the Trafficking Protocol requires states to pinpoint the type of travel documents that are being used when individuals are trafficked.<sup>920</sup> It should be noted that the *travaux préparatoires* to the Protocol define the term "travel documents" as "any type of document required for entering or leaving a State under its domestic law."<sup>921</sup>

According to one source, trafficked victims can travel either with:

- legitimate travel documents that are being used illegally by traffickers
- impostor passports made by traffickers.<sup>922</sup>

Traffickers often obtain legitimate paperwork for victims by passing them off as students, someone's fiancée, entertainers, or members of legitimate tour groups. Once visas are granted and the victims are within the territory of the destination country, they are forced to overstay their visas, as traffickers often confiscate their travel and other identification documents.<sup>923</sup> Another way of getting victims to their destination is through impostor passports. "Traffickers typically recycle valid passports with genuine visas and alter them with the recruit's picture or try to pass off the recruit as the person in the passport."<sup>924</sup> Thus, the Trafficking Protocol requires States Parties to closely check the documentation that victims are using to travel.

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<sup>916</sup> ECOSOC Report, *supra* note 58, at 6; *see also* Inglis, *supra* note 915, at 93; Fitzpatrick, *supra* note 41, at 1149.

<sup>917</sup> *See* Fitzpatrick, *supra* note 41, at 1150 ("Smuggled migrants may become trafficking victims if they are subjected to coercion and exploitation upon their arrival in the destination state.").

<sup>918</sup> *See* Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 2, G.A. Res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, U.N. Doc. A/45/49 (2001), available at [http://www.unodc.org/unodc/crime\\_cicp\\_convention.html#final](http://www.unodc.org/unodc/crime_cicp_convention.html#final) [hereinafter Migrant Smuggling Protocol].

<sup>919</sup> *See* Fitzpatrick, *supra* note 41, at 1148-49.

<sup>920</sup> *See* Trafficking Protocol, *supra* note 3, art. 10(1)(b).

<sup>921</sup> Convention and Protocol Travaux, *supra* note 68, at 14.

<sup>922</sup> *See* Intelligence Monograph, *supra* note 2, at 7-8.

<sup>923</sup> *See id.*

<sup>924</sup> *Id.* at 8.

## *Identifying the Trafficking Patterns of Organized Criminal Groups*

Article 10(1)(c) of the Trafficking Protocol requires governments, at a minimum,<sup>925</sup> to cooperate and discern the manner in which *organized criminal groups* traffic people, including their means of recruiting and transporting victims, and their routes and networks.<sup>926</sup> Article 10(1)(c) also requires states to work together and devise possible measures for detecting such illicit activities.<sup>927</sup>

Experts point out that focusing solely upon the trafficking activities of larger-scale organized criminal groups could prove to be problematic. In so doing, authorities are likely to miss smaller-scale operations. “Mom and pop” trafficking rings can go unnoticed if governments just concentrate their efforts upon major organized crime syndicates.<sup>928</sup> Furthermore, by apprehending individuals who run smaller trafficking operations, law enforcement authorities can develop useful leads and, consequently, be able to track down major organized crime players.<sup>929</sup> Thus, States Parties to the Trafficking Protocol should not only trace the activities of large organized criminal groups, but should also train their officials to discern situations where trafficking in persons is pursued at a smaller level by husband and wife teams or by friends of the victims’ families.

Furthermore, Article 10(1)(c) imposes an obligation upon States Parties to develop measures for detecting the trafficking activities of organized criminal groups, but it does not specifically mention what these measures should be. For example, the OSCE currently conducts regional workshops that focus on:

- technical means of detection: flagging documents used for illegal purposes in relation to trafficking as well as falsified travel documents for victims
- non-technical means of detection: interview techniques tailored to identify trafficked victims and their traffickers.<sup>930</sup>

States Parties to the Trafficking Protocol should consider adopting such methods of detection as well as take the initiative to develop other methods of identifying trans-border crime patterns that are mentioned throughout the Transnational Organized Crime Convention.<sup>931</sup>

### **Training**

Article 10(2) of the Trafficking Protocol obligates States Parties to train officials that are likely to come into contact with trafficked victims and their traffickers.<sup>932</sup> Authorities such as law enforcement, immigration, and other entities are to be trained in applying:

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<sup>925</sup> See Puleo Speech, *supra* note 3 (indicating that the Trafficking Protocol is a “floor” and not a “ceiling” thus setting forth minimum standards for combating trafficking).

<sup>926</sup> See Trafficking Protocol, *supra* note 3, art. 10(1)(c).

<sup>927</sup> See *id.*

<sup>928</sup> See Intelligence Monograph, *supra* note 2, at 35.

<sup>929</sup> See *id.* at 55-61 (describing the various existing organized criminal groups: the Chinese Triads, Japan’s Yakuza, Thai criminal networks, Russian organized crime, Ukrainian criminal syndicates, Georgian crime groups, Polish crime groups, Albanian crime groups, and Nigerian crime rings).

<sup>930</sup> See OSCE Action Plan, *supra* note 124, at 7; see also Projects of the OSCE Anti-Terrorism Unit, at <http://www.osce.org>.

<sup>931</sup> See Transnational Organized Crime Convention, *supra* note 37, art. 7(2) (detecting the cross-border movement of cash proceeds derived from illicit activities); see *id.* art. 9(1) (detecting the corruption of public officials); see *id.* art. 13(2) (identifying, tracing, freezing or seizing proceeds of crime, property, equipment or other instrumentalities); see *id.* art. 18 (requiring States Parties to provide one another with the highest degree of mutual legal assistance in order to identify, investigate and successfully prosecute trans-border offenders such as traffickers); see *id.* art. 20 (applying special investigative techniques); see *id.* art. 27 (requiring law enforcement cooperation in order to identify and combat trans-border crimes like trafficking in persons).

- preventive anti-trafficking methods
- means for prosecuting traffickers
- measures for protecting the rights of victims (including protecting victims from traffickers).<sup>933</sup>

Article 10(2) indicates that such training should “take into account the need to consider human rights and child- and gender-sensitive issues.”<sup>934</sup> Lastly, this provision also encourages governments to cooperate with NGOs, relevant organizations, and other elements of civil society when conducting training programs.<sup>935</sup>

The OSCE explains why it is important to train domestic officials in anti-trafficking related matters: Trafficked persons are often in a vulnerable position because they may have suffered physical, psychological or sexual violence. Judges and law enforcement officials need to be sensitized in order to treat them appropriately and to avoid further traumatizing victims. Further, the access of trafficked persons to assistance and support facilities depends on the ability of persons who are in contact with them to identify them as victims. For instance, law enforcement officers need to be able to identify a victim of trafficking in order to refer her/him to a shelter or other assistance. Finally, the ability of law enforcement officials and NGOs to identify trafficking cases may also contribute to the successful criminal prosecution of the traffickers.<sup>936</sup>

Accordingly, the OSCE and other experts recommend that states:

- organize and/or fund training programs for all persons likely to be faced with trafficking issues (such as social workers, medical, teaching, diplomatic, consular, judicial, customs, police and military personnel)
  - train law enforcement personnel and other authorities on how to address the needs of trafficked victims and to ensure that they can safely testify against their traffickers
  - train law enforcement officials to keep track of statistics on trafficking activities, perpetrators, victims, *modus operandi* of trafficking syndicates, etc.
- include NGOs in training programs
  - specifically when training law enforcement in dealing with trafficked victims
- establish programs specifically focused upon improving the relationship between NGOs and government authorities, enabling them to better cooperate in the fight against trafficking
- cooperate with regional bodies like the OSCE and other international organizations for the purposes of running training programs and developing information material that is to be distributed during training sessions.<sup>937</sup>

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<sup>932</sup> See Trafficking Protocol, *supra* note 3, art. 10(2).

<sup>933</sup> See *id.*

<sup>934</sup> *Id.*

<sup>935</sup> See *id.*

<sup>936</sup> OSCE GUIDE, *supra* note 72, at 96.

<sup>937</sup> See *id.* at 97; see also OSCE Action Plan, *supra* note 124, at 17; ECOSOC Report, *supra* note 58, at 10; Intelligence Monograph, *supra* note 2, at 32 (describing the obstacles that law enforcement personnel face in tracking down traffickers and their victims and conducting proper investigations and prosecutions); Chin & Dandurand, *supra* note 405, at 14; 2002 HRW BiH REPORT, *supra* note 160, at 8.

## Restrictions

Article 10(3) of the Trafficking Protocol indicates that “a State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.”<sup>938</sup> When governments cooperate and exchange information with one another in order to accomplish the goals of Article 10, the country providing the information may limit the manner in which such information is used. Such limitations can be aimed at protecting the privacy and identity of trafficked victims as required by Article 6(1) of the Trafficking Protocol.<sup>939</sup>

## *Examples of Compliance and Non-Compliance*

### **Upholding the Rights of Individuals**

#### De Jure

- **Compliance:** U.S. trafficking legislation establishes an Interagency Task Force whose duties include “to collect and organize data, including significant research and resource information on domestic and international trafficking”<sup>940</sup> and “to facilitate cooperation among countries of origin, transit, and destination.”<sup>941</sup> The law warns that any data that has been collected and shared has to respect the confidentiality of victims of trafficking.<sup>942</sup>

#### De Facto

- **Non-compliance:** In 1998, in an effort to prevent the trafficking of Bangladeshi women into Bahrain and other Persian Gulf countries, the government of Bangladesh banned female nurses and housemaids from relocating to that particular region,<sup>943</sup> thus impeding their freedom of movement and right to freely leave their country of nationality.<sup>944</sup>

### **Cooperation and Information Exchange/Identification**

#### De Jure

- **Compliance:** Albania has signed an agreement with Italy in order to increase cooperation in combating illegal immigration. Within this context, Italian law enforcement officials will assist Albanian authorities to more effectively combat all forms of organized crime including trafficking in persons.<sup>945</sup>

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<sup>938</sup> Trafficking Protocol, *supra* note 3, art. 10(3).

<sup>939</sup> *See id.* art. 6(1).

<sup>940</sup> TVPA 2000, *supra* note 206, § 105(d)(3).

<sup>941</sup> *Id.* § 105(d)(4).

<sup>942</sup> *See id.* § 105(d)(3).

<sup>943</sup> *See* The Protection Project; Human Rights Reports: Bahrain & Bangladesh, at <http://www.protectionproject.org/>; *see also* 2004 TIP Report, *supra* note 17, at 211 (indicating that the government of Bangladesh is beginning to issue regulations that govern the recruitment of Bangladeshi women to work overseas but as of December 2003, only regulations governing the relationship with Saudi Arabia had been issued. Regulations regarding the recruitment of women to other countries such as Bahrain had not yet been contemplated).

<sup>944</sup> *See* ICCPR, *supra* note 266, art. 12(2).

<sup>945</sup> *See* The Protection Project; Human Rights Reports: Albania, at <http://www.protectionproject.org/>.

## De Facto

- **Compliance:** The government of Norway cooperates with other nations through Interpol, Europol, as well as bilaterally in order to investigate and prosecute trafficking cases. In June 2004, it was reported that Norwegian authorities cooperated with their Swedish counterparts in a trafficking investigation.<sup>946</sup>
- **Non-compliance:** In November 2003, the OSCE reported that there was no reliable data on the migration of women into and out of Serbia, since border officials did not keep gender specific statistics. Thus, it was not possible to discern if and when women are being trafficked for the purposes of sexual exploitation or forced labor, etc. across the borders of Serbia.<sup>947</sup>
- **Compliance:** The United Arab Emirates (“U.A.E.”) implements DNA testing as part of its efforts to curtail the trafficking of children for illegal camel jockey work. The government uses DNA testing to identify adults that claim to be the parents of trafficked children brought to the U.A.E. As a result of such testing, forty-seven children who were trafficked by “false” parents were discovered in 2003.<sup>948</sup>

## Training

### De Jure

- **Compliance:** U.S. anti-trafficking legislation indicates that personnel of the Department of State and the Department of Justice, such as embassy officials, border guards, etc., are to be trained in identifying victims of trafficking and providing for their protection.<sup>949</sup>

### De Facto

- **Compliance:** In the Czech Republic, La Strada (NGO), with some financial help from the Czech government, conducted training sessions, from August 2002 to February 2003, for various law enforcement groups such as the Organized Crime Unit, Criminal Police, and Foreign and Border Police in order to sensitize them to the needs of trafficked victims. La Strada organized three workshops for 57 officers and established a trafficking database that contains approximately 400 documents, links, and publications that address the trafficking issue and that are available in both Czech and English. In June 2005, the U.S. State Department reported that this type of police training continued.<sup>950</sup>
- **Non-compliance:** In June 2004, the U.S. State Department indicated that while the government of Malaysia trained some of its higher-ranking officials on trafficking issues, “[t]here [was] no systematic anti-trafficking training program to sensitize front-line police

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<sup>946</sup> See 2004 TIP Report, *supra* note 17, at 162; see also 2005 TIP Report, *supra* note 5, at 171.

<sup>947</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 136.

<sup>948</sup> See 2004 TIP Report, *supra* note 17, at 204.

<sup>949</sup> See TVPA 2000, *supra* note 206, § 107(c)(4).

<sup>950</sup> See La Strada Czech Republic; Projects, at <http://www.strada.cz/en/>; see also 2005 TIP Report, *supra* note 5, at 94.

and immigration officers who conduct raids on brothels and could identify potential victims."<sup>951</sup>

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<sup>951</sup> 2004 TIP Report, *supra* note 17, at 101.

### Article 11: Border Measures

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

Article 11 of the Trafficking Protocol outlines the responsibility of States Parties to monitor trafficking at their borders. This responsibility includes:

- strengthening border controls
- monitoring the activity of commercial carriers
- imposing entry and visa restrictions on traffickers
- facilitating cooperation among border agencies and establishing direct channels of communication.<sup>952</sup>

Below is a more detailed summary of the issues that are addressed in Article 11, as well as the issues that are not addressed in Article 11. This is by no means an exhaustive list as other issues may arise when a State Party attempts to apply the requirements of Article 11 at the domestic level.

Obligations Under Art. 11	Obligations Not Addressed in Art. 11	Obligations Under the Transnational Organized Crime Convention
<ul style="list-style-type: none"> <li>• Strengthening border controls</li> <li>• Adopting legislation and other measures in order to monitor commercial carriers and prevent traffickers from using such means of transportation</li> <li>• Imposing sanctions upon commercial carriers if the above legislation and other measures are violated</li> </ul>	<ul style="list-style-type: none"> <li>• Specifying what kind of sanctions are to be imposed upon commercial carriers</li> <li>• Delineating the extent of the sanctions that are to be imposed</li> <li>• If criminal sanctions, requiring that such sanctions be proportionate to the offense committed by carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Requiring law enforcement counterparts from each State Party to cooperate with one another</li> </ul>

<sup>952</sup> See Trafficking Protocol, *supra* note 3, art. 11.

<ul style="list-style-type: none"> <li>• Imposing entry or visa restrictions for persons who commit/are implicated in trafficking</li> <li>• Facilitating cooperation among border control agencies and establishing direct communication among them</li> </ul>		
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### Border Controls

Traffickers can and have penetrated national borders without being detected. The Stability Pact outlines some of the major routes that traffickers use to transport their victims on a regular basis:

- **Baltic route:** from Russia and the Baltic Sea States, overland to the coast then by ferry into the Scandinavian countries; also limited overland travel to Finland and northern Sweden
- **Northern route:** Eastern Europe via Poland, Hungary, and the Czech Republic, initially into Germany and then Scandinavia. This route is also used as the final leg of the journey for migrants arriving by plane from the Far East, Africa, and South America.
- **Central route:** from central European states using the well developed motorway network and long-distance coach services to enter into Austria and Northern Italy
- **Central Balkan route:** from Caucasian States, Asia, and Eastern Europe through the central Balkan countries through Hungary into the EU States
- **Southern Balkan route:** from Caucasian States, Asia, and South Eastern Europe through Moldova, Romania, Bulgaria, and Albania initially entering the EU through Italy and Greece
- **Southern route:** from West Africa through Algeria and Morocco, across the straits of Gibraltar by ship then initially into Portugal and Spain
- **Western route:** from Central and South America entering the EU through the Iberian Peninsula. This route is also used as the final leg of the journey for migrants arriving by plane from the Far East, Africa, and South America.<sup>953</sup>

Consequently, Article 11(1) of the Trafficking Protocol requires States Parties to strengthen border controls in order to prevent and detect trafficking activities.<sup>954</sup> The Protocol stresses that this obligation is to be undertaken “without prejudice to international commitments in relation to the free movement of people.”<sup>955</sup> When strengthening border controls, governments are to pay heed to the right of individuals to enter and leave their countries freely.<sup>956</sup> This right is clearly outlined in international instruments such as the ICCPR. Article 12(2) of the ICCPR indicates that “[e]veryone shall be free to leave any country, including his own.”<sup>957</sup>

<sup>953</sup> See ICMPD TRAINING MANUAL, *supra* note 10, at 22.

<sup>954</sup> See Trafficking Protocol, *supra* note 3, art. 11(1).

<sup>955</sup> *Id.*

<sup>956</sup> See OSCE Action Plan, *supra* note 124, at 8.

<sup>957</sup> ICCPR, *supra* note 266, art. 12(2).

## Commercial Carriers

Articles 11(2) and 11(3) of the Trafficking Protocol delineate States Parties' obligation to monitor the activities of commercial carriers (i.e., airlines, etc.) such that traffickers do not make use of this mode of transportation.<sup>958</sup>

Specifically, Article 11(2) requires governments to adopt legislative and other appropriate measures to prevent traffickers from using commercial carriers to illicitly transport their victims through transit countries and into destination countries.<sup>959</sup> The *travaux préparatoires* to the Protocol make the distinction here between trafficked victims and smuggled migrants:

[V]ictims 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. This may make it more difficult for common carriers to apply preventive measures in trafficking cases than in smuggling cases and legislative or other measures taken in accordance with this paragraph should take this into account.<sup>960</sup>

Article 11(3) of the Protocol indicates that one of the measures that States Parties are to undertake is to impose an obligation upon commercial carriers to verify whether all passengers are in possession of the travel documents that are required for entry into the state of their destination.<sup>961</sup> Such a measure is to be carried out "where appropriate and without prejudice to applicable international conventions."<sup>962</sup>

## Sanctions

If commercial carriers do not check the documentation of their passengers as required by Article 11(3) above, then States Parties are obligated to impose sanctions.<sup>963</sup> Article 11(4) of the Protocol indicates that such sanctions are to be drafted in accordance with the domestic law of each state.<sup>964</sup>

The *travaux préparatoires* to the Protocol stress that Article 11(4) "requires States Parties to impose an obligation on common carriers *only* to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgment or assessment of the validity or authenticity of the documents."<sup>965</sup> The latter is the task of law enforcement, immigration, or other relevant officials under Article 10(1)(b) above.<sup>966</sup>

Furthermore, the *travaux* mention that Article 11(4) of the Trafficking Protocol "does not unduly limit the discretion of States Parties *not* to hold carriers liable for transporting undocumented refugees."<sup>967</sup> In other words, governments have the prerogative to forgo imposing sanctions upon commercial carriers even in situations where persons without proper travel documents are found aboard.

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<sup>958</sup> See generally Trafficking Protocol, *supra* note 3, arts. 11(2)-(3).

<sup>959</sup> See *id.* art. 11(2).

<sup>960</sup> Convention and Protocol Travaux, *supra* note 68, at 14.

<sup>961</sup> See Trafficking Protocol, *supra* note 3, art. 11(3).

<sup>962</sup> *Id.*

<sup>963</sup> See *id.* art. 11(4).

<sup>964</sup> See *id.*

<sup>965</sup> Convention and Protocol Travaux, *supra* note 68, at 15 [emphasis added].

<sup>966</sup> See Trafficking Protocol, *supra* note 3, art. 10(1)(b).

<sup>967</sup> Convention and Protocol Travaux, *supra* note 68, at 15 [emphasis added].

It should be noted that Article 11(4) does not specify what kind of sanctions are to be applied in situations where carriers do not check the documents of passengers: criminal, civil, or administrative. Furthermore, Article 11(4) does not outline the extent of the sanctions that are to be imposed. If the sanctions are criminal, they must be proportionate to the offense.<sup>968</sup> For more information on the type of sanctions that can be imposed, the reader should refer to the section on “Sanctions” incorporated in the analysis of Article 5 of the Protocol above.<sup>969</sup>

### **Denial of Entry and Visa Revocation**

Article 11(5) of the Trafficking Protocol encourages States Parties to consider taking measures that would deny entry to or revoke the visas of persons who are implicated in the commission of the offense of trafficking.<sup>970</sup> Such measures are merely suggested (not required) and are to be undertaken in accordance with the domestic law of each state.<sup>971</sup>

### **Cooperation**

Article 11(6) of the Protocol encourages States Parties “to strengthen cooperation among border control agencies by . . . establishing and maintaining direct channels of communication” among other things.<sup>972</sup> The objective here is to cooperate in order to identify the traffickers and their victims and relocate victims to where they can be protected. Such measures are merely suggested (not required) and are to be undertaken without prejudice to Article 27 of the Transnational Organized Crime Convention.<sup>973</sup>

Article 27 of the Convention states the following:

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

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<sup>968</sup> See ECOSOC Report, *supra* note 58, at 8; see also OSCE Action Plan, *supra* note 124, at 2.

<sup>969</sup> See discussion *supra* pp. 59-62.

<sup>970</sup> See Trafficking Protocol, *supra* note 3, art. 11(5).

<sup>971</sup> See *id.*

<sup>972</sup> See *id.* art. 11(6).

<sup>973</sup> See *id.*

- (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
  - (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
  - (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
  - (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.
2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
  3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.<sup>974</sup>

The *travaux préparatoires* of the Convention explain that the words “consistent with their respective domestic legal and administrative systems” in Article 27(1) give States Parties the flexibility to decide the extent of their cooperation.<sup>975</sup> “For example, this formulation enables States Parties to deny cooperation where it would be contrary to their domestic laws or policies to provide the assistance requested.”<sup>976</sup>

The *travaux* also mention that it is up to the states to determine how to secure and rapidly exchange the information outlined in Article 27(1)(a).<sup>977</sup> Many States Parties to the Convention support the use of direct communication among the different domestic law enforcement agencies of each country.<sup>978</sup> Others endorse the idea of a single point of contact through which information is to be filtered.<sup>979</sup>

Lastly, the *travaux* indicate that the forms of modern technology mentioned in Article 27(3) of the Convention include computers and telecommunications networks.<sup>980</sup>

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<sup>974</sup> Transnational Organized Crime Convention, *supra* note 37, art. 27.

<sup>975</sup> See Convention and Protocol Travaux, *supra* note 68, at 10; see also Transnational Organized Crime Convention, *supra* note 37, art. 27(1).

<sup>976</sup> Convention and Protocol Travaux, *supra* note 68, at 10.

<sup>977</sup> See *id.*; see also Transnational Organized Crime Convention, *supra* note 37, art. 27(1)(a).

<sup>978</sup> See Convention and Protocol Travaux, *supra* note 68, at 10.

<sup>979</sup> See *id.*

<sup>980</sup> See *id.*

## *Examples of Compliance and Non-Compliance*

### **Border Controls**

#### De Jure

- **Compliance:** In 2004, Romanian authorities introduced specific visa regimes for Moldovan and Ukrainian citizens visiting Romania, as these two countries are considered to be potential sources of illegal migrants.<sup>981</sup> Furthermore, the Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” calls on the Ministry of Interior to “use its specialized structures to provide specially trained staff to identify and process victims” at all border checkpoints so that the victims are “refer[ed] to specialized institutions.”<sup>982</sup>

#### De Facto

- **Non-compliance:** While Colombian immigration officials monitor airports in order to seek out and warn potential victims of trafficking, land borders and seaports are scarcely scrutinized.<sup>983</sup>
- **Compliance:** In 2003 and 2004, the Croatian Ministry of the Interior reported that illegal migration decreased as a result of more stringent migration policies in Bosnia-Herzegovina, Serbia, Montenegro, and Croatia. Specifically, the Ministry of the Interior in Croatia increased border controls. Thus, in 2000, there were 24,180 illegal migrants in Croatia and that number dropped to 17,038 in 2001, 5,415 in 2002, and 4,311 in 2003. In 2001, there were 314 instances of “Illegal Transfer of Persons Across the State Border,” a criminal offense, and in 2002 the number dropped to 191.<sup>984</sup> Keeping in mind that trafficked victims are *not* defined in the same manner as illegal migrants, these examples illustrate the capabilities of a country like Croatia to increase border controls with respect to the actual activities of traffickers.
- **Non-compliance:** In Moldova, the special Anti-Trafficking Unit, established under the auspices of the Department of Combating Organized Crime and Corruption within the Ministry of Internal Affairs, takes part in a joint program with the Border Police in order to exchange information about trafficking cases and deportation proceedings. However, in 2003, the OSCE reported that the program did not function properly because of a lack of cooperation and alleged corruption on the part of the Border Police.<sup>985</sup>
- **Compliance:** Romanian law enforcement agencies tightened border controls by increasing patrols and enforcing visa regimes focused on citizens from countries that are believed to

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<sup>981</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 91, 94.

<sup>982</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 31 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>983</sup> See 2004 TIP Report, *supra* note 17, at 230; see also 2005 TIP Report, *supra* note 5, at 85.

<sup>984</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 123; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 108; see also CRIMINAL CODE [CRIM. C.] art. 177 (Croat.), at <http://www.legislationline.org/view.php?document=56627>.

<sup>985</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 77.

be sources of illegal migration (i.e., Moldova and Ukraine). These efforts are in compliance with EU accession requirements.<sup>986</sup>

## Commercial Carriers

### De Jure

- **Compliance:** The Romanian anti-trafficking law stipulates that international transportation companies, as well as their drivers and staff, are obligated to verify, when issuing travel documents to passengers, whether such passengers possess the required identification documents to enter their country of destination or transit.<sup>987</sup>

### De Facto

- **Compliance:** The government of Cameroon, in cooperation with ILO, initiated a campaign to educate foreign tourists and law enforcement officials about the dangers of child trafficking in particular. Anti-trafficking information cards are distributed to passengers upon embarking or disembarking international flights arriving in and leaving the capital city of Yaoundé.<sup>988</sup>

## Sanctions

### De Jure

- **Non-compliance:** While Romania's anti-trafficking law delineates an obligation for international transportation companies to verify the identification documents of their passengers,<sup>989</sup> it does not provide for a sanction or penalty in cases where companies fail to uphold this obligation.

### De Facto

- **Non-compliance:** While Romania's conviction rate in trafficking cases has increased in 2004 (103 individuals were sentenced in 2004 while forty-nine individuals were sentenced in 2003) and efforts to combat corruption among border officials were also increased,<sup>990</sup> there were no signs of holding transportation companies liable for not following their obligation in accordance with the anti-trafficking legislation.

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<sup>986</sup> See *id.* at 91, 94.

<sup>987</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 47 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>988</sup> See 2004 TIP Report, *supra* note 17, at 50; see also 2005 TIP Report, *supra* note 5, at 79.

<sup>989</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 47 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>990</sup> See 2005 TIP Report, *supra* note 5, at 183.

## Denial of Entry and Visa Revocation

### De Jure

- **Compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” requires the Ministry of Foreign Affairs and the Ministry of Interior to “enforce the necessary steps to prevent access on the territory of Romania of foreign citizens in relation to whom there is strong evidence of involvement in trafficking in human beings.”<sup>991</sup>
- **Compliance:** Turkey’s Passport Law prohibits individuals who are trafficking women from entering the country.<sup>992</sup>

### De Facto

- **Non-compliance:** While Romania’s conviction rate in trafficking cases has increased in 2004 (103 individuals were sentenced in 2004 while forty-nine individuals were sentenced in 2003) and efforts to combat corruption among border officials were also increased,<sup>993</sup> there is no information available regarding the denial or revocation of visas for suspected traffickers.

## Cooperation

### De Jure

- **Compliance:** The Romanian anti-trafficking law fosters cooperation between Romania and other states with respect to the exchange of “criminal intelligence.”<sup>994</sup> The law calls for the establishment of liaison officers and magistrates within Romania’s Ministry of Interior and prosecution offices to coordinate efforts with their counterparts in other countries during the investigation of a trafficking case.<sup>995</sup>

### De Facto

- **Compliance:** In early 2003, the government of Switzerland placed an attaché in Thailand in order to coordinate criminal investigations, including trafficking cases, and act as a liaison between Swiss and Thai authorities.<sup>996</sup>

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<sup>991</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 5(2) (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>992</sup> See The Protection Project; Human Rights Reports: Turkey, at <http://www.protectionproject.org/>.

<sup>993</sup> See 2005 TIP Report, *supra* note 5, at 183.

<sup>994</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), arts. 45, 46 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>995</sup> See *id.* art. 45.

<sup>996</sup> See 2004 TIP Report, *supra* note 17, at 179.

## Article 12: Security and Control of Documents

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

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

Article 12 of the Trafficking Protocol obligates States Parties to take measures in order to ensure the security and control of travel and identity documents that are issued by their government officials.<sup>997</sup> It should be noted that while Article 12 makes such security measures a requirement, it indicates that they are to be undertaken “within [the] available means” of each State Party.<sup>998</sup>

The *travaux préparatoires* of the Protocol explain that the term “travel documents,” within the meaning of Article 12, includes “any type of document required for entering or leaving a State under its domestic law.”<sup>999</sup> The *travaux* also indicate that “identity documents” include “any documents used to establish the identity of a person in a State under the laws or procedures of that State.”<sup>1000</sup> Thus, since states themselves are in charge of issuing travel and identity documents and the domestic laws of each state governs such procedures, Article 12 of the Protocol requires them to protect the documents from possible misuse, falsification, and any other abuse such as altering, illicit replication, unlawful issuance, and unlawful creation.<sup>1001</sup>

The chart below summarizes in detail the obligations set forth in Article 12 of the Trafficking Protocol. Issues that are not covered by Article 12 are also incorporated below. Once again, the reader should not interpret this as an exhaustive list.

Obligations Under Art. 12	Obligations Not Addressed in Art. 12
<ul style="list-style-type: none"><li>• Requiring States Parties to ensure, within available means, that the quality of travel and identity documents is such that they cannot be misused, falsified or unlawfully altered, replicated, or issued</li><li>• Requiring States Parties to ensure, within available means, the integrity and security of travel and identity documents</li><li>• Requiring States Parties to prevent the unlawful creation, issuance, and use of travel and identity documents</li></ul>	<ul style="list-style-type: none"><li>• Specifying the means that are to be used in order to ensure that the quality of travel and identity documents is such that they cannot be easily falsified or unlawfully altered, replicated or issued</li><li>• Specifying the means to be used in order to ensure the integrity and security of travel and identity documents</li><li>• Specifying the manner in which countries are to prevent the unlawful creation, issuance and use of travel and identity documents</li></ul>

<sup>997</sup> See Trafficking Protocol, *supra* note 3, art. 12.

<sup>998</sup> See *id.*

<sup>999</sup> Convention and Protocol Travaux, *supra* note 68, at 15.

<sup>1000</sup> *Id.*

## Quality of Travel and Identity Documents

Article 12(a) of the Trafficking Protocol imposes an obligation on States Parties to use available means in order to ensure that the travel and identity documents that their government officials authorize have a certain “quality” such that persons like traffickers cannot misuse, falsify, or unlawfully alter, replicate, or issue them.<sup>1002</sup>

The *travaux préparatoires* of the Protocol mention that the terms “falsified or unlawfully altered, replicated or issued” in Article 12 (a) are not only referring to false documents but also to:

- legitimate documents that have been altered
- legitimate blank documents that have been stolen and unlawfully filled out
- forged documents
- validly issued documents that are being used by a person other than the lawful holder.<sup>1003</sup>

Thus, according to Article 12(a) of the Protocol, government officials are to develop travel and identity documents of such a quality that traffickers cannot make use of them in the various ways described above.

However, neither Article 12(a) nor the *travaux* provide guidance as to how countries are to go about ensuring the quality of such travel and identity documents. While the provision mentions that States Parties are to use “available means” in order to follow through with their obligations, it does not suggest what those means should be. For example, in the aftermath of 9/11,<sup>1004</sup> the United States began issuing passports with specialized security features such as a digitized image of the holder.<sup>1005</sup>

## Integrity and Security of Travel and Identity Documents

Article 12(b) of the Trafficking Protocol requires States Parties to “ensure the integrity and security of travel or identity documents issued by or on behalf of [each] State Party.”<sup>1006</sup> While countries are to undertake this obligation “within available means,”<sup>1007</sup> neither Article 12(b) nor the *travaux* provide any added specificity as to how governments are to go about ensuring the integrity and security of documents. Furthermore, neither Article 12(b) nor the *travaux* explain the exact meaning of the terms “integrity” or “security.” Following the example above, a state could theoretically maintain the integrity and security of travel and identity documents by introducing digitized photographs.<sup>1008</sup>

Article 12(b) of the Protocol also requires States Parties to use “available means” to prevent the unlawful creation, issuance, and use of travel and identity documents.<sup>1009</sup> Once again both this

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<sup>1002</sup> See Trafficking Protocol, *supra* note 3, art. 12(a).

<sup>1003</sup> See Convention and Protocol Travaux, *supra* note 68, at 15.

<sup>1004</sup> See Guy Gugliotta, *N.Y. Skyscrapers Collapse After Hijacked Planes Hit*, WASH. POST, Sept. 11, 2001 (late ed.), at A1; see also Matea Gold & Maggie Farley, *America Attacked; Strike Against the Nation; Terrorists Attack New York, Pentagon*, L.A. TIMES, Sept. 12, 2001, at A1.

<sup>1005</sup> See *US Tightens Passport Security* (BBC television broadcast, Apr. 08, 2002), available at <http://news.bbc.co.uk/2/hi/americas/1916440.stm>.

<sup>1006</sup> Trafficking Protocol, *supra* note 3, art. 12(b).

<sup>1007</sup> *Id.* art. 12.

<sup>1008</sup> See *supra* note 1005 and accompanying text.

<sup>1009</sup> See Trafficking Protocol, *supra* note 3, art. 12(b).

provision and the *travaux* are vague as to what preventive means are to be used in this scenario.<sup>1010</sup> However, it is worth noting that maintaining the integrity of travel and identity documents is directly related to the question of the integrity of the officials that issue and handle such paperwork. If officials are complicit in the activities of the traffickers, then maintaining the integrity of the actual documents serves no purpose. For more information on combating corruption and trafficking simultaneously, the reader should refer to the section on “Corruption” under the analysis of Article 1 of the Trafficking Protocol at the beginning of this manual.<sup>1011</sup>

## *Examples of Compliance and Non-Compliance*

### **Quality of Travel and Identity Documents**

#### De Jure

- **Compliance:** In the United States, the Enhanced Border Security and Visa Entry Reform Act of 2002 requires the federal government to establish document authentication and biometric identifiers standards for visas and travel documents. It also requires that all passports issued by countries participating in the U.S. Visa Waiver Program meet such standards as well.<sup>1012</sup>

#### De Facto

- **Compliance:** In June 2004, the U.S. State Department reported that the government of Guinea updated its passport technology and that photos are now digitally scanned rather than pasted onto passports. This was an effort to curtail child trafficking across the borders of Guinea.<sup>1013</sup>

### **Integrity and Security of Travel and Identity Documents**

#### De Jure

- **Compliance:** The Armenian Criminal Code includes penalties for falsifying documents and for fabricating, using or selling bogus documents, stamps, seals, or blanks.<sup>1014</sup>
- **Compliance:** The 1969 Law Concerning Travel Passports in Jordan establishes penalties for any individual who forges or alters travel documents.<sup>1015</sup>
- **Compliance:** The 1968 Immigration Act of Swaziland prohibits the forging or altering of travel documents.<sup>1016</sup>

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<sup>1010</sup> As mentioned above, digital photographs and/or biometric fingerprints on passports can decrease the ability of traffickers to unlawfully create, issue, and use such travel and other documents. *See supra* notes 1005, 1008 and accompanying text.

<sup>1011</sup> *See* discussion *supra* pp. 18-19.

<sup>1012</sup> *See* 8 U.S.C.A. § 1701 (2002).

<sup>1013</sup> *See* 2004 TIP Report, *supra* note 17, at 60.

<sup>1014</sup> *See* CRIMINAL CODE [CRIM. C.] art. 213 (Arm.), at <http://www.legislationline.org/view.php?document=56858>.

<sup>1015</sup> *See* Law Concerning Travel Passports, No. 2 (1969) (Jordan); *see also* The Protection Project; Human Rights Reports: Jordan, at <http://www.protectionproject.org/>.

- **Compliance:** U.S. federal criminal law punishes “[w]hoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport.”<sup>1017</sup>

#### De Facto

- **Compliance:** In 2003, Serbian courts convicted thirteen traffickers on various charges, including forgery charges, for falsifying travel and identity documents.<sup>1018</sup>
- **Compliance:** In June 2004, it was reported that the Immigration and Falsified Documents Unit of the Spanish National Police investigated cases of trafficking in persons and arrested 2,028 individuals for involvement in trafficking networks and 1,003 individuals for trafficking related to sexual and labor exploitation.<sup>1019</sup>
- **Non-compliance:** In 2003, it was reported that although the government of Tajikistan instituted criminal cases against two low-level officials for issuing falsified documents, both officials fled the country.<sup>1020</sup>

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<sup>1016</sup> See Immigration Act art. 28(2)(c) (1968) (Swaz.); see also The Protection Project; Human Rights Reports: Swaziland, at <http://www.protectionproject.org/>.

<sup>1017</sup> 18 U.S.C.A. § 1543 (2000).

<sup>1018</sup> See 2004 TIP Report, *supra* note 17, at 170.

<sup>1019</sup> See *id.* at 176.

<sup>1020</sup> See *id.* at 181.

### Article 13: Legitimacy and Validity of Documents

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

The final substantive provision of the Trafficking Protocol, Article 13, describes the manner in which States Parties are to cooperate with one another in order to determine the validity of travel and identity documents carried by suspected traffickers and trafficked victims.<sup>1021</sup> According to Article 13, when a state requests verification regarding the legitimacy and validity of travel and identity documents, the requested state must fully comply.<sup>1022</sup> Compliance with such requests is done in accordance with the domestic law of each state.<sup>1023</sup>

### *Examples of Compliance and Non-Compliance*

#### Legitimacy and Validity of Documents

##### De Facto

- **Compliance:** In 2003, the Swiss government responded to 575 international inquiries related to trafficking in persons. This number of responses was up from 474 in 2002.<sup>1024</sup>

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<sup>1021</sup> See Trafficking Protocol, *supra* note 3, art. 13.

<sup>1022</sup> See *id.*

<sup>1023</sup> See *id.*

<sup>1024</sup> See 2004 TIP Report, *supra* note 17, at 179.

## EXAMPLES OF SUCCESSFUL NGO ANTI-TRAFFICKING EFFORTS

In addition to government efforts to combat trafficking, it is important to focus on the work of NGOs that complements those efforts. In fact, in many countries, NGOs have taken a lead in anti-trafficking campaigns especially in the fields of victim protection and assistance as well as prevention.

The Trafficking Protocol calls upon its States Parties to recognize the invaluable contributions of NGOs and to cooperate with them whenever pertinent. Article 6(3) of the Protocol calls upon States Parties to involve NGOs in measures that seek to provide for the physical, psychological, and social recovery of trafficked victims such as appropriate housing, medical, psychological, and legal counseling, material assistance, education and employment programs, and vocational training.<sup>1025</sup> Article 9(3) requires States Parties to include NGOs “as appropriate” in policies, programs and other measures to prevent trafficking and protect trafficked victims from revictimization, such as research, information and mass media campaigns, programs aimed at alleviating root causes of trafficking (poverty, underdevelopment, lack of equal opportunity), and programs addressing the demand for trafficked individuals.<sup>1026</sup> Lastly, Article 10(2) calls for cooperation with NGOs when training law enforcement, immigration, and other relevant officials in preventive measures.<sup>1027</sup> More specifically, NGOs should be involved in training officials regarding the rights of trafficked victims and overall “human rights and child-and gender-sensitive issues.”<sup>1028</sup>

Below are three examples of innovative ways in which NGOs have assisted trafficked victims and have conducted preventive campaigns. These efforts can be mimicked by other NGOs worldwide. However, it is worthy to note that the Trafficking Protocol calls upon *government actors* to primarily address the trafficking issue and to seek out NGO involvement. That is, if an NGO is providing victims with shelter and counseling services, the government should take part in these measures from the very beginning, either through funding or direct participation, because the ultimate responsibility of protecting and assisting victims under the Protocol rests with the states themselves.<sup>1029</sup>

### La Strada Czech Republic

While the Czech Republic is a signatory to both the Trafficking Protocol and the Transnational Organized Crime Convention, it has not yet ratified either instrument as of the date of this writing.<sup>1030</sup>

Article 246 of the Czech Criminal Code solely criminalized trafficking of women for the purpose of sexual exploitation abroad. Thus, in November 2004, this provision was amended and now criminalizes all forms of trafficking, including trafficking for the purposes of forced labor and

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<sup>1025</sup> See Trafficking Protocol, *supra* note 3, art. 6(3).

<sup>1026</sup> See *id.* art. 9(3).

<sup>1027</sup> See *id.* art. 10(2).

<sup>1028</sup> *Id.*

<sup>1029</sup> See *id.* art. 6.

<sup>1030</sup> See Signatories to the UN Convention against Transnational Crime and its Protocols, *available at* [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/en/crime_cicp_signatures.html).

internal trafficking.<sup>1031</sup> There is no comprehensive law that seeks to protect all victims of trafficking (including those who do not wish to testify) or delineates preventive measures, but in 2003 the government issued a National Strategy of Combating Trafficking Human Beings, or an NPA. The national strategy addresses measures for prevention, punishment, victim support, and international cooperation. The action plan sets forth objectives in terms of organization, research, deterrence, prevention, and victim support and identifies deadlines and responsible government bodies.<sup>1032</sup>

La Strada CR<sup>1033</sup> is a Czech non-profit organization that belongs to the international network of La Strada organizations in Western Europe, Central and Eastern Europe as well as the Newly Independent States. Thus far, La Strada has a presence in the following nine countries: the Netherlands, Czech Republic, Poland, Bulgaria, Belarus, Moldova, Macedonia, Bosnia & Herzegovina, and Ukraine. La Strada's objectives are the prevention and protection aspects of anti-trafficking, and this is reflected in their activities in the Czech Republic.

La Strada CR began its work in the Czech Republic in 1995 as a project of the ProFem foundation, and was registered as an independent organization in 1998. The organization receives funding from entities such as the Czech Ministry of Justice, the Dutch Ministry of Foreign Affairs, European Union, Novib, the Global Fund for Women, the Hella Foundation, and the Women's World Day of Prayer (the German Committee).

La Strada CR pursues a multi-faceted strategy designed to help prevent trafficking and to assist trafficking victims. Article 9(2) of the Trafficking Protocol calls for "measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons."<sup>1034</sup> Many of La Strada's activities fall within these parameters. For example, the organization promotes education and information programs for young women and girls, including public service announcements in mass media outlets and the dissemination of posters, post cards, and information leaflets.

Furthermore, La Strada's educational activities target not only women and children but also law enforcement bodies and other relevant professionals. For instance, one project focused on increasing awareness of the trafficking issue among professionals from various Czech police agencies, and sensitizing them towards the needs of trafficked persons. La Strada also engages in "train the trainer" programs, by teaching professionals at family advice centers, shelter houses, street-work organizations, and other NGOs that work with at-risk groups, how to disseminate information about the dangers of trafficking.

La Strada is also engaged in a variety of research projects, such as a study that explored the risk of trafficking among female asylum applicants, and another that analyzed best practices for inter-agency cooperation in combating trafficking. This information, and many other resources on trafficking, are available through the La Strada library.

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<sup>1031</sup> See CRIMINAL CODE [CRIM. C.] art. 246 (Czech Rep.), available at

<http://www.legislationline.org/view.php?document=55354>; see also 2005 TIP Report, *supra* note 5, at 93.

<sup>1032</sup> See GOVERNMENT OF THE CZECH REPUBLIC, ACTION PLAN TO IMPLEMENT THE NATIONAL STRATEGY OF COMBATING TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION IN THE CZECH REPUBLIC (2003), available at [http://www.mvcr.cz/aktualit/sdeleni/2003/ak\\_plana.doc](http://www.mvcr.cz/aktualit/sdeleni/2003/ak_plana.doc).

<sup>1033</sup> For all the information included in this summary, the reader should refer to the La Strada website. See La Strada CR, at <http://www.strada.cz/en/>.

<sup>1034</sup> Trafficking Protocol, *supra* note 3, art. 9(2).

In addition to its projects that are designed to prevent trafficking, La Strada provides a wide range of direct assistance to victims of trafficking. Their services reflect many, if not all, of those recommended in Article 6 of the Trafficking Protocol, including anonymous housing, psychological assistance, legal consultation, medical assistance, and help in finding employment.<sup>1035</sup> These services are available for up to six months at absolutely no cost to the victim. Additionally, La Strada offers a support hotline for potential and returning victims of trafficking as well as their families.

### **Sanlaap and the Economic Rehabilitation of Trafficking Victims (“ERTV”) Program India**

India is a signatory to both the Trafficking Protocol and the Transnational Organized Crime Convention, but it has not ratified either instrument as of the date of this writing.<sup>1036</sup>

India’s main legislation for combating human trafficking is The Suppression of Immoral Traffic in Women and Girls Act of 1956.<sup>1037</sup> The Indian government also adopted a National Plan of Action on Combating Trafficking and Commercial Exploitation of Women and Children. “Several Indian states have developed their own state-level action plans to address human trafficking. Additionally, various government agencies are charged with combating human trafficking. These agencies include the Department of Women and Child Development (“DWCD”) (which operates under the Ministry of Human Resources Development and implements the NPA). Other government agencies involved in combating human trafficking include the Ministry of Home Affairs, the National Human Rights Commission, the National Commission for Women, and the National AIDS Control Organization.”<sup>1038</sup>

The Economic Rehabilitation of Trafficking Victims (“ERTV”) program,<sup>1039</sup> initially launched by the International Organization for Migration (“IOM”), is becoming a self-sustaining domestic effort to economically rehabilitate trafficked victims and aid with business start-ups without donor funds after the initial outlay. This is accomplished through the use of the *revolving fund* principle, whereby the initial business start-up funds, typically 10,000 rupees provided to a group of four women, are scheduled to be re-paid by each group of participants within approximately two years, at an estimated rate of 400 rupees a month. After two years, the participating women are self-sufficient with their own businesses. In Calcutta, one NGO helping to direct the program, Sanlaap, has recovered its start-up contributions to each business kiosk run by these new entrepreneurs and former trafficked victims. Sanlaap can then use the recovered funds as start-up for the next group of four individuals participating in the franchise partnership program.

The ERTV program in Calcutta began in March 2004, with the first business venture involving a partnership with the Gujurat Co-operative Milk Marketing Federation (“GCMMF”). The GCMMF

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<sup>1035</sup> See *id.* art. 6(3).

<sup>1036</sup> See Signatories to the UN Convention against Transnational Crime and its Protocols, available at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/en/crime_cicp_signatures.html).

<sup>1037</sup> See generally The Suppression of Immoral Traffic in Women and Girls Act, No. 104 (1956) (later amended 1978) (India), available at <http://www.protectionproject.org/>.

<sup>1038</sup> See ABA India & Bangladesh Report (unpublished), *supra* note 315, at 8.

<sup>1039</sup> The information regarding the ERTV was compiled by a group of researchers who travelled to India and Bangladesh in 2004 in order to study anti-trafficking efforts on behalf of the American Bar Association. See ABA India & Bangladesh Report (unpublished), *supra* note 315, at 62-65.

operates India-wide and markets various dairy products under the brand name of “Amul.” In this business partnership, the GCMMF offers the Amul franchise products and inputs to ERTV program participants at an initially discounted rate, and these products serve as one component of a café/parlor run by ERTV participants, officially named “The Hub.” “The Hub” has four components: an Amul café parlor, a cyber café parlor, a gift center, and a sari center.

The participants are Sanlaap residents, ages eighteen to twenty, and they earn a wage-based income (provided by Sanlaap) for their work at “The Hub.” Prior to entering these positions, the participants were involved in various vocational training courses—beauty parlor, tailoring, and computers courses—or had other jobs. The women presently working at “The Hub” will soon be running “Amul kiosks” throughout Calcutta, and their current jobs at “The Hub” are serving as a training period to gain experience with customers, marketing products (both within the shop and outside the shop by distributing leaflets), assessing inventories and sales trends, ordering products directly from GCMMF, and calculating profit margins. Furthermore, the program participants receive training from a former business executive with experience in the commercial field. The women are also gaining valuable computer skills, such as writing email and managing cyber café services.

Both the ERTV parlor and kiosk concepts are models of progressive, sustainable partnerships between the private sector and NGOs, alongside productive and supportive involvement by the government and other donors. These ventures have dramatically increased the participants’ awareness of the opportunities that are available to them. The ERTV scheme is unique in that both the private sector and NGOs have moved beyond seeing themselves as providers of charity. The Indian government has played a role in the provision of startup inputs and former victims have the chance to move away from their typical recipient role. The NGOs facilitate truly professional-oriented training partnerships. The government provides land and space for kiosks and parlors on government-owned property and in public areas.

This project is an extremely promising means of addressing both the prevention of trafficking and the protection of victims. By providing trafficked victims with economic opportunities that allow them to reach their potential, the ERTV program is an excellent example of how to implement Article 6(3)(d) of the Trafficking Protocol which addresses “employment, educational and training opportunities.”<sup>1040</sup> ERTV is also important with regards to Article 9(4), which calls for programs to address the root causes of trafficking such as poverty.<sup>1041</sup> Consequently, the ERTV program can prove to be extremely effective.

Sanlaap has already begun to formally disseminate the mechanics of the ERTV scheme to other NGOs, and greater use of similar economic-empowerment schemes will have a significant impact on the existence of successful assistance and re-integration measures for victims of trafficking and will also augment measures seeking to prevent trafficking in persons.

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<sup>1040</sup> Trafficking Protocol, *supra* note 3, art. 6(3)(d).

<sup>1041</sup> *See id.* art. 9(4).

## Coalition of NGOs Nigeria

Nigeria has signed and ratified both the Trafficking Protocol and the Transnational Organized Crime Convention.<sup>1042</sup>

In accordance with its international obligations, in 2003, the government of Nigeria adopted an anti-trafficking law, the Traffic in Persons (Prohibition) Law Enforcement and Administration Act that criminalizes the act of trafficking in persons. The law also addresses the rights of victims, including the right to social services, access to consular services, non-discriminatory treatment, and the right of repatriation. Lastly, the law created a new government agency, the National Agency for the Prohibition of Trafficking in Persons, in order to address issues such as criminal investigations, legal matters, public education needs, counseling, and re-integration as they relate to the trafficking issue.<sup>1043</sup>

Although this law is a major step in the advancement of Nigeria's compliance with its obligations under the Trafficking Protocol, numerous efforts have also been undertaken by NGOs at the local level that align with international standards.

As a result of international and domestic support, the number of NGOs working on trafficking throughout Nigeria is increasing considerably. While some NGOs are still at the developmental stage of their work, others have already made significant progress towards the elimination of the trafficking problem in Nigeria. The remainder of this summary will highlight the efforts of a coalition of NGOs<sup>1044</sup> that worked in close cooperation to develop and implement two unique anti-trafficking projects. These projects were implemented in 2003 and involved collaboration with anti-trafficking NGOs in Italy, a major destination country for women trafficked from Nigeria.

The coalition conducted its work primarily throughout Nigeria's Edo State and received significant support from the United Nations Interregional Crime and Justice Research Institute ("UNICRI"). The members are:

- Committee for the Support of the Dignity of Women ("COSUDOW")
- International Reproductive Rights Research Action Group ("IRRRAG")
- African Women's Empowerment Guild ("AWEG")
- National Council of Women Societies ("NCWS")
- Idia Renaissance
- Girls Power Initiative ("GPI").

The first project falls under the area of prevention and addresses issues set forth in Article 9 of the Trafficking Protocol.<sup>1045</sup> The project focuses on a variety of strategic awareness-raising activities to reach specific target groups such as, parents, traditional chiefs and priests, rural villages, and children.

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<sup>1042</sup> See Signatories to the UN Convention against Transnational Crime and its Protocols, available at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/en/crime_cicp_signatures.html).

<sup>1043</sup> See 2004 TIP Report, *supra* note 17, at 71; see also 2005 TIP Report, *supra* note 5, at 169; see generally Traffic in Persons (Prohibition) Law Enforcement and Administration Act (2003) (Nig.).

<sup>1044</sup> For all the information included in this summary, the reader should refer to <http://www.unicri.it/wwd/trafficking/nigeria/index.php>.

<sup>1045</sup> See Trafficking Protocol, *supra* note 3, art. 9.

Under the program of action, different campaigns are designed and conducted to meet the needs of different audiences. All campaigns are conducted in the appropriate local language and with local support from community leaders and associations in order to ensure commitment and participation from the existing communal networks.

One campaign is organized on three different levels in which radio programs, stickers, posters, and leaflets containing anti-trafficking slogans are widely disseminated, discussion groups are held with young girls, and meetings are organized with local clubs, vocational centers and trade unions. These campaigns are conducted in areas that serve as recruiting grounds for traffickers. Another campaign targets rural areas in order to educate parents, market leaders, and traditional leaders about the dangers associated with trafficking. Finally, another campaign aims to increase awareness among school children, local education officials, teachers, principals, bus-drivers, and others. These campaigns not only use radio programs and brochures, but also offer counseling and skills trainings through selected schools in order to target minors who are highly susceptible to trafficking.

The second major project of the coalition addresses both Article 6 and Article 9 of the Trafficking Protocol by implementing means of victim assistance and protection as well as means of preventing trafficking.<sup>1046</sup> The project specifically targets young women who have already been trafficked, young girls and women who have been deported back to Edo, and girls and women who are vulnerable to trafficking. The activities under this program are assistance-based and aim to provide support to victims of trafficking at the local level. The major component of this program consists of establishing micro-finance schemes in order to facilitate the rehabilitation and reintegration of trafficking victims into society. Project participants receive specialized technical assistance, business counseling and training, and the resources required to start and run a small business.

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<sup>1046</sup> See *id.* arts. 6, 9.

## APPENDIX A: EXAMPLES OF COMPLIANCE AND NON-COMPLIANCE

### Article 1: Relation with the United Nations Convention against Transnational Crime

#### Jurisdiction

##### De Jure

- **Compliance:** In cases of exploitation, trafficking in human beings, trade in human beings, and slave trade, Austrian criminal law is applicable regardless of the criminal law of the country where the crime occurred.<sup>1047</sup>
- **Compliance:** The criminal code of Niger recognizes international trafficking in persons as an aggravated offense and imposes sanctions upon perpetrators if they commit such a crime within the territory of Niger or in a different country.<sup>1048</sup>
- **Compliance:** The Thai Penal Code includes the offense of trafficking in persons and allows for the courts of Thailand to assert jurisdiction irrespective of where such offenses occurred or of the offender's nationality.<sup>1049</sup>

##### De Facto

- **Compliance:** In June 2001, Spanish authorities arrested thirty-five perpetrators, including Romanian and Russian nationals, who were members of a trafficking and prostitution ring.<sup>1050</sup>
- **Compliance:** In 2001, a U.S. federal court responded to jurisdictional challenges raised by Kil Soo Lee who had been indicted for knowingly and willfully holding Vietnamese workers in involuntary servitude at his factory in American Samoa. Lee contended that federal authorities in the state of Hawaii could not assert jurisdiction over him since his business was in Samoa. The court deemed that the issue was not one of jurisdiction but rather of venue, that the courts of American Samoa lacked the power to prosecute violations of the federal criminal code, and that venue was proper in Hawaiian courts.<sup>1051</sup>

#### Witness Protection

##### De Jure

- **Non-compliance:** In 2003, the international community pointed out that the Albanian Criminal Procedure Code did not provide for witness protection measures for victims of trafficking or for their relatives in cases where the victims decide to testify against their

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<sup>1047</sup> See The Protection Project; Human Rights Reports: Austria, at <http://www.protectionproject.org/>.

<sup>1048</sup> See CRIMINAL CODE [CRIM. C.] arts. 292(8), 293 (Niger); see also The Protection Project; Human Rights Reports: Niger, at <http://www.protectionproject.org/>.

<sup>1049</sup> See The Protection Project; Human Rights Reports: Thailand, at <http://www.protectionproject.org/>.

<sup>1050</sup> See The Protection Project; Human Rights Reports: Spain, at <http://www.protectionproject.org/>.

<sup>1051</sup> See *United States v. Lee*, 159 F. Supp. 2d 1241 (9th Cir. 2001).

traffickers (i.e., protection from retaliation, etc.).<sup>1052</sup> Consequently, the Ministry of Justice drafted a Witness Protection Law along with amendments to the Criminal Procedure Code that offer special protections for victims of trafficking who decide to testify. All of these provisions were adopted, however, as of June 2005, the regulations necessary for the implementation of witness-protection measures had not been finalized.<sup>1053</sup>

- **Compliance:** Bosnia and Herzegovina (“BiH”) has a “Law on Protection of Witnesses Under Threat and Vulnerable Witnesses,” which entered into force on March 1, 2003.<sup>1054</sup> The law defines a “witness under threat” as “a witness whose personal security or the security of his family is endangered through his participation in the [criminal] proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony.”<sup>1055</sup> The law defines a “vulnerable witness” as “a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a juvenile.”<sup>1056</sup> The law provides for 1) psychological support for the witness while testifying, 2) the possibility of hearing the testimony of the witness at an earlier time and in a different order than originally perceived, 3) appropriate control for the judge in order to protect the witness from harassment and confusion, including the ability to directly pose questions on behalf of the parties in exceptional circumstances, 4) video link testimony, 5) removal of the defendant from the courtroom based upon justified fear of the witness while ensuring that the defendant can still view the trial and that his/her attorney remains present, 6) protecting the identity of the witness in the record, 7) keeping some of the personal details of the witness from the accused by limiting access to files and documentation in exceptional circumstances, sealing the witness’s identity and other personal details for a period of thirty years after the trial, screening and distorting the image and voice of the witness when testifying, and holding separate witness protection hearings.<sup>1057</sup> BiH also has legislation at the Federation level that protects witnesses while testifying in criminal proceedings.<sup>1058</sup>
- **Compliance:** The Criminal Procedure Code of Bulgaria provides for the protection of witnesses whose testimony is likely to incite “real danger to the life, health or the property” of the witnesses or their “relatives of ascending or descending line, brothers, sisters, spouse or persons with whom [they are] in very close relationship.”<sup>1059</sup> The Code provides for the following means of witness protection: 1) keeping the identity of the witnesses secret and 2) assigning guards to the witnesses.<sup>1060</sup> The legislation balances the needs of the witnesses

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<sup>1052</sup> See Council of Europe; National Legislation: Albania, at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Alb.asp#P1048\\_82848](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Alb.asp#P1048_82848).

<sup>1053</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 38; see LARA PROJECT, *supra* note 876, at 3-6; see also 2005 TIP Report, *supra* note 5, at 52.

<sup>1054</sup> See Law on Protection of Witnesses Under Threat and Vulnerable Witnesses (2003) (Bosn. & Herz.), available at <http://www.legislationline.org/view.php?document=58758>.

<sup>1055</sup> *Id.* art. 3(1).

<sup>1056</sup> *Id.* art. 3(3).

<sup>1057</sup> See *id.* arts. 6-14.

<sup>1058</sup> See Law on Special Witness Identity Protection in Criminal Proceedings in the Federation of Bosnia and Herzegovina (2001), available at <http://www.legislationline.org/view.php?document=56710>.

<sup>1059</sup> CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 97(a)(1) (Bulg.); see also Council of Europe; National Legislation: Bulgaria, at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>1060</sup> See *id.* art. 97(a)(2).

with the rights of the accused by allowing defense counsel to receive transcripts of the witnesses' testimony. The transcripts are not bear the signatures of the witnesses.<sup>1061</sup>

- **Non-compliance:** In 2002, it was reported that trafficked victims could not seek protection under Colombia's witness protection system because only witnesses in kidnapping, terrorism, and drug trafficking cases were covered. It should be noted that witnesses do not usually give oral testimony in Colombian courts. Written affidavits containing the witnesses' testimony are generally filed. It is possible to change a particular witness' name in such documents in order to protect his/her privacy, but this level of protection is not sufficient. In 2005, the U.S. State Department indicated that many victims of trafficking continue to chose not to assist with prosecutions in Colombia because of "inadequate witness protection programs."<sup>1062</sup>
- **Compliance:** Under Italian law, trafficked victims are protected when they testify in the *incidente probatorio* (special evidence pre-trial hearing). The prosecutor or the victims themselves can request the *incidente probatorio* under Article 392 and 394 of the Code of Criminal Procedure. It is a closed hearing and generally used in cases where there is a risk of evidence tampering.<sup>1063</sup> Furthermore, Italian legislation provides for a special witness protection scheme that offers, *inter alia*, witness relocation.<sup>1064</sup>
- **Compliance:** In Moldova, trafficked victims can seek protection under the 1998 Law on State Protection of the Victim, Witnesses and Other Persons who Provide Assistance in the Criminal Proceedings. The law extends "state protection" to persons who cooperate with law enforcement in their investigations, including witnesses, victims and their legal representatives in criminal proceedings, suspects, defendants, convicted persons, defense counsel, and close relatives of all of the aforementioned persons. "State protection" entails ordinary safety measures, personal protection, protection of residence and personal property, special individual protection, temporary placement in safe locations, extraordinary change of place of work or study, change of residence with mandatory granting of a new place of residence (house, apartment), change of identity, and prosecution of offenses in closed court sessions.<sup>1065</sup>
- **Compliance:** Under Romania's anti-trafficking law, trafficked victims can request, and the court can order, a "closed-doors session" as their traffickers are being prosecuted.<sup>1066</sup> Furthermore, "[u]pon request, and on Romanian territory, the Ministry of Interior shall provide physical protection for victims of trafficking in human beings during the criminal procedures."<sup>1067</sup>

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<sup>1061</sup> See *id.* art. 97(a)(5).

<sup>1062</sup> See ASI REPORT, *supra* note 150, at 193; see also 2005 TIP Report, *supra* note 5, at 85.

<sup>1063</sup> ASI REPORT, *supra* note 150, at 148; see also CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] arts. 392, 394 (Italy).

<sup>1064</sup> See Law Establishing a Special Witness Protection Scheme, No. 2207-B (2001), art. 12(3) (Italy), available at <http://www.legislationline.org/view.php?document=56089>.

<sup>1065</sup> See Law on State Protection of the Victim, of Witnesses and Other Persons who Provide Assistance in the Criminal Proceedings, No. 1458-XIII (1998), arts. 2, 8(1) (Mold.), at <http://www.legislationline.org/view.php?document=56842>; see also HTAT Pilot, *supra* note 148, at 17-20.

<sup>1066</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 25 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1067</sup> *Id.* art. 27.

- **Compliance:** In the United Kingdom, criminal sanctions are available against individuals who intimidate witnesses. Section 51 of the Criminal Justice and Public Order Act of 1994 delineates two offenses: intimidating a witness and harming or threatening to harm a witness. Harmful acts include causing financial harm directed towards the witness or his/her property. Fearful witnesses can also submit their testimony in written form and there is no requirement that the defendant be the root cause of their fear. Lastly, sections 34-40 of the Youth Justice and Criminal Evidence Act of 1999, place limitations on the cross-examination of witnesses in cases involving rape and other sex offenses. According to these provisions, the defendant is not allowed to cross-examine the victim witnesses and counsel is prohibited from asking questions regarding previous sexual history.<sup>1068</sup>
- **Compliance:** In the United States, the Victim and Witness Protection Act of 1982 (federal law) penalizes individuals for intimidating potential witnesses, victims of a crime, or any informants. Section 1512 indicates: “(a) [w]hoever knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to (1) influence the testimony of any person in an official proceeding; (2) cause or induce any person to (a) withhold testimony, or withhold a record, document, or other object, from an official proceeding; (b) alter, destroy, mutilate, or conceal an object with intent to impair the object’s integrity or availability for use in an official proceeding; (c) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or (d) be absent from an official proceeding to which such person has been summoned by legal process; or (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; shall be fined not more than \$250,000 or imprisoned not more than ten years, or both.”<sup>1069</sup> Furthermore, individuals can be fined up to \$25,000, imprisoned for not more than one year or both if they intentionally harass others impeding their testimony in judicial proceedings or their participation in investigations.<sup>1070</sup> Lastly, if individuals cause bodily injury, property damage, or threaten other persons with the intent to retaliate against them for testifying or for cooperating with authorities, they can be fined up to \$250,000, imprisoned not more than ten years, or both.<sup>1071</sup>

### De Facto

- **Compliance:** In Austria and Germany, witness interrogations can be conducted via video link if the witness has been subjected to sexual violence by the accused and if s/he would be seriously endangered if s/he confronts the accused. The witness is placed in a separate room, and his/her testimony is simultaneously broadcasted (picture and sound) into the courtroom. Defense counsel can interrupt and ask questions of the witness.<sup>1072</sup>

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<sup>1068</sup> See Witness Protection Measures: United Kingdom, available at <http://www.legislationline.org/index.php?topic=87&country=40&org=0&eu=0>.

<sup>1069</sup> Victim and Witness Protection Act, 18 U.S.C. § 1512(a) (2000).

<sup>1070</sup> See *id.* §1512(b).

<sup>1071</sup> See *id.* §1513.

<sup>1072</sup> See OSCE GUIDE, *supra* note 72, at 83.

- **Compliance:** In Israel, children who agree to testify and who have been subjected to sexual exploitation or other prostitution-related acts, may be questioned by a special youth examiner. Their testimony, although taken outside of court, is admissible.<sup>1073</sup>
- **Non-compliance:** In Slovakia, victims who agree to assist investigators and prosecutors are eligible to enter into a witness protection program. They can also receive a new identity and avoid giving live testimony (their statements can be recorded). However, in June 2004, the U.S. State Department reported that “lack of trust in the police often deters potential witnesses.”<sup>1074</sup>

## Money Laundering

### De Jure

- **Compliance:** Brazil adopted anti-money-laundering legislation in 1998, which allows authorities to prosecute persons suspected of facilitating laundering operations, and to seize and freeze the proceeds from drug trafficking, smuggling, and “other types of trafficking.”<sup>1075</sup>
- **Compliance:** Colombia has a comprehensive law against trafficking that incorporates the offense of money laundering in addition to the separately defined offense of trafficking in persons.<sup>1076</sup>
- **Compliance:** In Turkey, money laundering is a crime according to the 1996 Law on Prevention of Money Laundering. The law provides for the confiscation of money laundering proceeds and requires reporting of suspicious activities. The law is implemented by the Financial Crimes Investigation Board. In addition, the 1999 Banking Law of Turkey prohibits banks from providing services to a person who fails to produce proper identification.<sup>1077</sup>
- **Compliance:** In the United States, money laundering is defined as an offense at the federal level as “the movement of illicit cash or cash equivalent proceeds into, out of, or through the United States, or into, out of, or through United States financial institutions.”<sup>1078</sup>

### De Facto

- **Compliance:** In the United States, individuals are prosecuted for money laundering at both the federal and state level. In some cases, money laundering charges are grouped together with closely related offenses such as fraud, depending upon the scope of the perpetrator’s illicit activities.<sup>1079</sup>

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<sup>1073</sup> See The Protection Project; Human Rights Reports: Israel, at <http://www.protectionproject.org/>.

<sup>1074</sup> 2004 TIP Report, *supra* note 17, at 173.

<sup>1075</sup> See The Protection Project; Human Rights Reports: Brazil, at <http://www.protectionproject.org/>.

<sup>1076</sup> See ASI REPORT, *supra* note 150, at 187.

<sup>1077</sup> See The Protection Project; Human Rights Reports: Turkey, at <http://www.protectionproject.org/>.

<sup>1078</sup> 18 U.S.C.A. § 5340(2) (2000).

<sup>1079</sup> See, e.g., *United States v. Ross*, 279 F.3d 600 (8th Cir. 2002) (deciding on sentencing guidelines for wire fraud and money laundering charges).

## Corruption

### De Jure

- **Compliance:** In February 2004, legislation came into force in Bangladesh in order to establish an Anti-Corruption Commission. This body is tasked with investigating and prosecuting cases that involve all types of corruption.<sup>1080</sup>
- **Compliance:** In Botswana, the Corruption and Economic Crime Act of 1994 provides for the investigation and prevention of corruption and economic crimes and seeks to increase public awareness concerning these offenses. The Act establishes the Directorate on Corruption and Economic Crime, which has the authority to initiate disciplinary action against public officers who are involved in corrupt practices.<sup>1081</sup>
- **Compliance:** In 1995, Law No. 190 came into force in Colombia targeting corruption in the administrative sector. This law requires public officials to report assets and property. Furthermore, the 1996 Law No. 333 nullifies the right to property acquired through criminal activity.<sup>1082</sup>
- **Compliance:** In 1996, the Costa Rican government issued a decree prohibiting the illegal enrichment of public employees. An additional decree, issued in 1995, requires officers that represent all branches of government to submit sworn declarations of assets. The 1991 Law on Civil Service and Administrative Careers delineates a code of ethics for civil servants.<sup>1083</sup>
- **Compliance:** The Criminal Code of The Former Yugoslav Republic of Macedonia dedicates specific provisions to penalizing individuals for both receiving and taking a bribe (Articles 357 and 358 respectively).<sup>1084</sup>
- **Compliance:** Oman's Law on Protection of Public Money and Avoidance of Conflict of Interests prohibits public officials from accepting any additional consideration in return for exercising their official duties.<sup>1085</sup> Oman's Criminal Code also includes offenses such as bribery of public officials<sup>1086</sup> and abuse of public office for private gain.<sup>1087</sup>

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<sup>1080</sup> See 2004 TIP Report, *supra* note 17, at 210.

<sup>1081</sup> See The Protection Project; Human Rights Reports: Botswana, at <http://www.protectionproject.org/>.

<sup>1082</sup> See The Protection Project; Human Rights Reports: Colombia, at <http://www.protectionproject.org/>.

<sup>1083</sup> See The Protection Project; Human Rights Reports: Costa Rica, at <http://www.protectionproject.org/>.

<sup>1084</sup> See CRIMINAL CODE [CRIM. C.] arts. 357, 358 (Maced.), at

[http://www.coe.int/T/F/Affaires\\_juridiques/Coop%E9ration\\_juridique/Combattre\\_la\\_criminalit%E9\\_%E9conomique/P rojet\\_LARA/Natleg\\_FYROM.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%E9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/P rojet_LARA/Natleg_FYROM.asp#TopOfPage).

<sup>1085</sup> See Law on Protection of Public Money and Avoidance of Conflict of Interests, No. 39 (1982) (Oman); *see also* The Protection Project; Human Rights Reports: Oman, at <http://www.protectionproject.org/>.

<sup>1086</sup> See CRIMINAL CODE [CRIM. C.] arts. 155-158 (Oman); *see also* The Protection Project; Human Rights Reports: Oman, at <http://www.protectionproject.org/>.

<sup>1087</sup> See CRIMINAL CODE [CRIM. C.] arts. 160, 161 (Oman); *see also* The Protection Project; Human Rights Reports: Oman, at <http://www.protectionproject.org/>.

## De Facto

- **Non-compliance:** In June 2004, the U.S. State Department reported that in Bangladesh “[p]olice officials are known to facilitate trafficking of women and children, though none have ever been charged or arrested” and that “[t]he government does not adequately monitor its borders; corruption among border guards is a major obstacle to anti-trafficking progress.” In June 2005, the U.S. State Department noted that this trend continued and advised the Bangladeshi government to “expand its anti-corruption efforts to reduce the witting and unwitting complicity of officials in trafficking.”<sup>1088</sup>
- **Non-compliance:** Czech authorities indicted and convicted individuals under trafficking statutes during 2004-2005. However, the U.S. State Department reported in June 2005 that “[n]o government officials were indicted or convicted for complicity in trafficking, [and] allegations continued about the involvement of individual border police officers facilitating illegal border crossings.”<sup>1089</sup>
- **Non-compliance:** In July 2001, Human Rights Watch reported involvement on the part of Greek police in trafficking activities. Government officials openly acknowledged such corruption, indicating that some officers had been prosecuted and convicted for complicity in the trafficking of women for the purpose of forced prostitution.<sup>1090</sup> In June 2004, the U.S. State Department reported similar corruption based on information that certain police officers received bribes from traffickers and frequented establishments implicated in trafficking. This trend has continued as of June 2005.<sup>1091</sup>
- **Non-compliance:** In June 2004, the U.S. State Department reported the following regarding the trafficking situation in Guinea: “[g]overnment officials are known to issue false passports for trafficking purposes, and deliberately overlook trafficking at border crossings. No action has been taken against officials involved in trafficking in persons. In November 2003, a network of Guinean women that trafficked girls from Bamako into Guinea for domestic servitude was discovered in the aftermath of a car crash. Guinean authorities worked with IOM to repatriate the five surviving children. It is not known whether any charges were filed against the traffickers.” In June 2005, the U.S. State Department indicated that “[c]orruption remains a problem and impedes cross-border trafficking investigations, yet the government [of Guinea] reported no investigations or prosecutions of corrupt officials.”<sup>1092</sup>
- **Non-compliance:** In June 2004, the U.S. State Department conveyed that “[e]ndemic corruption among law enforcement officials impedes India’s progress in combating trafficking in persons. Many low-level border guards take bribes or turn a blind eye to cross-border trafficking. Some police officers have been implicated in tipping off brothels to impending raids.” This trend continued as of June 2005.<sup>1093</sup>

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<sup>1088</sup> 2004 TIP Report, *supra* note 17, at 210; 2005 TIP Report, *supra* note 5, at 63.

<sup>1089</sup> See 2005 TIP Report, *supra* note 5, at 94.

<sup>1090</sup> See HUMAN RIGHTS WATCH, MEMORANDUM OF CONCERN: TRAFFICKING OF MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE 19 (2001), available at <http://www.hrw.org/backgrounder/eca/greece/index.htm> [hereinafter 2001 HRW GREECE REPORT].

<sup>1091</sup> See 2004 TIP Report, *supra* note 17, at 145; see also 2005 TIP Report, *supra* note 5, at 114.

<sup>1092</sup> 2004 TIP Report, *supra* note 17, at 59; 2005 TIP Report, *supra* note 5, at 116.

<sup>1093</sup> See 2004 TIP Report, *supra* note 17, at 214; see ABA India & Bangladesh Report (unpublished), *supra* note 315, at 24

- **Non-compliance:** Despite the existence of anti-corruption laws in Nigeria, the U.S. State Department reported in June 2004 that “government officials, particularly police and immigration and border officials, facilitate the trafficking of women and children [and] there is no discernible commitment to address this trafficking-related corruption. This corruption is reportedly very high, impeding the identification and prosecution of traffickers.” In June 2005, corruption remained a serious obstacle to anti-trafficking efforts in Nigeria.<sup>1094</sup>
- **Compliance:** In Romania, trafficking in persons is considered a trans-border and internal phenomenon. In 2003, OSCE highlighted the following problem: while an Anti-Trafficking Squad had been assigned to handle international trafficking, or trafficking activities that cross Romania’s borders, there was no government agency or organization with a mandate to address the issue of internal trafficking. Local NGOs indicated that corruption among police officers was a major barrier to the development of effective mechanisms to combat internal trafficking. “The pimps responsible for internal trafficking [were] often police informants or [had] informal contacts and dealings with the police.” In June 2005, the U.S. State Department reported an improvement in Romania’s efforts to combat corruption in connection with trafficking activities. “In 2004, Romania’s lead police anti-corruption agency investigated 81 police officials implicated in trafficking-related corruption; authorities imposed administrative sanctions on 31 officials, dismissed ten officials, and sent 40 cases forward for prosecution. Additionally, the Anti-Corruption National Prosecutor’s Office reviewed a total of ten cases of suspected trafficking-related corruption in 2004.”<sup>1095</sup>
- **Non-compliance:** In Slovakia, the government has instituted stronger anti-corruption measures, such as the use of sting operations and the enactment of whistle-blower statutes, resulting in several arrests. However, the U.S. State Department indicated in June 2005 that “allegations persisted . . . of corrupt activity among customs and border guards that may have facilitated trafficking.”<sup>1096</sup>

## Obstruction of Justice

### De Jure

- **Compliance:** The Chinese anti-trafficking provisions punish *inter alia* “whoever, through violence or threat, obstructs functionaries of a State organ from rescuing a sold woman or child.”<sup>1097</sup>
- **Compliance:** In the United States, obstruction of justice is criminalized at the federal level punishing, *inter alia*, “[w]hoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit

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(“According to some local experts, this is true because well-organized traffickers and even madams have often disappeared by the time police conduct their raids; sometimes they are even tipped off by corrupt officials or are simply allowed to escape.”); see also 2005 TIP Report, *supra* 5, at 124.

<sup>1094</sup> See 2004 TIP Report, *supra* note 17, at 71; see also 2005 TIP Report, *supra* note 5, at 169.

<sup>1095</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 92; see also 2005 TIP Report, *supra* note 5, at 183.

<sup>1096</sup> 2005 TIP Report, *supra* note 5, at 196.

<sup>1097</sup> CRIMINAL CODE [CRIM. C.] art. 242 (China), at <http://www.protectionproject.org/>.

juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats of force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.”<sup>1098</sup>

### De Facto

- **Compliance:** In the United States, obstruction of justice is prosecuted at both the federal and state level. Obstruction of justice charges have been filed against individuals when they have submitted false statements to the court,<sup>1099</sup> violated bail conditions by attempting to flee,<sup>1100</sup> and threatened potential witnesses.<sup>1101</sup>

## Article 2: Statement of Purpose

### Prevention, Prosecution, Protection, and International Cooperation

#### De Jure

- **Compliance:** In June 2004, the U.S. State Department reported that the government of Mali signed a convention with neighboring Cote d’Ivoire in order to better combat trafficking in persons. As of June 2005, Mali had also negotiated similar instruments with Burkina Faso and Senegal in order to increase cross-border coordination and facilitate victim repatriation.<sup>1102</sup>
- **Compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” incorporates measures intended to prevent trafficking,<sup>1103</sup> prosecute perpetrators,<sup>1104</sup> protect victims,<sup>1105</sup> and cooperate with other states with respect to the exchange of “criminal intelligence.”<sup>1106</sup>
- **Compliance:** According to the Thai 1993 International Cooperation in Criminal Matters Act, the government is committed to providing assistance to other countries in the region in criminal cases even in the absence of a formal treaty. Furthermore, Thailand has concluded

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<sup>1098</sup> 18 U.S.C.A. § 1503(a) (2000).

<sup>1099</sup> See, e.g., *United States v. Khimchiachvili*, 372 F.3d 75 (2d Cir. 2004).

<sup>1100</sup> See, e.g., *United States v. Fournier*, 361 F.3d 42 (1st Cir. 2004).

<sup>1101</sup> See, e.g., *United States v. Johns*, 142 F.3d 437 (6th Cir. 1998).

<sup>1102</sup> See 2004 TIP Report, *supra* note 17, at 65; see also 2005 TIP Report, *supra* note 5, at 153.

<sup>1103</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), ch. II (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1104</sup> See *id.* ch. III, ch. IV.

<sup>1105</sup> See *id.* ch. V.

<sup>1106</sup> *Id.* arts. 45, 46.

mutual legal assistance treaties with the United States, the United Kingdom, and Canada.<sup>1107</sup>

### De Facto

- **Compliance:** The Danish government cooperates with Europol, Eurojust, Interpol, the Council of the Baltic Sea States, the Police and Customs Cooperation in the Nordic Countries, as well as other countries for the purpose of investigating trafficking cases.<sup>1108</sup>
- **Compliance:** In June 2004, the U.S. State Department reported that the Hungarian government established an International Center for Co-operation in Criminal Affairs, was coordinating with Europol through a liaison officer, and was revising already existing bilateral cooperative agreements on combating organized crime. Furthermore, Hungary participates in regional organizations such as the Southeast European Cooperative Initiative (“SECI”), the Stability Pact, and the Council of Europe.<sup>1109</sup>
- **Compliance:** Italy used its presidency of the European Union (“EU”) to create an anti-trafficking coordination mechanism between source and destination countries and proposed the EU Council Directive on Trafficking.<sup>1110</sup>

## Article 3: Use of Terms

### Trafficking Definition

#### De Jure

- **Non-compliance:** The Albanian Criminal Code has been amended to include the offense of “trafficking of humans,” as well as the offenses of “trafficking of women for prostitution,” and “trafficking of children,” but does not detail the elements of these particular crimes, thus, they may easily be confused with other illicit behavior such as “smuggling” or “illegal border crossing.”<sup>1111</sup> For example, the provision delineating the offense of “trafficking of humans” indicates that “[t]rafficking of humans with the purpose of material profit or any other profit shall be punished by imprisonment from 5-15 years. When this offence is committed in complicity with others, repetitively or associated with maltreatment and physical or psychological threat toward the injured person to commit different actions or causing serious health impairment is punished with imprisonment not less than 15 years, and when these actions cause the death (of the person) shall be punished with life imprisonment. Kidnapping or keeping hostage of a person, or of a child under the age of 14, preceded by or associated by physical or psychological torture, if it is committed against several persons or repetitively shall be

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<sup>1107</sup> See The Protection Project; Human Rights Reports: Thailand, at <http://www.protectionproject.org/>.

<sup>1108</sup> See 2004 TIP Report, *supra* note 17, at 135; see also 2005 TIP Report, *supra* note 5, at 95.

<sup>1109</sup> See 2004 TIP Report, *supra* note 17, at 147.

<sup>1110</sup> See *id.* at 148-49.

<sup>1111</sup> CRIMINAL CODE [CRIM. C.] arts. 110/a, 114/b, 128/b (Alb.); see also Council of Europe; National Legislation: Albania, at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Alb.asp#P1048\\_82848](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Alb.asp#P1048_82848).

punished with not less than 20 years imprisonment, when death is caused, then shall be punished with life imprisonment.”<sup>1112</sup>

- **Non-compliance:** The Federation Criminal Code of BiH defines trafficking in persons as a separate crime in Article 186 punishing: “[w]hoever takes part in the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation . . . .”<sup>1113</sup> The OSCE argues that this particular definition does not comply with the minimum requirements of the Trafficking Protocol because it attempts to redefine trafficking using alternative and unclear wording and does not touch upon the irrelevancy of consent once the coercive means of trafficking have been proven.<sup>1114</sup> The Criminal Code of the Republika Srpska, a separate entity of BiH, defines the crime of “trafficking in persons for the purpose of prostitution.”<sup>1115</sup> However, this provision will no longer be applicable once all the criminal laws of BiH will be harmonized at the state level in accordance with the aforementioned 2003 code.<sup>1116</sup>
- **Non-compliance:** Brazil defines trafficking in women as a separate offense in its Criminal Code.<sup>1117</sup> The U.S. State Department criticized Brazil for having “antiquated trafficking statutes” in June 2005 indicating that “existing anti-trafficking law addresses *only* transnational trafficking in women for sexual exploitation.”<sup>1118</sup> Such provisions are insufficient because they do not address the other exploitative purposes listed in Article 3(a) of the Trafficking Protocol (forced labor, slavery, servitude, removal of organs, etc.) as minimum required elements.<sup>1119</sup>
- **Non-compliance:** The Criminal Code of Cameroon does not define trafficking in persons as a separate offense but incorporates the term within the crime of slavery. Article 293(1) of the Cameroonian Criminal Code, entitled “Slavery,” punishes “[a]ny person who: (a) reduces a person to or maintains a person in slavery, or (b) engages, even occasionally, in trafficking in human beings.”<sup>1120</sup> The code does not define the meaning of the terms “trafficking in human beings” or “slavery.” The offense of forced labor is delineated separately in Article 292 of the code.<sup>1121</sup>
- **Compliance:** Initially, the Criminal Code of Croatia did not criminalize the act of trafficking in persons. However, amendments defining this particular offense were

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<sup>1112</sup> See CRIMINAL CODE [CRIM. C.] arts. 110/a (Alb.).

<sup>1113</sup> CRIMINAL CODE [CRIM. C.] art. 186 (Bosn. & Herz.), at <http://www.legislationline.org/view.php?document=56698>.

<sup>1114</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 110.

<sup>1115</sup> CRIMINAL CODE [CRIM. C.] art. 188 (Republika Srpska), at <http://www.legislationline.org/view.php?document=54950>.

<sup>1116</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 110.

<sup>1117</sup> See CRIMINAL CODE [CRIM. C.] art. 231 (Braz.); *see also* The Protection Project; Human Rights Reports: Brazil, at <http://www.protectionproject.org/>.

<sup>1118</sup> See 2005 TIP Report, *supra* note 5, at 71 [emphasis added].

<sup>1119</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1120</sup> CRIMINAL CODE [CRIM. C.] art. 293(1) (Cameroon); *see also* The Protection Project; Human Rights Reports: Cameroon at <http://www.protectionproject.org/>.

<sup>1121</sup> See CRIMINAL CODE [CRIM. C.] art. 292 (Cameroon).

drafted and came into force in October 2004.<sup>1122</sup> These new provisions comply with the definition of the Trafficking Protocol and not only penalize traffickers but also clients of victims if it is determined that they knew the victims had been trafficked.<sup>1123</sup> Other criminal code provisions are also being used to prosecute traffickers, in addition to the newly adopted trafficking offense, such as Article 175 that prohibits slavery and transport of slaves,<sup>1124</sup> Article 177 that proscribes the illegal transfer of persons across the state border,<sup>1125</sup> Article 178 that bans international prostitution,<sup>1126</sup> and Article 196 that criminalizes the act of pandering a child or a minor.<sup>1127</sup>

- **Non-compliance:** In Cyprus, The Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, solely criminalizes trafficking for the purposes of sexual exploitation.<sup>1128</sup> The law differentiates between sexual exploitation of adults and of children and incorporates coercive means such as “use of force, violence, threat, or fraud, or . . . ‘abuse of power or other kind of pressure to such an extent so that the particular person would have no substantial or reasonable choice but to submit to pressure or ill-treatment.’”<sup>1129</sup> The law does not include other exploitative purposes such as forced labor, slavery, servitude and removal of organs as delineated in Article 3(a) of the Trafficking Protocol.<sup>1130</sup>
- **Compliance:** The Criminal Code of the Czech Republic defines trafficking in persons as a separate crime, however, the focus used to be solely on individuals forced into prostitution and sexual exploitation across borders. In November 2004, the offense of trafficking was amended to encompass *all* forms of trafficking, including labor exploitation and internal trafficking.<sup>1131</sup> Consequently, the Czech definition of trafficking in persons is currently in line with Article 3(a) of the Trafficking Protocol.<sup>1132</sup>
- **Non-compliance:** The Criminal Code of Egypt defines certain crimes that can be used to prosecute trafficking in persons but such provisions are not sufficient and they solely focus on sexual exploitation. The code punishes an individual “[w]ho manipulates, inveigles or entices a person, either male or female, to commit lewdness or prostitution by deceit, force or threat or by misusing of authority or by any other way of compulsion”<sup>1133</sup> as well as an individual “[w]ho retains a person, by any such ways, either a male or female without his/her consent in a brothel.”<sup>1134</sup>

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<sup>1122</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126; see also 2005 TIP Report, *supra* note 5, at 90.

<sup>1123</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 127.

<sup>1124</sup> See CRIMINAL CODE [CRIM. C.] art. 175 (Croat.), at <http://www.legislationline.org/view.php?document=56627&ref=true>.

<sup>1125</sup> See *id.* art. 177.

<sup>1126</sup> See *id.* art. 178.

<sup>1127</sup> See *id.* art. 196.

<sup>1128</sup> See Combating of Trafficking in Persons and Sexual Exploitation of Children Law, No. 3(1) § 5 (2000) (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>1129</sup> *Id.* §§ 5(1)-(2), 3(1)(a).

<sup>1130</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1131</sup> See 2005 TIP Report, *supra* note 5, at 93.

<sup>1132</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1133</sup> CRIMINAL CODE [CRIM. C.] art. 10(1)(2)(a) (Egypt), at <http://www.protectionproject.org/>; see also The Protection Project: Human Rights Reports: Egypt, at <http://www.protectionproject.org/>.

<sup>1134</sup> CRIMINAL CODE [CRIM. C.] art. 10(1)(2)(b) (Egypt), at <http://www.protectionproject.org/>.

- **Non-compliance:** The Hungarian Penal Code defines trafficking in persons as a separate offense incorporating most but not all of the exploitative purposes that are set forth in the Trafficking Protocol at a minimum. The Hungarian law penalizes “[a]ny person who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party” and includes as means for an *aggravated* offense the following: deprivation of personal freedom (i.e., enslavement, servitude, etc.) sexual exploitation, and forced labor.<sup>1135</sup>
- **Non-compliance:** India’s Constitution explicitly prohibits the “traffic in human beings” and all forms of forced labor.<sup>1136</sup> A Central law was also passed in 1956, and later amended in 1978, that addresses “the suppression of immoral traffic in women and girls.”<sup>1137</sup> Unlike Article 3(a) of the Trafficking Protocol, this particular anti-trafficking law focuses solely on forced prostitution as an exploitative purpose and on women and girls as potential victims.<sup>1138</sup>
- **Compliance:** The United Nations Interim Mission in Kosovo (“UNMIK”) adopted Regulation No. 2001/4 that defines trafficking in persons as a separate criminal act. The definition follows the Trafficking Protocol word-for-word: “‘trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. ‘Exploitation’ as used in subparagraph (a) shall include, *but not be limited to*, 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.”<sup>1139</sup>
- **Non-compliance:** Article 165 of the Moldovan Criminal Code defines trafficking in persons as “[t]he recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of commercial and non-commercial sexual exploitation, forced labour or services, slavery and slavery-like conditions, using a person in armed conflicts or in criminal activities, removal of organs or tissues for transplantation” which is accomplished by the following means: “threat of use or use of physical or psychological violence non-dangerous for a person’s life and health, including through abduction, confiscation of documents and servitude for the repayment of a debt whose limits are not reasonably defined; deception; [and] abuse of a position of vulnerability or abuse of power, by giving or receiving payments or benefits to achieve the consent of a person having control over another person.”<sup>1140</sup> This definition seems to comply with the

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<sup>1135</sup> See CRIMINAL CODE [CRIM. C.] art. 175/B (Hung.), at <http://www.legislationline.org/view.php?document=55324>.

<sup>1136</sup> See INDIA CONST, art. 23(1); see also The Protection Project; Human Rights Reports: India, at <http://www.protectionproject.org/>.

<sup>1137</sup> The Suppression of Immoral Traffic in Women and Girls Act, No. 104 (1956) (later amended 1978) (India), available at <http://www.protectionproject.org/>.

<sup>1138</sup> See *id.* arts. 5, 6.

<sup>1139</sup> UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, § 1, available at <http://www.unmikonline.org/regulations/2001/reg04-01.html> [emphasis added].

<sup>1140</sup> CRIMINAL CODE [CRIM. C.] art. 165(1) (Mold.), at <http://www.legislationline.org/index.php?topic=14&country=28&org=0&eu=0>.

Protocol's trafficking definition and even surpasses some of the coercive means required at a minimum by Article 3(a). However, the Moldovan definition omits to include the category of "other types of coercion" that a trafficker can use to exploit his/her victims. By omitting this all encompassing category, practitioners cannot prove that a person was trafficked when means *other* than the ones listed in the law were used. Moldovan law separately criminalizes the offense of trafficking in children.<sup>1141</sup>

- **Non-compliance:** The Criminal Code of Montenegro defines trafficking in persons in Article 201(a) punishing: "[a]nyone who picks up, transports, carries or receives persons with the intention of exploiting them for the purpose of forced labour, prostitution or other forms of sexual abuse by coercion, threat or deception or in any other way. . . ." <sup>1142</sup> This provision incorporates aggravating factors such as the involvement of child victims, physical injury of the victims, and death resulting from the act of trafficking.<sup>1143</sup> In 2003, OSCE pointed out that while Montenegro's definition of trafficking complies with the Trafficking Protocol, certain terminology used is unclear. For example, when listing the aggravating factor of child victims, the law differentiates between "persons less than 14 years of age" and "minor person[s]" without defining the term "minor."<sup>1144</sup>
- **Non-compliance:** In 2003, Nigeria incorporated the crime of trafficking in persons within its laws. The definition states that: "[t]rafficking includes all acts and attempted acts involved in the recruitment, transportation, within or across Nigerian borders, purchase, sale, transfer, receipt or harboring of a person involving the use of deception, coercion, or debt bondage, for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labor, or in slavery-like conditions."<sup>1145</sup> The definition omits fraud and abduction as possible coercive measures and does not incorporate the removal of organs as an exploitative purpose; elements which are required, at a minimum, by Article 3(a) of the Trafficking Protocol.<sup>1146</sup>
- **Non-compliance:** The Criminal Code of Paraguay defines trafficking in persons as a separate offense punishing "[o]ne who uses force and intimidation to take a person out of the national territory or vice versa, by taking advantage of the person's inability to defend him or herself."<sup>1147</sup> This definition omits other exploitative means that traffickers may use such as coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or the giving or receiving of payments to achieve consent of a person that has control over a potential victim (means listed in Article 3(a)

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<sup>1141</sup> See CRIMINAL CODE [CRIM. C.] art. 206 (Mold.), at

<http://www.legislationline.org/index.php?topic=14&country=28&org=0&eu=0>. For a more detailed discussion regarding the gaps in Moldova's current definitions of the trafficking offense, the reader should refer to the pilot project for this assessment tool. See HTAT Pilot, *supra* note 148, at 51-54.

<sup>1142</sup> CRIMINAL CODE [CRIM. C.] art. 201(a) (Montenegro), at

[http://www.coe.int/T/F/Affaires\\_juridiques/Coop%20ration\\_juridique/Combattre\\_la\\_criminalit%20%20conomique/P rojet\\_LARA/Natleg\\_mont.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%20ration_juridique/Combattre_la_criminalit%20%20conomique/P rojet_LARA/Natleg_mont.asp#TopOfPage).

<sup>1143</sup> See *id.*

<sup>1144</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 150.

<sup>1145</sup> Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, § 50 (Nig.).

<sup>1146</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1147</sup> CRIMINAL CODE [CRIM. C.] art. 129 (Para.), at <http://www.protectionproject.org/>.

- of the Protocol).<sup>1148</sup> Furthermore, Paraguay's definition of trafficking does not include the exploitative purposes delineated, at a minimum, in Article 3(a) of the Protocol such as forced prostitution, other forms of sexual exploitation, forced labor or services, slavery, practices similar to slavery, servitude or removal of organs.<sup>1149</sup>
- **Compliance:** Until recently in Poland, several other provisions of the Criminal Code were used to prosecute alleged traffickers since there was no separate crime of trafficking in persons. Most of these replacement provisions focused on deprivation of personal liberty and sexual exploitation.<sup>1150</sup> In June 2005, the U.S. State Department indicated that Poland's Criminal Code now defines "trafficking for the purposes of both sexual and non-sexual exploitation with sufficiently severe penalties."<sup>1151</sup>
  - **Non-compliance:** The Penal Code of Qatar criminalizes kidnapping for the purposes of prostitution, selling or possessing any person with the intent of exploiting that person for prostitution or for any other purpose, and leading a person to engage in sex with another or enticing that person to reside in a prostitution establishment;<sup>1152</sup> all provisions addressing sexual exploitation and forced prostitution that currently replace a separately defined offense of trafficking in persons. A 2003 National Plan of Action ("NPA") recommended the criminalization of trafficking children for the purpose of forcing them to be camel jockeys. Currently, camel jockeys are not protected by any laws in Qatar, including labor laws, since their services are considered to be a sports activity and not a form of labor.<sup>1153</sup>
  - **Compliance:** In Romania, the crime of trafficking in persons is defined in "The Law on the Prevention and Combat of Trafficking in Human Beings" and complies with the minimum standards set forth in the Trafficking Protocol.<sup>1154</sup> The Romanian law punishes "[w]hoever recruits, transports, transfers, harbors or receives a person, through the use of threats or violence or the use of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter. . . ."<sup>1155</sup> The law explains that "exploitation of a person" means forced labor or services, slavery, sexual exploitation, harvesting of human organs, and other activities that violate fundamental human rights and liberties.<sup>1156</sup>
  - **Non-compliance:** The Russian Federation amended its Criminal Code to include the separate offense of trafficking in persons. Article 127 defines trafficking in persons as

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<sup>1148</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1149</sup> See *id.*

<sup>1150</sup> See CRIMINAL CODE [CRIM. C.] arts. 189-191, 197-200, 203-204 (Pol.), at <http://www.legislationline.org/view.php?document=55267>.

<sup>1151</sup> See 2005 TIP Report, *supra* note 5, at 179.

<sup>1152</sup> See PENAL CODE [PENAL C.] arts. 190, 194, 205 (Qatar), at <http://www.protectionproject.org>.

<sup>1153</sup> See 2004 TIP Report, *supra* note 17, at 200; see also 2005 TIP Report, *supra* note 5, at 181.

<sup>1154</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 93.

<sup>1155</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 12 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1156</sup> See *id.* art. 2(2).

“the buying-selling of a person or other actions committed for the purpose of such person’s exploitation in the form of recruitment, transportation, transfer, harboring, or receipt of such person.”<sup>1157</sup> The newly amended provision further explains that the term “exploitation” as used in Article 127 means “the exploitation of the prostitution of others and other forms of sexual exploitation, use of slave labor (services), involuntary servitude, as well as the removal of organs or tissues of another.”<sup>1158</sup> While incorporating the “use or threat of force” as an aggravated circumstance,<sup>1159</sup> Article 127 does not include the other coercive means enumerated in Article 3(a) of the Trafficking Protocol: other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over a potential victim.<sup>1160</sup>

- **Compliance:** Article 111(b) of the current Criminal Code of the Republic of Serbia defines the offense of trafficking in persons and punishes “[w]hoever by use of force or means of threat, by deception or perpetuation of deception, the abuse of power, trust or of a position of subordination or vulnerability of another person: recruits, transports, transfers, surrenders, sells, buys, acts as an intermediary in transfer or sale, conceals, or keeps another person for the purpose of obtaining some gain, exploitation of labour, criminal activities, prostitution or begging, for pornographic purposes, removal of organs for transplantation or exploitation in armed conflicts. . . .”<sup>1161</sup> In comparison with the Trafficking Protocol’s definition and its minimum requirements, the Serbian definition expands the types of exploitation that fall within the scope of the illicit activities of traffickers.<sup>1162</sup>
- **Compliance:** The initial definition of trafficking in persons as set forth in the Slovak Criminal Code punished “[w]hoever entic[ed], hir[ed] or transport[ed] a woman abroad with the intention to have her used there for sexual intercourse with another person.”<sup>1163</sup> This definition did not meet the minimum standards set forth in Article 3(a) of the Trafficking Protocol because it confined the group of potential victims solely to women and limited the scope of the offense to sexual exploitation (omitting forced labor, slavery, servitude, or removal of organs as other possible exploitative purposes). In 2003, the government amended the offense to include all forms of trafficking.<sup>1164</sup>
- **Non-compliance:** Article 201(b) of the Turkish Penal Code defines the offense of trafficking in persons separately and penalizes “[t]hose who provide, kidnap, take or transfer from one place to another and house individuals with the intention of making them work or serve by force, subject them to slavery or similar treatment, threaten, pressure, use force or coercion to persuade them to give up their bodily organs, use undue influence, secure their consent by deception or by exploiting the desperation of

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<sup>1157</sup> CRIMINAL CODE [CRIM. C.] art. 127(1) (Russ.), at <http://www.legislationline.org/view.php?document=58712>.

<sup>1158</sup> *Id.*

<sup>1159</sup> *See id.*

<sup>1160</sup> *See* Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1161</sup> CRIMINAL CODE [CRIM. C.] art. 111(b) (Serb.), at <http://www.legislationline.org/view.php?document=56720>. It should be noted that Serbia is in the process of redrafting its Criminal Code. The new code will become enforceable on January 1, 2006.

<sup>1162</sup> *See* 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 139.

<sup>1163</sup> CRIMINAL CODE [CRIM. C.] art. 246 (Slovk.), at <http://www.legislationline.org/view.php?document=55255>.

<sup>1164</sup> *See* 2004 TIP Report, *supra* note 17, at 173; *see also* 2005 TIP Report, *supra* note 5, at 195.

such individuals. . . .”<sup>1165</sup> This definition does not fully comply with the Trafficking Protocol because it does not reference exploiting individuals for the purpose of prostitution and other forms of sexual exploitation.

- **Non-compliance:** The Ukrainian Criminal Code defines trafficking separately as the “[s]ale, other transfer for payment or any other illegal deals with regard to a person, involving legal or illegal movement of that person, with or without his/her consent, across the border of Ukraine for further sale or other transfer to any person (or persons) for the purpose of sexual exploitation, use in pornobusiness, engagement in criminal activities, peonage, adoption for commercial purposes, use in armed conflicts, labor exploitation.”<sup>1166</sup> The Ukrainian provisions do not incorporate all of the illicit means that are required, at a minimum, by Article 3(a) of the Trafficking Protocol: threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over potential victims.<sup>1167</sup>

## Consent

### De Jure

- **Non-compliance:** The 2003 Criminal Code of BiH does not address the issue of consent of the victim in its definition of trafficking in persons.<sup>1168</sup>
- **Compliance:** The Bulgarian definition of the offense of trafficking in persons makes victim’s consent irrelevant. The law states that “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. . . .”<sup>1169</sup>
- **Compliance:** According to the Cypriot anti-trafficking law, consent is not a defense to the crime of trafficking of persons for the purposes of sexual exploitation.<sup>1170</sup>
- **Compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” states that “[c]onsent on the part of the trafficked person does not exonerate the offender from criminal liability.”<sup>1171</sup>

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<sup>1165</sup> CRIMINAL CODE [CRIM. C.] art. 201(b) (Turk.), available at

<http://www.mfa.gov.tr/grupa/ac/acb/TraffickinginHumanBeings.htm>.

<sup>1166</sup> CRIMINAL CODE [CRIM. C.] art. 149(1) (Ukr.), at <http://www.legislationline.org/view.php?document=55167>.

<sup>1167</sup> See Trafficking Protocol, *supra* note 3, art. 3(a).

<sup>1168</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 110; see also CRIMINAL CODE [CRIM. C.] art. 186 (Bosn. & Herz.), at <http://www.legislationline.org/view.php?document=56698>.

<sup>1169</sup> CRIMINAL CODE [CRIM. C.] art. 159(a)(1) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp) [emphasis added].

<sup>1170</sup> See Combating of Trafficking in Persons and Sexual Exploitation of Children Law, No. 3(1) § 6(b)

(2000) (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>1171</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 16 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

## Children

### De Jure

- **Non-compliance:** The definition of trafficking in persons that was incorporated into the Bulgarian Criminal Code attempts to follow the definition set forth in the Trafficking Protocol and its minimum requirements. The Bulgarian law punishes “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. . . .”<sup>1172</sup> However, the Bulgarian definition lists the means used to achieve the exploitative goals of traffickers such as threat or use of force, coercion, abduction, fraud, deception, the abuse of power, or promising, giving or receiving benefits, as a required element *solely* in cases where persons under the age of eighteen have been trafficked. Article 3(c) of the Trafficking Protocol indicates that a prosecutor is not required to prove such coercive means in cases where minors are victims of trafficking.<sup>1173</sup>
- **Non-compliance:** The Criminal Code of Paraguay criminalizes the offense of trafficking of minors as a separate offense punishing “[o]ne who induces a legal representative of a minor to give his or her child in a false adoption for a price, taking advantage of his or her inexperience, need or inability.”<sup>1174</sup> Aggravated circumstances of this particular crime include the avoidance of adoption proceedings all together, pursuit of an economic benefit, or exposure of the minor to sexual abuse or forced labor.<sup>1175</sup> This definition addresses the issue of illegal adoption more so than child trafficking. The *travaux préparatoires* of the Trafficking Protocol recognize that illegal adoption can qualify as trafficking in persons under Article 3(a) but only in cases where it “amounts to a practice similar to slavery.”<sup>1176</sup> Paraguay’s definition does not incorporate this key element. Furthermore, Article 3(c) of the Trafficking Protocol indicates that trafficking of children is an offense even if coercive means are not used.<sup>1177</sup> Such coercive means include “abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.”<sup>1178</sup> These are the exact means that are incorporated in Paraguay’s definition of child trafficking. Paraguay’s laws make these coercive means required elements of the crime of child trafficking, thus, going against Article 3(c) of the Protocol.<sup>1179</sup>

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<sup>1172</sup> CRIMINAL CODE [CRIM. C.] art. 159(a)(1) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp); see also 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 57.

<sup>1173</sup> See CRIMINAL CODE [CRIM. C.] art. 159(a)(2) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp); but see Trafficking Protocol, *supra* note 3, art. 3(c).

<sup>1174</sup> CRIMINAL CODE [CRIM. C.] art. 223(1) (Para.), at <http://www.protectionproject.org/>.

<sup>1175</sup> See *id.* art. 223(2).

<sup>1176</sup> Convention and Protocol Travaux, *supra* note 68, at 12 [emphasis added].

<sup>1177</sup> See Trafficking Protocol, *supra* note 3, art. 3(c).

<sup>1178</sup> *Id.* art. 3(a).

<sup>1179</sup> See *id.* art. 3(c).

## Article 4: Scope of Application

### Transnational Trafficking/Internal Trafficking

#### De Jure

- **Compliance:** Bulgarian law recognizes the offense of trafficking in persons and increases the penalty, from one to eight years and a fine not exceeding 8,000 Levs to three to eight years and a fine not exceeding 10,000 Levs, in cases where traffickers transport their victims “across the frontiers of the country.”<sup>1180</sup> Thus both transnational and internal trafficking are covered by these provisions.
- **Compliance:** China’s definition of trafficking in persons incorporates the possibility the illicit conduct occurring “out of the territory of China” but does not solely limit trafficking to trans-border activity.<sup>1181</sup>
- **Compliance:** The Criminal Code of Montenegro recognizes the trans-border aspect of trafficking in persons (in addition to internal) and sentences an individual to “a minimum of 6 months to a maximum of 5 years imprisonment” if s/he transports persons from one country to another in order to exploit them for the purposes of forced labor, prostitution, and other forms of sexual abuse.<sup>1182</sup>

#### De Facto

- **Non-compliance:** Initially, Latvia’s laws solely criminalized international trafficking in persons. In June 2004, the U.S. State Department reported that the Latvian Interior Ministry was proposing certain amendments that would define the offense of internal trafficking as well. Up to then, internal trafficking cases were prosecuted under laws that criminalized pimping resulting in much lower sentences. In December 2004, the amendments defining internal trafficking were adopted, but the courts continued to apply provisions regarding pimping and alien smuggling for the purpose of sexual exploitation to all of the potential trafficking cases before them, consequently, allotting lower sentences.<sup>1183</sup>

### Involvement of an Organized Criminal Group

#### De Jure

- **Compliance:** Bulgarian law recognizes the offense of trafficking in persons and increases the penalty, from one to eight years and a fine not exceeding 8,000 Levs to five to fifteen years and a fine not exceeding 20,000 Levs, in cases where the perpetrators followed the orders or implemented the decision of an organized criminal group. This particular

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<sup>1180</sup> CRIMINAL CODE [CRIM. C.] arts. 159(a)(1), 159(b) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>1181</sup> See CRIMINAL CODE [CRIM. C.] art. 240 (China), at <http://www.protectionproject.org/>.

<sup>1182</sup> See CRIMINAL CODE [CRIM. C.] art. 201(a) (Montenegro), at [http://www.coe.int/T/F/Affaires\\_juridiques/Coop%9ration\\_juridique/Combattre\\_la\\_criminalit%E9\\_%E9conomique/P rojet\\_LARA/Natleg\\_mont.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/P rojet_LARA/Natleg_mont.asp#TopOfPage).

<sup>1183</sup> See 2004 TIP Report, *supra* note 17, at 154; see also 2005 TIP Report, *supra* note 5, at 141.

provision also allows the court to confiscate the property, in whole or in part, of the perpetrators.<sup>1184</sup>

- **Compliance:** The Chinese Criminal Code recognizes that the offense of trafficking in persons can be committed by “a ringleader of a gang engaged in abducting and trafficking in women and children” but does not limit the range of perpetrators to members of organized criminal groups.<sup>1185</sup>
- **Compliance:** The Hungarian Penal Code increases the punishment for trafficking in persons from one to five years imprisonment to two to eight years imprisonment if the offense is committed by a criminal organization.<sup>1186</sup> Furthermore, if the act of trafficking involves deprivation of the victim’s freedom *and* was committed by a criminal organization, then the sentence is raised to five to ten years imprisonment.<sup>1187</sup> Lastly, if the act of trafficking is committed for the purpose of forced labor and sodomy or sexual intercourse, deprives the victim of personal liberty, *and* is committed by a criminal organization, then the punishment can range between ten to fifteen years or life imprisonment.<sup>1188</sup>
- **Non-compliance:** Macedonian provisions defining the offense of trafficking in persons do not include any aggravating circumstances or any other clearly defined provisions for situations where an organized criminal group would be involved. Article 418/a of the Criminal Code punishes persons who “organize” the crime of trafficking but it is not evident from the text whether this is a reference to organized crime.<sup>1189</sup>
- **Compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” indicates that when the crime of trafficking in persons is committed by a member of an organized group, s/he will be sentenced to three years in prison in *addition* to the maximum penalties for trafficking as delineated in Articles 12 and 13 of the law.<sup>1190</sup>
- **Compliance:** The current Criminal Code of the Republic of Serbia provides for higher penalties where alleged traffickers belong to an organized criminal group. The sentence for the offense of trafficking is generally one to ten years. The minimum threshold is raised to three years where there is a link to organized crime.<sup>1191</sup>

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<sup>1184</sup> See CRIMINAL CODE [CRIM. C.] arts. 159(a)(1), 159(c) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>1185</sup> See CRIMINAL CODE [CRIM. C.] art. 240 (China), at <http://www.protectionproject.org/>.

<sup>1186</sup> See CRIMINAL CODE [CRIM. C.] arts. 175/B(2), 175/B(3) (Hung.), at <http://www.legislationline.org/view.php?document=55324>.

<sup>1187</sup> See *id.* art. 175/B(4).

<sup>1188</sup> See *id.* art. 175/B(5).

<sup>1189</sup> See CRIMINAL CODE [CRIM. C.] art. 418/a (Maced.), at

[http://www.coe.int/T/F/Affaires\\_juridiques/Coop%9ration\\_juridique/Combattre\\_la\\_criminalit%9\\_%9conomique/Projet\\_LARA/Natleg\\_FYROM.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%9ration_juridique/Combattre_la_criminalit%9_%9conomique/Projet_LARA/Natleg_FYROM.asp#TopOfPage); see also LARA PROJECT, *supra* note 876, at 25.

<sup>1190</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 14 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1191</sup> See CRIMINAL CODE [CRIM. C.] art. 111(b) (Serb.), at <http://www.legislationline.org/view.php?document=56720>. It should be noted that Serbia is in the process of redrafting its Criminal Code. The new code will become enforceable on January 1, 2006.

- **Compliance:** The Slovak Criminal Code increases the penalty for the crime of trafficking in persons, from a term of one to five years to a term of three to eight years, if the perpetrator is a member of an organized criminal group.<sup>1192</sup>

### De Facto

- **Non-compliance:** Investigations and prosecutions under Russia's anti-trafficking provisions were initiated but no convictions were reported when the annual US TIP Report was published in June 2004. Members of organized criminal groups were prosecuted for their trafficking activities but under pre-existing laws. In June 2005, the US TIP Report indicated that little progress had been made in securing trafficking convictions and that "[t]he government continued to bring charges against traffickers using older code provisions."<sup>1193</sup>

## Article 5: Criminalization

### States Parties' Obligations

#### De Jure

- **Compliance:** Bulgaria signed and ratified both the Transnational Organized Crime Convention<sup>1194</sup> and the Trafficking Protocol<sup>1195</sup> and adopted amendments to its Criminal Code that define the act of trafficking in persons as a separate offense.<sup>1196</sup> The domestic provisions closely mimic the language of the Trafficking Protocol.<sup>1197</sup>
- **Compliance:** Croatia has signed and ratified both the Transnational Organized Crime Convention<sup>1198</sup> and the Trafficking Protocol.<sup>1199</sup> Amendments to the Criminal Code that define trafficking in persons as a separate offense came into force in October 2004.<sup>1200</sup> Previously, prosecutors used the provisions of the Criminal Code that prohibit slavery,<sup>1201</sup>

<sup>1192</sup> See CRIMINAL CODE [CRIM. C.] art. 246 (Slovk.), at <http://www.legislationline.org/view.php?document=55255>. It should be noted that Slovakia has amended the provisions of the Criminal Code related to trafficking since the posting of this provision on legislationline.org, thus, the particulars of this example could have been modified.

<sup>1193</sup> See 2004 TIP Report, *supra* note 17, at 168; 2005 TIP Report, *supra* note 5, at 184-85.

<sup>1194</sup> Bulgaria signed the Transnational Organized Crime Convention on December 13, 2000 and deposited its instrument of ratification on December 5, 2001. See Signatories to the Convention against Transnational Organized Crime, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

<sup>1195</sup> Bulgaria signed the Trafficking Protocol on December 13, 2000 and deposited its instrument of ratification on December 5, 2001. See Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>1196</sup> See CRIMINAL CODE [CRIM. C.] arts. 159(a)-(c) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>1197</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 57.

<sup>1198</sup> Croatia signed the Transnational Organized Crime Convention on December 12, 2000 and deposited its instrument of ratification on January 24, 2003. See Signatories to the Convention against Transnational Organized Crime, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

<sup>1199</sup> Croatia signed the Trafficking Protocol on December 12, 2000 and deposited its instrument of ratification on January 24, 2003. See Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>1200</sup> See 2005 TIP Report, *supra* note 5, at 90.

<sup>1201</sup> See 2004 TIP Report, *supra* note 17, at 129.

international prostitution,<sup>1202</sup> and illegal human transport<sup>1203</sup> to convict individuals suspected of engaging in illicit trafficking activities. While these provisions can be used to prosecute the most serious forms of trafficking, including enslavement and the use of direct physical force, they do not cover all forms of exploitation or cases where perpetrators recruit or harbor trafficked victims.<sup>1204</sup>

- **Compliance:** In March 2004, Slovenia adopted amendments to its Penal Code that criminalize trafficking as a separate offense.<sup>1205</sup> Consequently, Slovenia ratified both the Transnational Organized Crime Convention and the Trafficking Protocol on May 21, 2004.<sup>1206</sup> Until March 2004, authorities were investigating and prosecuting traffickers under provisions prohibiting the acts of pimping, sexual assault, and slavery.<sup>1207</sup>
- **Non-compliance:** Uganda ratified the Transnational Organized Crime Convention<sup>1208</sup> but has not yet ratified the Trafficking Protocol.<sup>1209</sup> Uganda does not criminalize trafficking as a separate offense and prosecutors make use of various other provisions of the Penal Code as substitute offenses. These other provisions include those prohibiting procuring a female for the purpose of prostitution, procuring a female under the age of twenty-one for the purpose of unlawful carnal connection with another, procuring a person by using threats, intimidation, false pretenses, false representation, or by administering drugs, owning or occupying premises in which a female under the age of eighteen is induced to have carnal knowledge with another, trading in slaves, and forced labor.<sup>1210</sup>

### De Facto

- **Non-compliance:** Although Brazil has a separately defined offense of trafficking in its Criminal Code, the U.S. State Department reported in June 2005 that “Brazilian courts handed down only three convictions for transnational trafficking for sexual exploitation in 2004; prison sentences imposed ranged from eight to 30 years. Government teams investigated approximately 250 complaints regarding forced labor and rescued 2,743 victims of forced labor in 2004; employers generally paid fines and compensation to rescued victims and risked losing access to government financial aid programs, but did not face criminal prosecution.”<sup>1211</sup>

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<sup>1202</sup> See *id.*

<sup>1203</sup> See *id.*

<sup>1204</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126.

<sup>1205</sup> See 2004 TIP Report, *supra* note 17, at 175.

<sup>1206</sup> See Signatories to the Convention against Transnational Organized Crime, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html); see also Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>1207</sup> See 2004 TIP Report, *supra* note 17, at 175.

<sup>1208</sup> Uganda signed the Transnational Organized Crime Convention on December 12, 2000 and deposited its instrument of ratification on March 09, 2005. See Signatories to the Convention against Transnational Organized Crime, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html).

<sup>1209</sup> Uganda signed the Trafficking Protocol on December 12, 2000 but has not yet deposited its instrument of ratification. See Signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, at [http://www.unodc.org/unodc/en/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html).

<sup>1210</sup> See The Protection Project: Human Rights Reports: Uganda, at <http://www.protectionproject.org/>; see also 2005 TIP Report, *supra* note 5, at 216.

<sup>1211</sup> 2005 TIP Report, *supra* note 5, at 71.

- **Compliance:** During 2004-2005, Chinese authorities investigated 309 trafficking gangs, arrested 5,043 suspected traffickers, and referred 3,144 cases for prosecution. Media reports also indicated that thirty six individuals suspected of child trafficking were convicted carrying sentences from two years imprisonment to the death penalty.<sup>1212</sup>
- **Non-compliance:** Despite the fact that Greece enacted a law in 2002 criminalizing trafficking in persons as a separate offense, the U.S. State Department reported in June 2005 that the government of Greece conducted a number of investigations and raids, successfully dismantled several organized crime rings, but that “[c]onviction rates . . . remained disproportionately low.”<sup>1213</sup>
- **Non-compliance:** In June 2005, the U.S. State Department reported that Nigerian authorities were making strong strides in improving anti-trafficking law enforcement efforts but that comprehensive statistics were not available to accurately reflect the number of investigations, prosecutions, and convictions.<sup>1214</sup>
- **Non-compliance:** The Former Yugoslav Republic of Macedonia defines the offense of trafficking in persons separately and has amended its Criminal Code in order to establish a mandatory eight year minimum sentence in aggravated circumstances. However, in June 2005, the U.S. State Department indicated that, while authorities conducted investigations and referred cases for prosecution, “instances of official impropriety and poor courtroom procedures continued to hamper judicial effectiveness.” For example, convicted “[t]rafficker Dilaver Bojku-Leku was sentenced to 3 years and 8 months in prison for ‘mediation in prostitution,’ but [was] in an ‘open regime,’ which allow[ed] him to regularly leave the prison on his own recognizance. At his March 2005 retrial for additional charges, the court failed to adequately safeguard the victim-witness’s identity or prevent the defendant’s apparent intimidation of the victim and of court officials.”<sup>1215</sup>
- **Compliance:** In 2004, Polish courts prosecuted eighteen of the thirty nine traffickers that had been arrested that year. The most recent comprehensive statistics (from 2003) indicated that the government convicted 147 traffickers based on forced prostitution charges and five traffickers based on human slavery charges. Out of a total of 152 convicted persons, only thirty-six received a non-suspended prison sentence.<sup>1216</sup>
- **Compliance:** In 2004, Romanian authorities convicted 103 traffickers in comparison to forty nine in 2003. Of those 2004 convictions, thirty four individuals received prison sentences of five to ten years and forty nine received sentences of one to five years.<sup>1217</sup>

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<sup>1212</sup> See 2005 TIP Report, *supra* note 5, at 83-84. NOTE: the reference to the death penalty in this example is not be interpreted as an endorsement of the death penalty by the authors of this assessment tool, ABA-CEELI, the ABA, or the drafters of the UN Trafficking Protocol and the Transnational Organized Crime Convention.

<sup>1213</sup> See 2004 TIP Report, *supra* note 17, at 145; see also 2005 TIP Report, *supra* note 5, at 114.

<sup>1214</sup> See 2005 TIP Report, *supra* note 5, at 169.

<sup>1215</sup> *Id.* at 147.

<sup>1216</sup> See *id.* at 179.

<sup>1217</sup> See *id.* at 183.

## Criminalization of Lesser Included Offenses and Other Activities Related to Trafficking

### De Jure

- **Compliance:** Despite the fact that Nigeria did not incorporate all of the minimum elements of trafficking in persons in its domestic definition of the crime (as required by Article 3(a) of the Trafficking Protocol), it did take into consideration the “attempt” to commit trafficking.<sup>1218</sup>

### De Facto

- **Non-compliance:** Ghana does not have a law that specifically criminalizes trafficking in persons or the attempt to commit trafficking, but in 2003, “two individuals were sentenced to two-year jail terms and fined for attempting to sell a child.”<sup>1219</sup>

## Establishment of Additional Crimes Within the Trafficking Context

### De Jure

- **Compliance:** Armenia’s Criminal Code contains several crimes related to the offense of trafficking in persons (which is separately defined).<sup>1220</sup> Such crimes include abduction of a person,<sup>1221</sup> unlawful deprivation of liberty,<sup>1222</sup> rape,<sup>1223</sup> violent actions of sexual character,<sup>1224</sup> and compelling acts of sexual character.<sup>1225</sup>
- **Compliance:** In addition to trafficking in persons, Montenegro law criminalizes such acts as rape,<sup>1226</sup> coercion to sexual intercourse and unnatural debauchery,<sup>1227</sup> sexual intercourse or unnatural debauchery over a helpless person,<sup>1228</sup> maltreatment and neglecting of a minor,<sup>1229</sup> and procuring and permitting sexual abuse.<sup>1230</sup>

### De Facto

- **Compliance:** Denmark defines trafficking as a separate offense but prosecutors have other laws that they can charge under *in addition* to trafficking. For example, in December 2003,

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<sup>1218</sup> See Traffic in Persons (Prohibition) Law Enforcement and Administration Act (2003), § 50 (Nig.).

<sup>1219</sup> 2004 TIP Report, *supra* note 17, at 57.

<sup>1220</sup> See CRIMINAL CODE [CRIM. C.] art. 132 (Arm.).

<sup>1221</sup> See *id.* art. 138.

<sup>1222</sup> See *id.* art. 139.

<sup>1223</sup> See *id.* art. 143.

<sup>1224</sup> See *id.* art. 144.

<sup>1225</sup> See *id.* art. 145.

<sup>1226</sup> See CRIMINAL CODE [CRIM. C.] art. 86 (Montenegro), at

[http://www.coe.int/T/F/Affaires\\_juridiques/Coop%E9ration\\_juridique/Combattre\\_la\\_criminalit%E9\\_%E9conomique/P  
rojet\\_LARA/Natleg\\_mont.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%E9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/P<br/>rojet_LARA/Natleg_mont.asp#TopOfPage).

<sup>1227</sup> See *id.* art. 87.

<sup>1228</sup> See *id.* art. 88.

<sup>1229</sup> See *id.* art. 100.

<sup>1230</sup> See *id.* art. 93.

Danish authorities arrested five men and charged them with *both* trafficking and pimping. Their trial began in April 2004.<sup>1231</sup>

## Sanctions

### De Jure

- **Compliance:** Article 240 of the Chinese Criminal Code indicates that an individual who abducts or traffics a woman or a child “shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.”<sup>1232</sup> This provision also delineates aggravated circumstances in which that same individual can be sentenced to anywhere from 10 years in prison to life imprisonment.<sup>1233</sup> “[I]f the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.”<sup>1234</sup>
- **Compliance:** The German Penal Code differentiates between the offense of trafficking in human beings and the offense of serious trafficking in human beings. The former is punishable by imprisonment not exceeding five years or a fine<sup>1235</sup> and the latter is punishable by imprisonment from one to ten years.<sup>1236</sup> These penalties are commensurate with penalties for other serious crimes in Germany such as sexual coercion/rape, kidnapping, false imprisonment, and crimes against personal freedom.<sup>1237</sup>
- **Non-compliance:** Guatemala criminalizes trafficking of women for the purposes of forced prostitution, however, the sentence is one to three years imprisonment and a fine of five hundred to three thousand quetzals.<sup>1238</sup>
- **Compliance:** The Romanian anti-trafficking provisions provide for aggravated circumstances increasing the designated penalty for trafficking of “3 to 12 years imprisonment and denial of a number of rights” depending on whether perpetrators traffic two or more persons at the same time,<sup>1239</sup> adult victims sustain serious bodily harm, health problems,<sup>1240</sup> die or commit suicide,<sup>1241</sup> underage persons fifteen to eighteen years of age) or minors (under fifteen years of age) are victimized,<sup>1242</sup> perpetrators use coercive means (such as use of threats or violence, kidnapping, fraud, or misrepresentation, etc.) against underage persons or minors,<sup>1243</sup> or underage/minor victims die or commit suicide.<sup>1244</sup> It

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<sup>1231</sup> See 2004 TIP Report, *supra* note 17, at 135.

<sup>1232</sup> CRIMINAL CODE [CRIM. C.] art. 240 (China), at <http://www.protectionproject.org/>.

<sup>1233</sup> See *id.*

<sup>1234</sup> *Id.* NOTE: this direct quotation from the Chinese Criminal Code is not to be interpreted as an endorsement of the death penalty by the authors of this assessment tool, ABA-CEELI, the ABA, or the drafters of the UN Trafficking Protocol and the Transnational Organized Crime Convention.

<sup>1235</sup> See PENAL CODE § 180b(1) (Ger.), at <http://www.legislationline.org/view.php?document=55334>.

<sup>1236</sup> See *id.* § 181(1).

<sup>1237</sup> See 2004 TIP Report, *supra* note 17, at 143.

<sup>1238</sup> See The Protection Project; Human Rights Reports: Guatemala, at <http://www.protectionproject.org/>.

<sup>1239</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 12(2)(a) (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1240</sup> See *id.* art. 12(2)(b).

<sup>1241</sup> See *id.* art. 12(3).

<sup>1242</sup> See *id.* arts. 13(1)-(2).

<sup>1243</sup> See *id.* art. 13(3).

should be noted that suspected traffickers may receive a sentence of fifteen to twenty-five years or life imprisonment if the death or suicide of underage/minor victims is established.<sup>1245</sup>

- **Compliance:** Spanish law criminalizes trafficking for the purposes of sexual exploitation and labor exploitation and delineates penalties ranging from five to twelve years imprisonment. These penalties are commensurate to other serious crimes such as rape.<sup>1246</sup>

#### De Facto

- **Non-compliance:** In 2002, the German government reported 289 pre-trial investigations of trafficking for sexual exploitation and 159 convictions (number which increased from 148 convictions in 2001). “Although the government reported that 151 defendants received a prison sentence from one month to 10 years, 87 received suspended sentences. German courts routinely suspend sentences of up to two years for most crimes, particularly for first-time offenders and where no aggravating circumstances are present, but offenders are subject to strict parole conditions.” This sentencing trend continued as of June 2005.<sup>1247</sup>

### Confiscation and Seizure of Assets

#### De Jure

- **Compliance:** When the offense of trafficking in persons involves an order or decision of an organized criminal group, Bulgarian courts are permitted to confiscate the property of the perpetrators, in whole or in part.<sup>1248</sup>
- **Compliance:** In Croatia, courts can issue orders to confiscate assets when they consist of “any pecuniary gain acquired as a result of [a] criminal offense.”<sup>1249</sup> Such ill-acquired property will also be confiscated if it is in the possession of third parties and they “knew or could and ought to have known that this gain was obtained as a result of a criminal offense.”<sup>1250</sup>
- **Compliance:** In The Former Yugoslav Republic of Macedonia, “[n]o one may retain the direct or indirect property gain gained through a crime.”<sup>1251</sup> The court can confiscate the actual property from individual perpetrators and legal entities. If such confiscation is not possible, then the court can order the individual or the legal entity to pay a comparable

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<sup>1244</sup> See *id.* art. 13(5).

<sup>1245</sup> See *id.*

<sup>1246</sup> See 2004 TIP Report, *supra* note 17, at 176.

<sup>1247</sup> *Id.* at 143; see also 2005 TIP Report, *supra* note 5, at 111.

<sup>1248</sup> See CRIMINAL CODE [CRIM. C.] art. 159(c) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>1249</sup> CRIMINAL CODE [CRIM. C.] art. 82(1), (Croat.), at <http://www.legislationline.org/view.php?document=56625>.

<sup>1250</sup> *Id.* art. 82(2).

<sup>1251</sup> CRIMINAL CODE [CRIM. C.] art. 97 (Maced.), at

[http://www.coe.int/T/F/Affaires\\_juridiques/Coop%E9ration\\_juridique/Combattre\\_la\\_criminalit%E9\\_%E9conomique/Projet\\_LARA/Natleg\\_FYROM.asp#TopOfPage](http://www.coe.int/T/F/Affaires_juridiques/Coop%E9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/Projet_LARA/Natleg_FYROM.asp#TopOfPage).

amount of money. Such property or amount of money goes to the injured parties in the case. If no injured parties exist, then the assets become the property of the state.<sup>1252</sup>

- **Compliance:** In Romania, money, valuables, other assets, vehicles, lodging, and other property derived from or used to commit the crime of trafficking, are subject to “special forfeiture” under Article 19 of the “Law on the Prevention and Combat of Trafficking in Human Beings.”<sup>1253</sup>
- **Compliance:** While South Africa does not yet have a law in force that criminalizes trafficking in persons as a separate offense,<sup>1254</sup> the International Cooperation in Criminal Matters Act of 1996, later amended by the Prevention of Organized Crime Act of 1998, provides for evidence sharing as well as confiscation of proceeds of a crime.<sup>1255</sup>

#### De Facto

- **Compliance:** In 2002, it was reported that the Central Clubs and Vice Unit of the London Metropolitan Police had the highest rate of criminal asset seizure in the United Kingdom. Specifically in trafficking cases, the unit had seized £275,000 in traffickers’ assets during the first half of 2002.<sup>1256</sup>

### Disposal of Confiscated Assets

#### De Jure

- **Compliance:** In the United Kingdom, the Powers of Criminal Courts (Sentencing) Act allows a court to confiscate the assets/property of offenders and to order that proceeds from such assets/property be paid to persons who have suffered personal injury, loss, or damage as a result of the offenders’ crimes.<sup>1257</sup>

#### De Facto

- **Non-compliance:** Although English law provides for the confiscation of criminal assets/property and victim compensation via proceeds from such assets/property, a 2002 report indicated that “[t]here are concerns that currently seized assets are remaining in the Government’s Treasury, rather than being applied to compensation for trafficked persons.”<sup>1258</sup>

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<sup>1252</sup> See *id.* art. 98.

<sup>1253</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 19 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1254</sup> See 2005 TIP Report, *supra* note 5, at 198.

<sup>1255</sup> See The Protection Project; Human Rights Reports: South Africa, at <http://www.protectionproject.org/>.

<sup>1256</sup> See ASI REPORT, *supra* note 150, at 115.

<sup>1257</sup> See Powers of Criminal Courts (Sentencing) Act §§ 143, 145 (2000) (U.K.); see also ASI REPORT, *supra* note 150, at 115.

<sup>1258</sup> ASI REPORT, *supra* note 150, at 115.

## Establishment of Specialized Units

### De Jure

- **Compliance:** The BiH Council of Ministers authorized the creation of a Strike Force, or a special unit within the police force solely dedicated to combating trafficking in persons. The Strike Force operates under the direct supervision of the State Prosecutor and consists of representatives from the Prosecutor's Office, the Entity and Brcko taxation offices, the Ministries of Interior, the financial police, and Brcko and State Border Services. The Strike Force signed a Memorandum of Understanding ("MoU") with the governments of the Entities and of the Brcko District to ensure the implementation of the Bosnian National Plan of Action ("NPA") to combat trafficking.<sup>1259</sup>
- **Non-compliance:** India's 1956 law entitled "The Suppression of Immoral Traffic in Women and Girls Act" calls for the appointment of a special police officer to deal with trafficking offenses "for each area to be specified by the State Government."<sup>1260</sup> Given, the large scale of the trafficking problem in India, one officer per designated area is not sufficient. Furthermore, the law does not call for the establishment of a specialized prosecution unit.

### De Facto

- **Non-compliance:** Part of Montenegro's efforts to combat trafficking has been the establishment of a Special Task Force on Border Control and a Special Task Force on Trafficking and Smuggling in September 2001. Each task force has specialist teams (five to six persons) that are assigned to seven Centers of Security for victims. The teams are required to include female police officers, however, in 2003, it was reported that not all of them did.<sup>1261</sup>
- **Non-compliance:** In Romania, an Anti-Trafficking Squad was established. However, the OSCE pointed out in 2003 that this special investigative unit only addressed international trafficking, or trafficking activities that crossed Romania's borders. Internal trafficking is also a problem in Romania and it was supposed to be addressed by the Legal Directorate at the Ministry of Interior.<sup>1262</sup>
- **Compliance:** "In 2004, Serbia took important steps to increase its law enforcement capacity to combat trafficking. Serbia established two full-time police anti-trafficking units consisting of six officers within the organized crime police and nine officers within the border police. . . . [T]he police units increased trafficking investigations and victim identification. Police filed criminal charges for 24 investigations involving 51 suspects in 2004."<sup>1263</sup>

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<sup>1259</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 109; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 178.

<sup>1260</sup> The Suppression of Immoral Traffic in Women and Girls Act, No. 104, § 13(1) (1956) (India), available at <http://www.protectionproject.org/>.

<sup>1261</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 149.

<sup>1262</sup> See *id.* at 92.

<sup>1263</sup> See 2005 TIP Report, *supra* note 5, at 190.

- **Compliance:** In Slovakia, the Ministry of Interior established a specialized police unit to deal solely with trafficking cases. At the beginning of 2004, the Ministry of Interior increased the size of the Slovak anti-trafficking unit and elevated its status to a department.<sup>1264</sup> The unit maintains a steady record of investigations, however, its members “noted that a lack of English-language ability among Slovak police officials somewhat limited joint investigations.”<sup>1265</sup>

## Article 6: Assistance to and Protection of Victims of Trafficking in Persons

### Identifying Individuals as Trafficked Victims

#### De Jure

- **Compliance:** In 2003, the government of Qatar adopted a National Plan of Action (“NPA”) to combat trafficking that calls for, among other things, conducting DNA testing to verify claimed family ties between child camel jockeys and their traffickers, performing retinal scans to prevent identify falsification, and taking X-rays in order to establish the age of camel jockeys.<sup>1266</sup>

#### De Facto

- **Compliance:** The Chinese government established a national DNA databank in order to match children rescued from trafficking situations with their natural parents.<sup>1267</sup>
- **Compliance:** The United Arab Emirates (“U.A.E.”) implements DNA testing as part of its efforts to curtail the trafficking of children for illegal camel jockey work. The government uses DNA testing to identify adults who claim to be the parents of trafficked children brought to the U.A.E. As a result of such testing, forty-seven children who were trafficked by “false” parents were discovered in 2003.<sup>1268</sup>

### Non-Criminalization

#### De Jure

- **Non-compliance:** India’s anti-trafficking law provides for the “rescue” of trafficked victims.<sup>1269</sup> A magistrate, based on credible evidence that a woman or child has been trafficked and forced into prostitution, can order a police officer to remove such a victim from the suspected brothel and bring her before the court.<sup>1270</sup> However, according to the law such victims are to be kept in *custody* for a period not “exceeding three weeks.”<sup>1271</sup> A

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<sup>1264</sup> See 2004 TIP Report, *supra* note 17, at 173.

<sup>1265</sup> See 2005 TIP Report, *supra* note 5, at 196.

<sup>1266</sup> See 2004 TIP Report, *supra* note 17, at 201.

<sup>1267</sup> See *id.* at 92.

<sup>1268</sup> See *id.* at 204.

<sup>1269</sup> See The Suppression of Immoral Traffic in Women and Girls Act, No. 104, § 16 (1956) (later amended 1978) (India), available at <http://www.protectionproject.org/>.

<sup>1270</sup> See *id.* § 16(1).

<sup>1271</sup> *Id.* § 17(3).

victim can file an application with the magistrate asking to be kept in a “protective home” or to be “provided care and protection by the court,”<sup>1272</sup> but the magistrate has the ultimate authority to decide whether to keep her in custody pending inquiry<sup>1273</sup> or to place her in a “protective home,” “corrective institution,” or “under the supervision of a person appointed by the magistrate.”<sup>1274</sup>

### De Facto

- **Non-compliance:** In June 2004, the U.S. State Department reported that while the Hungarian government established a Victim Protection Office, it did not provide sufficient assistance and protection to trafficked individuals who were “often detained, deported, or prosecuted for the violation of other laws, such as those relating to prostitution or illegal immigration.” This trend continued as of June 2005.<sup>1275</sup>
- **Non-compliance:** In June 2004, the U.S. State Department reported that the government of Kuwait “generally detain[ed], jail[ed], and deport[ed] trafficking victims if they [were] caught violating other laws material to their trafficking.” This trend continued as of June 2005.<sup>1276</sup>

## Confidentiality

### De Jure

- **Compliance:** The Criminal Procedure Code of Bulgaria provides for the protection of witnesses whose testimony is likely to bring about “real danger to the life, health or the property” of the witnesses or their “relatives of ascending or descending line, brothers, sisters, spouse or persons with whom [they are] in very close relationship.”<sup>1277</sup> The Code provides for the following means of witness protection: 1) keeping the identity of the witnesses secret and 2) assigning guards to the witnesses.<sup>1278</sup>
- **Compliance:** The Criminal Procedure Code of the Netherlands allows for the identity of a “threatened witness” to remain secret if his/her life, health, safety, or the stability of his/her family or socio-economic circumstances is at risk.<sup>1279</sup> A “threatened witness” is “a witness whose identity will be kept secret during the examination pursuant to a judicial order.”<sup>1280</sup> Furthermore, in order to conceal the identity of the witness, a magistrate may

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<sup>1272</sup> See *id.* § 19.

<sup>1273</sup> See *id.* § 19(b)(3).

<sup>1274</sup> *Id.*

<sup>1275</sup> 2004 TIP Report, *supra* note 17, at 147; see 2005 TIP Report, *supra* note 5, at 122.

<sup>1276</sup> 2004 TIP Report, *supra* note 17, at 196; see 2005 TIP Report, *supra* note 5, at 138.

<sup>1277</sup> See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 97(a)(1) (Bulg.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Blg.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/Project_LARA/Natleg_Blg.asp).

<sup>1278</sup> See *id.* art. 97(a)(2).

<sup>1279</sup> See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 226a (Neth.), at <http://www.legislationline.org/view.php?document=56664>.

<sup>1280</sup> *Id.* art. 136c.

refuse to allow the suspect, his or her counsel, or both to attend the examination. “Under such circumstances, the public prosecutor shall also be refused permission to attend.”<sup>1281</sup>

### De Facto

- **Compliance:** Legislation in Poland allows for the use of video link testimony which encompasses methods for shielding a witness’ identity. Consequently, in 2003, a total of sixteen victims testified against their traffickers; a number which rose from thirteen in 2002.<sup>1282</sup>

## Assistance in Court

### De Jure

- **Compliance:** The Albanian Criminal Procedure Code provides for the legal representation of victims of crimes when exercising such rights as claiming compensation or seeking the prosecution of their abusers.<sup>1283</sup>
- **Compliance:** The Croatian NPA, adopted in 2002, stressed the need to inform victims of trafficking of their legal rights.<sup>1284</sup>
- **Compliance:** Kosovar anti-trafficking regulations indicate that a person who provides “reasonable grounds for belief that she or he is a victim of trafficking” shall be provided with “free interpreting services in the language of their choice” and “free legal counsel in relation to trafficking issues (criminal or civil)” depending upon the availability of such resources.<sup>1285</sup>
- **Compliance:** The 2002 Macedonian NPA provided for legal counsel that would assist trafficked victims in court and explain their rights. It should be noted, that, as of March 2004, a new NPA focusing on child victims was being drafted and it includes similar obligations.<sup>1286</sup>
- **Non-compliance:** The Romanian anti-trafficking law provides victims, *who are Romanian citizens*, with counseling as to the “legal benefits for persons regarded as social outcasts” offered through “Centers for Assistance and Protection of Victims of Trafficking in Human Beings” located in the different counties of Romania.<sup>1287</sup> Furthermore, Romanian victims

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<sup>1281</sup> *Id.* art. 226d.

<sup>1282</sup> See 2004 TIP Report, *supra* note 17, at 163.

<sup>1283</sup> See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58 (Alb.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Al.asp#P1048\\_82848](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Al.asp#P1048_82848).

<sup>1284</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126.

<sup>1285</sup> See UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, sec. 10(1)(a)-(b), available at <http://www.unmikonline.org/regulations/2001/reg04-01.html>; see also OSCE GUIDE, *supra* note 72, at 81.

<sup>1286</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 179; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 139.

<sup>1287</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 33 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

who find themselves within the territory of other states are entitled to assistance from “the diplomatic missions and consular bureaus of Romania to those countries.”<sup>1288</sup>

- **Non-compliance:** The Penal Code of Tanzania provides for the application of the double witness rule in all criminal cases. Thus, no person can be convicted based upon the testimony of one witness, unless other evidence implicating the accused corroborates that testimony.<sup>1289</sup> Experts argue that this is a direct violation of Article 6(2)(b) of the Trafficking Protocol that requires States Parties to assist trafficked victims and ensure that their views are properly represented during legal proceedings.<sup>1290</sup>
- **Non-compliance:** The Ugandan Penal Code allows for the application of the double witness rule whereby a charge for procurement of a female (Uganda does not have a separately defined offense of trafficking in persons) cannot stand solely on the basis of the testimony of one witness unless that testimony can be corroborated by other evidence implicating the accused.<sup>1291</sup> Experts argue that this is a direct violation of Article 6(2)(b) of the Trafficking Protocol that requires States Parties to assist trafficked victims and ensure that their views are properly represented during legal proceedings.<sup>1292</sup>

#### De Facto

- **Non-compliance:** In reality, trafficked victims in Albania do not receive adequate representation in court and are not aware of their right to compensation, the new law criminalizing trafficking, or of the consequences of testifying against their traffickers.<sup>1293</sup>
- **Non-compliance:** In June 2004, the U.S. State Department reported that in Malaysia “[t]he lack of government translators to interview foreign trafficking victims has significantly hampered efforts to assist victims.”<sup>1294</sup>
- **Non-compliance:** In Poland, the NGO La Strada (*not* the Polish government) provides support to trafficked victims who may wish to press charges against their traffickers.<sup>1295</sup>
- **Non-compliance:** In Serbia, victims of trafficking can receive legal assistance through the Counseling Centre against Family Violence, which is run by local NGOs and supported by IOM (*not* the Serbian government). The lawyers are usually associated with the local NGOs.<sup>1296</sup>

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<sup>1288</sup> *Id.* arts. 28, 26(5).

<sup>1289</sup> See The Protection Project: Human Rights Reports: Tanzania, at <http://www.protectionproject.org/>.

<sup>1290</sup> See Mattar 2, *supra* note 191, at 15.

<sup>1291</sup> See The Protection Project: Human Rights Reports: Uganda, at <http://www.protectionproject.org/>.

<sup>1292</sup> See Mattar 2, *supra* note 191, at 15.

<sup>1293</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 38; see also 2005 TIP Report, *supra* note 5, at 52.

<sup>1294</sup> 2004 TIP Report, *supra* note 17, at 101.

<sup>1295</sup> See La Strada Poland: Our Activities, at <http://free.ngo.pl/lastrada/>.

<sup>1296</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 140-41; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 293.

## Rehabilitation and Reintegration in Society

### De Jure

- **Compliance:** The Cypriot anti-trafficking law indicates that the *state* is to provide victims with “reasonable protection and support including, to the extent that this is feasible and reasonable, arrangements for maintenance, temporary shelter, medical care and psychiatric support until the victims are considered as having recovered from any traumatic experience.”<sup>1297</sup> A trial court may order a convicted trafficker to completely or partially reimburse the Cypriot state for expense that it incurred, or that it expects to incur, when providing the above protection and assistance to victims.<sup>1298</sup>
- **Compliance:** India’s anti-trafficking law provides for the establishment of government run “protective homes” or “corrective institutions” in order to protect and rehabilitate victims.<sup>1299</sup> The operation of such homes is entrusted to women whenever possible and requires a license based on certain conditions.<sup>1300</sup>
- **Compliance:** The Kosovo anti-trafficking regulation mentions that a person who provides “reasonable grounds for belief that she or he is a victim of trafficking” shall be granted “temporary safe housing, psychological, medical and social welfare assistance as may be necessary to provide for their needs.”<sup>1301</sup>
- **Compliance:** The 2002 Macedonian NPA called for the establishment of a “Transit Centre” to provide accommodations, food, interpreters, information about rights, social and health protection, and legal assistance for victims of trafficking. Such a center was to fall under the jurisdiction of the Ministry of Interior, Ministry of Labor and Social Policy, Ministry of Health, and Ministry of Justice.<sup>1302</sup>
- **Compliance:** The Romanian anti-trafficking law provides for temporary housing in “Centers for Assistance and Protection of Victims of Trafficking in Human Beings” established in various counties in Romania. The housing is to be maintained in “civilized conditions” offering adequate accommodations for personal hygiene, food, psychological and medical assistance and victims are to receive information and counseling as to their legal rights.<sup>1303</sup> Victims, who are Romanian citizens, also have the option of seeking social housing provided by the Local Councils in their town of residence.<sup>1304</sup> Victims, who are not Romanian citizens, are to be housed in “special Centers set up according to Law no. 123/2001 on the regime of aliens in Romania” in order to preserve “their physical

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<sup>1297</sup> Combating of Trafficking in Persons and Sexual Exploitation of Children Law, No. 3(1) § 7(1) (2000) (Cyprus), at <http://www.legislationline.org/view.php?document=55360>.

<sup>1298</sup> See *id.* § 7(2).

<sup>1299</sup> See The Suppression of Immoral Traffic in Women and Girls Act, No. 104, § 21 (1956) (later amended 1978) (India), available at <http://www.protectionproject.org/>.

<sup>1300</sup> See *id.* § 21(3).

<sup>1301</sup> UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, sec. 10(1)(c), available at <http://www.unmikonline.org/regulations/2001/reg04-01.html>.

<sup>1302</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 179.

<sup>1303</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), arts. 32, 33 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1304</sup> See *id.* art. 36.

security.”<sup>1305</sup> In such shelters, non-Romanian victims are to be informed of the legal and administrative procedures that apply to them and they are to receive psychological, medical, and social assistance in a language they can understand.<sup>1306</sup> Separately, county employment agencies are to offer trafficked victims “if possible, special short-term programs for . . . vocational initiation or training” and “priority counseling and labor mediation . . . in order for [them] to find a job.”<sup>1307</sup>

- **Compliance:** U.S. anti-trafficking legislation indicates that victims of trafficking are “not to be detained in facilities inappropriate to their status as crime victims,” are to “receive necessary medical care and other assistance,” and are to “be provided protection if a victim’s safety is at risk.”<sup>1308</sup> Moreover, such victims are to “have access to information about their rights and translation services.”<sup>1309</sup> Amended legislation further provides grants to local NGOs in other countries that operate transit shelters at key border crossings for victims and support rescued victims who train customs authorities to better identify the traffickers and their illicit activities.<sup>1310</sup>

### De Facto

- **Non-compliance:** In June 2004, the U.S. State Department reported that while the government of Brazil established 335 centers to assist nationals who are victims of exploitation (seven of which are specifically focused on trafficked individuals), foreign victims did not receive the same sort of protection and assistance and were deported. Furthermore, Brazilian authorities did not aid their nationals who had been trafficked overseas. This trend continued as of June 2005.<sup>1311</sup>
- **Compliance:** The Croatian government, working together with NGOs, provides support for a shelter and three reception centers that accommodate trafficked victims on a temporary basis. Furthermore, the government covers the operating costs of an SOS hotline devoted solely to trafficked persons.<sup>1312</sup>
- **Non-compliance:** The Cypriot anti-trafficking law provides for protection and assistance of victims and the government’s efforts in the area of protection have recently improved but they still fall short of international standards in some respects. In June 2005, the U.S. State Department indicated that “[t]he Welfare Department of the Ministry of Labor routinely ensured that victims received temporary shelter, received legal and financial assistance, and issued residence and employment permits [but only] *in cases where victims cooperated in an investigation*. . . . In 2004, the government set aside several rooms for trafficking victims in government-subsidized housing and solicited bids for the operation and construction of a permanent shelter.”<sup>1313</sup>

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<sup>1305</sup> *Id.* art. 38(1).

<sup>1306</sup> *See id.* arts. 38(2), 38(3).

<sup>1307</sup> *Id.* art. 35.

<sup>1308</sup> TVPA 2000, *supra* note 206, § 107(c)(1).

<sup>1309</sup> *Id.* § 107(c)(2).

<sup>1310</sup> *See* TVPRA 2003, *supra* note 206, § 3(a)(2).

<sup>1311</sup> *See* 2004 TIP Report, *supra* note 17, at 227; *see also* 2005 TIP Report, *supra* note 5, at 71.

<sup>1312</sup> *See* 2004 TIP Report, *supra* note 17, at 129; *see also* 2005 TIP Report, *supra* note 5, at 90.

<sup>1313</sup> 2005 TIP Report, *supra* note 5, at 92.

- **Compliance:** In the Czech Republic, the government funded several NGOs and international organizations for the purposes of sheltering and providing care to victims of trafficking. “[T]wo of the Czech Republic’s principal organizations provided shelter to 68 trafficking victims in 2004.”<sup>1314</sup>
- **Compliance:** One of the Danish government’s measures to protect and assist victims of trafficking is a telephone hotline that is serviced by multilingual operators. The hotline provides information on support services, Danish laws, and repatriation guidelines. During the first eleven months of operation, the hotline received 254 calls and e-mails. The government also continues to provide funds to NGOs for victim services.<sup>1315</sup>
- **Non-compliance:** In June 2005, the U.S. State Department indicated that the government of Hungary did not provide adequate resources to assist victims of trafficking. Despite the fact that the government donated a facility for the purposes of providing housing to victims in 2004, only “[v]ictims who cooperat[ed] with police and prosecutors [were] entitled to assistance such as temporary residence status and shelter. . . . Hungarian authorities frequently continued to detain, jail, or deport trafficking victims.”<sup>1316</sup>
- **Non-compliance:** In India, government-run homes provide less than adequate protection and assistance to victims of trafficking. One fact-finding mission reported that “drug and alcohol abuse among formerly trafficked victims is prevalent in government homes and goes untreated. In addition, . . . many girls and women staying in the homes felt as though they are locked up, and that the home environment is hardly nurturing. In visits to government homes, the NGO All Bengal-Women’s Union (ABWU) encountered girls that had spent more than seventeen years in these shelters, and noticed considerable cases of illiteracy. . . . Moreover, in cases of border rescues or in-transit rescues, there may not even be a nearby shelter home for the victim.”<sup>1317</sup> Given the inadequacy of government support for victims, NGOs have stepped in to properly identify trafficked individuals, provide them with counseling, rehabilitate them and reintegrate them into society.<sup>1318</sup>
- **Non-compliance:** In June 2004, the U.S. State Department reported the following regarding Kuwait: “[d]omestic servants are not covered by Kuwait’s Labor Law and consequently lack adequate protections. The government generally detains, jails, and deports trafficking victims if they are caught violating other laws material to their trafficking. The police have returned some victims to their abusive employers. Occasionally, the government provides limited financial assistance to victims, but it does not provide shelter nor does it provide visas to enable victims to pursue legal remedies.” In June 2005, the U.S. State Department reported similar inadequacies.<sup>1319</sup>
- **Compliance:** In July 2003, Lithuania provided funds for a pilot program entitled “Psychological Rehabilitation, Professional Orientation, and Employment of Victims of Trafficking and Prostitution” and assisted over 200 trafficked victims. “In addition to

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<sup>1314</sup> See *id.* at 94.

<sup>1315</sup> See 2004 TIP Report, *supra* note 17, at 135; see also 2005 TIP Report, *supra* note 5, at 95.

<sup>1316</sup> See 2005 TIP Report, *supra* note 5, at 122.

<sup>1317</sup> ABA India & Bangladesh Report (unpublished), *supra* note 315, at 30.

<sup>1318</sup> See *id.*

<sup>1319</sup> 2004 TIP Report, *supra* note 17, at 196; see also 2005 TIP Report, *supra* note 5, at 138.

shelters run by NGOs, the city of Vilnius and some other municipalities [operate] hostels to provide shelter and social support to victims of domestic violence and trafficking victims.” Furthermore, it was reported in June 2005 that the Lithuanian government provided grants to thirteen of approximately twenty NGOs that offer assistance and shelter to victims of trafficking.<sup>1320</sup>

- **Non-compliance:** In the Former Yugoslav Republic of Macedonia, assistance and protection of victims is rudimentary and there are reports of victims being deported following improper application of screening procedures.<sup>1321</sup> The Transit Shelter Center has experienced a mass influx of victims, however, its ability to assist and protect victims has decreased over the years. Between January 2001 and October 2002, 189 trafficked persons were registered at the Center, twelve percent of who were under the age of eighteen. The victims came from countries such as Romania, Moldova, Ukraine, Russia, Bulgaria, Kosovo, Croatia, and Serbia. The Centre also housed a separate group of twelve women who came from Romania and Moldova to testify in a trafficking case in Macedonia. In 2003, the Center housed 143 victims. In 2004, however, there was a significant drop as only thirty eight victims were registered at the Center.<sup>1322</sup>
- **Non-compliance:** In Moldova, IOM (not the Moldovan government) established a reception and rehabilitation center for returning victims. The center provides services such as gynecological and STD examinations, STD treatment, HIV/AIDS tests, psychological diagnosis, social and psychological counseling, group therapy, psychiatric support, general medical assistance, optional vocational training, legal assistance, lodging and meals.<sup>1323</sup> Furthermore, the Ministry of Labor signed an agreement with IOM in order to provide returning victims with vocational training and job opportunities. According to the agreement, IOM was to subsidize the first six months of a returning victim’s salary, and subsequently, the employer was to be responsible for the rest. Although 50 percent of returning victims received vocational training, few jobs were found.<sup>1324</sup> La Strada, a regional NGO, also provides comprehensive social assistance to victims, chief among which is an anti-trafficking hotline. La Strada also provides support with the recovery, rescue, and repatriation of victims.<sup>1325</sup>
- **Non-compliance:** In 2004, the Romanian government opened five of nine shelters for trafficked victims required by law. This was an improvement in comparison to 2003, when only two such shelters were operational. The government also funded a local NGO as it opened ten shelters for unaccompanied repatriated children, however, “overall Romanian funding for NGOs that assist trafficking victims remained low.”<sup>1326</sup>
- **Non-compliance:** In Serbia, victims, who are usually discovered during police raids and are identified as victims of trafficking, are taken to the Counseling Center against Family Violence, which is run by local NGOs and funded by IOM (not the Serbian government).

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<sup>1320</sup> 2004 TIP Report, *supra* note 17, at 155; *see* 2005 TIP Report, *supra* note 5, at 145.

<sup>1321</sup> *See* LARA PROJECT, *supra* note 876, at 25; *see also* 2005 TIP Report, *supra* note 5, at 147.

<sup>1322</sup> *See* 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 181; *see also* 2005 TIP Report, *supra* note 5, at 147.

<sup>1323</sup> *See* 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 81; *see also* HTAT Pilot, *supra* note 148, at 92.

<sup>1324</sup> *See* 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 76; *see also* HTAT Pilot, *supra* note 148, at 92-93.

<sup>1325</sup> *See* 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 81, 83-84.

<sup>1326</sup> *See* 2005 TIP Report, *supra* note 5, at 183.

There, victims receive medical, psychological, and legal support. In 2003, OSCE reported that victims who were identified as not carrying legal documents were taken to Padinska Skela, a detention center for illegal migrants.<sup>1327</sup>

- **Non-compliance:** In June 2005, the U.S. State Department reported that “[t]he Slovak Republic continued to lag considerably in the area of victim protection, in part because of financial constraints. . . . The government provided small grants to local organizations to assist and shelter trafficking victims, but overall, NGOs continued to report difficulties in obtaining funding to provide services to trafficking victims.”<sup>1328</sup>
- **Non-compliance:** In its 2004 TIP Report, the U.S. State Department indicated that the government of Tanzania did *not* provide direct protection services to victims of trafficking but supported the work of NGOs that cooperate with the ILO in order to establish child labor councils tasked with reporting trafficking cases. The government created a child welfare desk at the police headquarters in Dar es Salaam that receives information regarding trafficking cases. In June 2005, the U.S. State Department reported that the government took some steps to protect victims but within the limits of its resources. For example, “[l]ocal police and officials from the Social Welfare Department identified and informally referred child trafficking victims to NGOs that work with street children and child prostitutes, provided small donations of food and other goods to these NGOs, and identified land available for building new shelters.”<sup>1329</sup>
- **Non-compliance:** In June 2005, the U.S. State Department indicated that the government of Togo “[did] not fund specific trafficking-related shelters or centers that may aid victims; however, it [did] closely coordinate and collaborate with NGOs for victim care and assistance. In some limited cases, the government [was] able to provide temporary shelter, and access to legal, medical and psychological services before turning victims over to NGOs.”<sup>1330</sup>

## Children

### De Jure

- **Compliance:** In Israel, children that agree to testify and have been subjected to sexual exploitation or other prostitution-related acts may be questioned by a special youth examiner. Their testimony, although taken outside of the court, is admissible.<sup>1331</sup>
- **Compliance:** The Romanian anti-trafficking law provides for the physical, psychological, and social recovery of trafficked victims<sup>1332</sup> taking into consideration the special needs of underage persons<sup>1333</sup> and women.<sup>1334</sup> It should be noted though, that the law grants

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<sup>1327</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 140-41.

<sup>1328</sup> 2005 TIP Report, *supra* note 5, at 196.

<sup>1329</sup> See 2004 TIP Report, *supra* note 17, at 79; 2005 TIP Report, *supra* note 5, at 211.

<sup>1330</sup> See 2005 TIP Report, *supra* note 5, at 214.

<sup>1331</sup> See The Protection Project; Human Rights Reports: Israel, at <http://www.protectionproject.org/>.

<sup>1332</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 26(3) (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1333</sup> See *id.* art. 26(4).

<sup>1334</sup> See *id.* art. 26(5).

“special protection and assistance” to women and children but does not specify the details of such special protections.<sup>1335</sup>

- **Compliance:** In the United Kingdom, the Metropolitan Police issued a document entitled “Metropolitan Police Service Response to ‘Every Child Matters’; a Government Green Paper on Improving Services for Children,” which provides guidelines for better identifying and protecting children who have been trafficked into the country. The paper was based upon a study conducted at Heathrow airport as well as other points of entry that monitored the flow of unaccompanied children into the United Kingdom. The document concluded that “a national coordinated response is needed at all UK ports involving immigration, police, social and voluntary services. This will ensure that the needs of all unaccompanied children entering the country through recognised routes are assessed and protective taken when necessary. Such an initiative will also provide intelligence on children who are trafficked for illegal purposes and will lead to positive interventions.”<sup>1336</sup>

#### De Facto

- **Compliance:** In 2004, the Metropolitan Police in the United Kingdom, together with immigration officials, conducted a study screening the number of unaccompanied children that were entering the country at Heathrow airport and other points (Operation Paladin Child). The purpose of this effort was to identify children at risk of being trafficked into the United Kingdom and to provide them with the necessary protections.<sup>1337</sup> Following Operation Paladin Child, authorities placed a permanent child protection officer on a full-time basis at Heathrow airport.<sup>1338</sup> On a separate note, “[r]esponding to concerns over the placement of trafficked and other vulnerable children in centers where their security could not be guaranteed, the government began placing them with foster care providers.”<sup>1339</sup>

### Physical Safety

#### De Jure

- **Non-compliance:** In Italy, providing for the safety of trafficked victims is tied to the residence permit for which they can apply regardless of whether they agree to testify against their traffickers. However, in 2002, it was reported that there were no provisions, that allowed trafficked victims (even those who agree to testify) to bring their family members to Italy in order to protect them from reprisals.<sup>1340</sup>
- **Compliance:** The Romanian “Law on the Prevention and Combat of Trafficking in Human Beings” provides trafficked victims with physical protection while they are on Romanian territory and for the duration of the criminal proceedings against their traffickers.<sup>1341</sup>
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<sup>1335</sup> See *id.* arts. 26(4), 26(5).

<sup>1336</sup> METROPOLITAN POLICE GREEN PAPER, *supra* note 672, at 3.

<sup>1337</sup> See 2004 TIP Report, *supra* note 17, at 185; see also METROPOLITAN POLICE GREEN PAPER, *supra* note 672.

<sup>1338</sup> See 2004 TIP Report, *supra* note 17, at 185.

<sup>1339</sup> *Id.*; see also 2005 TIP Report, *supra* note 5, at 222.

<sup>1340</sup> See ASI REPORT, *supra* note 150, at 148.

<sup>1341</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), arts. 26, 27 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

## De Facto

- **Compliance:** In an effort to provide better protection to victims and address safety concerns, the Czech Republic launched a victim assistance pilot program in October 2003 that was subsequently expanded to a permanent government-funded program. In June 2004, the U.S. State Department reported that “[u]nder this pilot program, [then] involving 10 individuals, trafficking victims receive a 30-day grace period for assistance and counseling during which a victim can decide whether to cooperate with Czech police. *Foreign victims who [chose] not to cooperate [were] offered voluntary return to their home country.*” In June 2005, the U.S. State Department reported that the victim assistance program was open “to all foreign and Czech victims.”<sup>1342</sup>

## Compensation

### De Jure

- **Non-compliance:** Currently, the Albanian Criminal Procedure Code allows victims of *particular* crimes to seek the prosecution of alleged perpetrators and to claim compensation for their injuries. The crimes listed do not include trafficking in persons.<sup>1343</sup> As of December 2003, the Ministry of Justice was working on amendments to the Criminal Procedure Code in order to coordinate pertinent sections with the offense of trafficking in persons included in the Criminal Code. In June 2005, it was reported that changes had been made to the Criminal Procedure Code but only in relation to witness protection issues.<sup>1344</sup>
- **Compliance:** The Croatian Criminal Procedure Code offers victims a damage recovery mechanism, or a claim for indemnification arising out of the commission of a criminal offense, “provided that this does not considerably delay proceedings.”<sup>1345</sup> The code further indicates that the claim may consist of a demand for compensatory damages, recovery of an object, or the annulment of a certain legal transaction.<sup>1346</sup>
- **Compliance:** Under Italian law, it is possible for victims to join a civil action to the prosecution of their traffickers in criminal court. Victims become civil parties to the case and the criminal court judge must take into consideration the civil consequences of the losses/injuries sustained by the victims. If the defendants are found guilty of their criminal charges, then the judge must decide on the civil claims of the victims.<sup>1347</sup>
- **Compliance:** The Civil Code of Sweden provides that “any person who, willfully or by negligence, causes loss of life or personal injury will be liable for paying compensation for that loss or injury.”<sup>1348</sup>

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<sup>1342</sup> 2004 TIP Report, *supra* note 17, at 134 (emphasis added); *see also* 2005 TIP Report, *supra* note 5, at 94 [emphasis added].

<sup>1343</sup> *See* CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 59(1) (Alb.), at [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Combating\\_economic\\_crime/Project\\_LARA/Natleg\\_Alb.asp#P1048\\_82848](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Combating_economic_crime/Project_LARA/Natleg_Alb.asp#P1048_82848).

<sup>1344</sup> *See* 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 38; *see also* 2005 TIP Report, *supra* note 5, at 52.

<sup>1345</sup> CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 127(1) (Croat.), at <http://www.legislationline.org/view.php?document=56797>.

<sup>1346</sup> *See id.* art. 127(2).

<sup>1347</sup> *See* ASI REPORT, *supra* note 150, at 153.

<sup>1348</sup> CIVIL CODE [CIV. C.] § 1, ch. 2 (Swed.); *see also* The Protection Project; Human Rights Reports: Sweden, at

## De Facto

- **Non-compliance:** Although Italian law offers trafficked victims the opportunity to file for compensation, Italian lawyers interviewed in 2002 indicated that “[w]here damages are awarded, in most cases, this amounts only to a symbolic gesture. Damages are rarely paid because traffickers tend to hide their assets abroad. Confiscation of profits of crime is possible, but proof is difficult.”<sup>1349</sup> Furthermore, the Italian lawyers “agreed that claims for damages in the civil court, although possible to bring, are not really an option with such a slow and bureaucratic system. Massive delays occur, with normal cases taking eight to ten years and complicated cases up to 20 years for the civil court to come to a decision.”<sup>1350</sup> Lastly, it should be noted that the only viable mechanism for enforcing payments for victims actually mitigates the sentences of traffickers. “Under Italian law, actual payment of compensation to the victim may reduce the sentence against the defendant by one third.”<sup>1351</sup>

## Article 7: Status of Victims of Trafficking in Persons in Receiving States

### Immigration Status

#### De Jure

- **Compliance:** Bosnian law offers a victim of trafficking temporary residence based on certain conditions, including humanitarian grounds.<sup>1352</sup> If s/he does not qualify based on those conditions s/he is automatically granted a temporary residence permit based on humanitarian grounds for three months<sup>1353</sup> because s/he is “an alien who has been a victim of an organised crime and/or trafficking of human beings.”<sup>1354</sup> This particular status is granted “for the purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence.”<sup>1355</sup>
- **Compliance:** The Croatian NPA, which was adopted in 2002, mentions the need to provide trafficked victims with alternatives other than returning them to their country of origin. The NPA stresses the right to residence.<sup>1356</sup> Accordingly, the Croatian Parliament adopted a Law on Foreigners that initially allowed trafficked victims to apply for temporary residency status for 90 days, which was renewable for up to two years. In June 2005, it was reported that “the Croatian Parliament amended the Law on Foreigners to increase the length of time victims can apply for temporary residency status- from 90 days to one year- with a possible one-year extension.”<sup>1357</sup>

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<http://www.protectionproject.org/>.

<sup>1349</sup> ASI REPORT, *supra* note 150, at 153.

<sup>1350</sup> *Id.*

<sup>1351</sup> *Id.*

<sup>1352</sup> See Law on Movement [or] Stay of Aliens and Asylum, art. 32(1) (2002) (Bosn. & Herz.), at

<http://www.legislationline.org/view.php?document=56701>.

<sup>1353</sup> See *id.* art. 32(3).

<sup>1354</sup> *Id.* art. 34(1)(a).

<sup>1355</sup> *Id.*

<sup>1356</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 125-26.

<sup>1357</sup> See 2004 TIP Report, *supra* note 17, at 129; 2005 TIP Report, *supra* note 5, at 90.

### De Facto

- **Non-compliance:** Poland grants foreign victims of trafficking a one-year temporary residence permit when they agree to testify against their traffickers. In June 2004, the U.S. State Department reported that despite training of Polish authorities on proper identification and assistance of trafficked individuals, many victims were summarily deported. In June 2005, the U.S. State Department indicated that “[d]ue in part to a lack of formal screening procedures, enforcement authorities continued to deport some potential victims.”<sup>1358</sup>

## Immigration Issues Within the Context of Humanitarian and Compassionate Factors

### De Jure

- **Compliance:** Bosnia’s “Law on Movement [or] Stay of Aliens and Asylum” sets forth certain conditions for granting temporary residence: “marriage with a citizen of BiH, reunification of families, education, scientific/research and artistic work, employment as specified in the work permit granted, for business purposes, medical treatment, tourism or for *humanitarian reasons*.”<sup>1359</sup> A temporary residence permit issued on the basis of humanitarian grounds lasts up to three months.<sup>1360</sup> If a victim of trafficking does not qualify for a temporary residence permit based on the above conditions, s/he is automatically granted such a permit solely based upon his/her status as a trafficked victim.<sup>1361</sup>
- **Compliance:** Immigration provisions in the Netherlands provide trafficked victims with both temporary residence permits as well as permanent residence permits. Permanent residency can be offered when *humanitarian factors* are involved such as risk of reprisals against the victims, lack of formal protection, risk of the victims being prosecuted, and the possibility of reintegration in the victims’ countries of origin.<sup>1362</sup>

### De Facto

- **Non-compliance:** While permanent residency based upon humanitarian factors is a possibility in the Netherlands, the courts construe such factors narrowly. Consequently, there have been few cases where the trafficked victims were indeed offered permanent residence.<sup>1363</sup>

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<sup>1358</sup> 2004 TIP Report, *supra* note 17, at 163; *see also* 2005 TIP Report, *supra* note 5, at 180.

<sup>1359</sup> Law on Movement [or] Stay of Aliens and Asylum, art. 32(1) (2002) (BiH), at <http://www.legislationline.org/view.php?document=56701> [emphasis added].

<sup>1360</sup> *See id.* art. 32(3).

<sup>1361</sup> *See id.* art. 34(1)(a).

<sup>1362</sup> *See* ASI REPORT, *supra* note 150, at 73.

<sup>1363</sup> *See id.*

## Article 8: Repatriation of Victims of Trafficking in Persons

### Right to Return

#### De Jure

- **Compliance:** The Romanian anti-trafficking law states that “Romania assists foreign citizen victims of trafficking in human beings in returning to their country of origin without undue delay.”<sup>1364</sup> Also, the law designates a special diplomat in each of Romania’s diplomatic missions and consular bureaus who would deal solely with the repatriation of Romanian citizens who are victims of trafficking.<sup>1365</sup>

#### De Facto

- **Compliance/Non-compliance:** While the current Moldovan NPA addresses the return and reintegration of trafficked victims,<sup>1366</sup> increasingly fewer victims do, in fact, return to Moldova. In 2003, OSCE reported that “[t]he IOM database in Chisinau includes 364 cases from 2001, 292 from 2002 and 89 up to May 2003. Approximately 160 women and girls have taken part in the IOM reintegration programme. At the beginning of 2002, there were at least 30 women coming to the shelter each month, but a year later, the numbers were much lower - 5 to 10 cases per month. There are not many women returning from Western Europe via IOM or NGOs channels.”<sup>1367</sup>

### Safety, Legal Proceedings, and the Voluntary Nature of Return

#### De Jure

- **Compliance:** U.S. anti-trafficking legislation calls for the “safe integration” of trafficked victims when requiring the U.S. Secretary of State as well as government agencies like USAID to cooperate with NGOs in order to return willing victims to their homeland.<sup>1368</sup>

#### De Facto

- **Non-compliance:** In 2002, it was reported that very few women who had been trafficked from Nigeria to countries like Italy, voluntarily returned.<sup>1369</sup> In fact, a “group of approximately 160 women were deported from Italy *en masse*.”<sup>1370</sup> IOM runs a program in conjunction with a local Nigerian NGO focused on voluntary repatriation. During a one-year period, this program assisted only nine women to return to Nigeria. In June 2005, the U.S. State Department reported that the Italian government “continued to implement tough immigration laws in response to a significant influx of illegal immigrants. As a result, there were continued reports of authorities inadvertently deporting potential victims before they

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<sup>1364</sup> Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), art. 37 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1365</sup> See *id.* art. 30(4).

<sup>1366</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 75.

<sup>1367</sup> *Id.* at 74.

<sup>1368</sup> See TVPA 2000, *supra* note 206, § 107(a)(1).

<sup>1369</sup> See ASI REPORT, *supra* note 150, at 162.

<sup>1370</sup> See *id.* at 160.

could be adequately screened and identified as having been trafficked.” However, “[i]n 2004, the government funded *voluntary repatriation* and six month reintegration assistance for 66 victims.”<sup>1371</sup>

## Article 9: Prevention of Trafficking in Persons

### Preventive Policies, Programs, and Other Measures

#### De Jure

- **Compliance:** The Former Yugoslav Republic of Macedonia has an NPA that is aimed at investigating the causal factors of trafficking and illegal migration within the country and in the region, identifying the traffickers, their *modus operandi* and their connections to international groups and outside individuals, proposing preventive measures, protecting the victims, and prosecuting the perpetrators.<sup>1372</sup>
- **Compliance:** Moldova’s current NPA to combat trafficking encourages cooperation among government officials, international organizations, and NGOs in the areas of researching and assessing the trafficking problem, raising awareness, addressing the social and economic causes of trafficking, assisting victims, returning and reintegrating victims, reforming laws, strengthening law enforcement, and coordinating with other states.<sup>1373</sup>
- **Compliance:** In November 2003, Montenegro adopted the National Strategy for Combating Trafficking which defines six objectives in the area of trafficking prevention: public education and awareness, supporting the efforts of international organizations and NGOs, sustaining a National Coordinator, encouraging government officials to speak out against trafficking, ensuring that implementing organizations refrain from interfering with judicial processes, and training border police to monitor immigration and emigration patterns related to trafficking.<sup>1374</sup>
- **Compliance:** Qatar developed an NPA in response to the problem of trafficking in persons for the purposes of sexual exploitation, forced prostitution, and domestic servitude, as well as the practice of forcing children to become camel jockeys. The NPA’s recommendations include printing booklets in Arabic, English, Urdu, and Tagalog to inform immigrant workers of their rights and the assistance available to them, raising the age for camel jockeys to eighteen, imposing minimum body weights for camel jockeys (adult weight), conducting DNA testing to verify claimed family ties between jockeys and their traffickers, performing retinal scans to prevent identify falsification, and taking X-rays in order to establish the age of camel jockeys. The Qatari NPA calls for increased cooperation with countries of origin in order to repatriate victims.<sup>1375</sup>
- **Non-compliance:** Romania developed an NPA that was compatible with the regional Plan of Action of the former Stability Pact Task Force on Trafficking (“SPTF”). The NPA focuses

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<sup>1371</sup> See *id.* at 162; see also 2005 TIP Report, *supra* note 5, at 130 [emphasis added].

<sup>1372</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 178; see also LARA PROJECT, *supra* note 876, at 24-25.

<sup>1373</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 75.

<sup>1374</sup> See 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 150.

<sup>1375</sup> See 2004 TIP Report, *supra* note 17, at 201.

on law enforcement and legal reform to combat trafficking. The NPA implicates pertinent governmental agencies and NGOs in such activities as researching the trafficking phenomenon, promoting prevention, raising awareness, and providing assistance to trafficked victims. Although preventive measures are detailed in Romania's "Law on the Prevention and Combat of Trafficking in Human Beings,"<sup>1376</sup> the OSCE mentioned in 2003 that the NPA was general in terms and did not assign concrete tasks or establish actual deadlines for the accomplishment of its goals.<sup>1377</sup>

- **Compliance:** Ukraine established the National Coordination Council for Prevention of Trafficking in Human Beings under the authority of the Ombudsperson of the Ukrainian Parliament. In 1999, the Cabinet of Ministers developed the "Program for the Prevention of Trafficking in Women and Children," the first NPA, later replaced by the "Comprehensive Program for Combating Trafficking in Persons for 2002-2005." This serves as Ukraine's current NPA and was adopted through Decree No. 766 of the Cabinet of Ministers on June 05, 2002. The NPA stresses cooperation between government authorities and NGOs in the fight against trafficking. In late 2004, a new government assumed power in Ukraine and there is no information available as to whether a new plan to combat trafficking is in development (as of the date of this writing).<sup>1378</sup>
- **Compliance:** U.S. anti-trafficking legislation requires the President of the United States, acting through his/her Cabinet members, to implement various measures that seek to prevent trafficking in persons from occurring, such as economic enhancement programs, education programs, and public awareness and information campaigns.<sup>1379</sup>

#### De Facto

- **Non-compliance:** The government of Guinea developed an NPA to combat trafficking in persons, which consists of education campaigns and child registration drives. However, in June 2004, the U.S. State Department reported that "the plan was poorly publicized and largely ignored." Minimal efforts included an anti-trafficking workshop, government talks focused on ways to close off airports, ports, and exit routes, and a 2003 UNICEF study on Guinean child trafficking. In June 2005, the U.S. State Department indicated that the NPA remained largely unimplemented.<sup>1380</sup>
- **Non-compliance:** As of November 2003, no budget had been allotted for implementing the activities delineated in the Macedonian NPA. In June 2005, the U.S. State Department conveyed that Macedonia's anti-trafficking commission had not "developed an adequate strategy and timeline for its implementation."<sup>1381</sup>
- **Non-compliance:** As of June 2005, there was no proposed budget and no funds were allocated for Moldova's NPA. Furthermore, most anti-trafficking measures were still being

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<sup>1376</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), ch. II, (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1377</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 93.

<sup>1378</sup> See OSCE GUIDE, *supra* note 72, at 98; see 2004 TIP Report, *supra* note 17, at 184; see also 2005 TIP Report, *supra* note 5, at 217.

<sup>1379</sup> See TVPA 2000, *supra* note 206, § 106(a)-(b).

<sup>1380</sup> See 2004 TIP REPORT, *supra* note 17, at 59-60; see also 2005 TIP Report, *supra* note 5, at 116.

<sup>1381</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 180; see also 2005 TIP Report, *supra* note 5, at 147.

implemented by NGOs and international organizations with limited input from the Moldovan government.<sup>1382</sup>

- **Non-compliance:** In November 2003, Montenegro adopted the National Strategy for Combating Trafficking, however, preventive measures have been primarily initiated and funded by the international community and local NGOs. <sup>1383</sup>
- **Non-compliance:** Although Romania has an anti-trafficking law that incorporates detailed preventive measures and an established NPA, the OSCE reported in November 2003 that there were no regulatory procedures in place to implement either.<sup>1384</sup>
- **Non-compliance:** In March 2005, OSCE reported that there was still no NPA in Serbia. “As of early 2004, the NPA was being drafted. The National Co-ordinator solicited inputs from all working groups and the final draft [was] expected to be ready for adoption in early 2005.” In June 2005, the U.S. State Department reported that the government of Serbia adopted a plan targeted at decreasing the vulnerability of children to trafficking but did not indicate whether the NPA had been officially adopted.<sup>1385</sup>
- **Non-compliance:** In 2001, the government of Tanzania appointed a working group to develop an anti-trafficking strategy. In June 2004, the U.S. State Department reported that the group remained inactive. In June 2005, the U.S. State Department indicated that “[t]he government made limited progress in preventing trafficking over the reporting period, In July 2004, it convened the first-ever meeting of senior government officials to discuss trafficking in Tanzania, investigations into trafficking cases, and existing legal statutes.”<sup>1386</sup>
- **Non-compliance:** In June 2004, the U.S. State Department reported that, while Ukraine had made some progress in implementing its Comprehensive Program for Combating Trafficking in Persons, the Interdepartmental Coordination Council for Combating Trafficking in Persons, which was established in December 2002 (to implement this particular program), had never had a formal meeting. “Local commissions on combating trafficking were created throughout Ukraine pursuant to the Comprehensive Program, but their quality and effectiveness var[ied].” In June 2005, the U.S. State Department indicated that a new government assumed power in late 2004 and it is expected to respond more effectively to the trafficking phenomenon.<sup>1387</sup>

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<sup>1382</sup> See HTAT Pilot, *supra* note 148, at 9, 115.

<sup>1383</sup> See 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 150, 311-318.

<sup>1384</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 94.

<sup>1385</sup> 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 146; see 2005 TIP Report, *supra* note 5, at 191.

<sup>1386</sup> See 2004 TIP Report, *supra* note 17, at 79; 2005 TIP Report, *supra* note 5, at 212.

<sup>1387</sup> 2004 TIP Report, *supra* note 17, at 184; see 2005 TIP Report, *supra* note 5, at 217.

## Research, Information, Mass Media Campaigns, and Other Initiatives

### De Jure

- **Compliance:** The Croatian NPA indicates that schools are expected to develop special classes on trafficking in persons so that students and teachers are aware of the dangers of this phenomenon.<sup>1388</sup>
- **Compliance:** The current Moldovan NPA “calls upon state officials to establish a research center, which will cooperate with all government agencies and conduct research and sociologic surveys related to the issue of trafficking in persons. The results of the center’s research endeavors (statistical or otherwise) are to be published and circulated annually. The plan further stresses the need to establish a standard database that is to be used by the police, welfare agencies, labor force agencies, and healthcare institutions in order to keep track of trafficked victims and the phenomenon in general. The plan also calls for awareness raising measures.”<sup>1389</sup>
- **Compliance:** The “Law on the Prevention and Combat of Trafficking in Human Beings” requires the various Romanian ministries to create and disseminate materials outlining the risks of trafficking and identifying the persons at risk of being trafficked, develop educational programs for parents and children (especially those belonging to high-risk groups), compile and update a database on the phenomenon of trafficking, monitor trafficking patterns and issue period assessments, publish statistical information and reports on a biannual basis, conduct periodic studies in order to identify the causes of trafficking, and organize public awareness campaigns.<sup>1390</sup>
- **Compliance:** U.S. trafficking legislation establishes an Interagency Task Force whose duties include “to collect and organize data, including significant research and resource information on domestic and international trafficking.”<sup>1391</sup> The law warns that any data that has been collected has to respect the confidentiality of victims of trafficking.<sup>1392</sup> Amended legislation further provides for grants to NGOs, relevant U.S. government agencies, and international organizations to collect data and research the trafficking problem. Such research is to cover the economic causes of trafficking, the effectiveness of existing anti-trafficking programs, and the interrelationship between trafficking and global health risks.<sup>1393</sup>

### De Facto

- **Compliance:** As part of its NPA, Croatia cooperated with IOM and conducted a public awareness campaign entitled “Trafficking in Human Beings is Our Reality. Let’s Stop It!” that included free spots on Croatian national TV and 20 local radio stations nationwide. The \$80,000 campaign, which was funded by the U.S. and Dutch governments, targeted

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<sup>1388</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126.

<sup>1389</sup> See HTAT Pilot, *supra* note 148, at 111-112.

<sup>1390</sup> See Law on the Prevention and Combat of Trafficking in Human Beings, No. 678 (2001), arts. 7, 8, 9, 10, 11 (Rom.), at <http://www.legislationline.org/view.php?document=55257>.

<sup>1391</sup> TVPA 2000, *supra* note 206, § 105(d)(3).

<sup>1392</sup> See *id.*

<sup>1393</sup> See TVPRA 2003, *supra* note 206, § 6(g)(1).

border crossing authorities, public transportation officials, school officials, journalists, and employment agencies informing them of the trafficking phenomenon. Furthermore, IOM, in cooperation with two local NGOs, runs a free SOS helpline for trafficked victims.<sup>1394</sup>

- **Compliance:** In Hungary, the Ministry of Education agreed to introduce a program developed by IOM and other organizations in order to educate students about the dangers of trafficking in persons. The program is designed in the same fashion as drug and alcohol prevention classes and it is supplementary to an already existing sex education class that is compulsory for Hungarian high school students.<sup>1395</sup>
- **Compliance:** The Lithuanian government cooperated with IOM and the Nordic Council of Ministers in order to develop trafficking prevention curricula for schools, a guide for teachers, and a brochure that seeks to familiarize young girls with the dangers of trafficking. The curricula and guide are used on a voluntary basis in areas where trafficking is recognized as a problem.<sup>1396</sup>
- **Non-compliance:** In November 2003, the Rwandan Ministry of Public Service held a conference aimed at developing an anti-trafficking strategy. In June 2005, the U.S. State Department reported that there were “no government-run information campaigns specifically on trafficking, although the government ran campaigns to educate people about sexual violence against children, including condemnations of those individuals that solicit prostitutes. . . . The Ministry of Gender conducted a variety of public education programs (including workshops, seminars, and radio broadcasts) related to the protection of women and children from sexual and gender-based discrimination and violence; government officials trained an estimated 24,000 women and children in Rwanda’s provinces.”<sup>1397</sup>
- **Non-compliance:** In its 2004 TIP Report, the U.S. State Department reported that the Slovak Republic devoted only a few resources to the prevention of trafficking in persons and that “the Slovak population continues to demonstrate a low awareness of trafficking in persons issues.” In June 2005, the U.S. State Department indicated that the Slovak government continued to devote few resources to preventive measures.<sup>1398</sup>
- **Compliance:** In 2003, the government of Switzerland co-funded an anti-trafficking radio program in BiH, a trafficking awareness campaign in Colombia, a mobile theater project in Ukraine, and an information campaign in Sri Lanka regarding illegal immigration.<sup>1399</sup>
- **Non-compliance:** In 2003, a cooperative effort between IOM, UNFPA, the Swiss Development Office, and the French Embassy in Tajikistan, funded a play inspired by true stories of trafficked individuals and recent studies of the phenomenon. IOM reported that

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<sup>1394</sup> See Croatia- Human Trafficking Awareness Campaign, at

<http://www.humantrafficking.com/humantrafficking/client/view.aspx?ResourceID=3027>; see also INTERNATIONAL ORGANIZATION FOR MIGRATION, FINAL REPORT: PREVENTION OF TRAFFICKING IN HUMAN BEINGS “TRAFFICKING IN HUMAN BEINGS IS OUR REALITY. LET’S STOP IT!,” at [http://www.dec.org/pdf\\_docs/PDABY672.pdf](http://www.dec.org/pdf_docs/PDABY672.pdf).

<sup>1395</sup> See Press Release, IOM, Hungary: Counter Trafficking Included in School Curriculum (Nov. 05, 2002), available at <http://www.iom.int/en/archive/PBN051102.shtml>.

<sup>1396</sup> See 2004 TIP Report, *supra* note 17, at 156; see also 2005 TIP Report, *supra* note 5, at 145.

<sup>1397</sup> See 2004 TIP Report, *supra* note 17, at 73-74; 2005 TIP Report, *supra* note 5, at 187.

<sup>1398</sup> 2004 TIP Report, *supra* note 17, at 173; see also 2005 TIP Report, *supra* note 5, at 196.

<sup>1399</sup> See 2004 TIP Report, *supra* note 17, at 180.

"[t]he play's central theme [was] trafficking for sexual exploitation of Tajik women and girls. The plot [was] based on true stories and [used] popular drama as an instrument to sensitize the audience on the tragic realities of human trafficking."<sup>1400</sup> The Tajik government did not sponsor this preventive measure.<sup>1401</sup>

## Root Causes

### De Jure

- **Compliance:** The Albanian NPA for 2001-2004 established a clear link between the economic and social disadvantages of women within both the public and the private spheres, and the trafficking phenomenon. Therefore, the third phase of the NPA (July 2003-September 2004) was focused on developing programs that would foster the economic empowerment of women and the prevention of domestic violence.<sup>1402</sup>
- **Compliance:** The Croatian NPA calls on state officials to implement policies that promote human rights and gender equality.<sup>1403</sup>
- **Compliance:** The Macedonian NPA emphasizes the need for measures to address the root causes of trafficking, which include violence against women and children, bad economic conditions, and discrimination.<sup>1404</sup>
- **Compliance:** U.S. anti-trafficking legislation requires the President of the United States to "establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking."<sup>1405</sup> Such initiatives include micro-credit lending programs, training in business development, skills training, job counseling, programs promoting women's participation in economic decision-making, programs encouraging children (especially girls) to remain in school, as well as grants to local NGOs that seek to advance the political, economic, social and educational roles, and capacities of women in their countries.<sup>1406</sup>

### De Facto

- **Non-compliance:** "Lack of economic opportunity makes Bulgarian women and girls vulnerable to trafficking. Women constitute 65 percent of the long-term unemployed."<sup>1407</sup> The Bulgarian NPA recognizes the precarious situation of women and calls for improvement of the social and economic possibilities of women and assurance of their access to the labor market. Thus far, though, the international community, not the Bulgarian government, has taken a lead in implementing poverty-reduction strategies. The United Nations Development Programme ("UNDP") "connects the national government

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<sup>1400</sup> Press Release, International Organization for Migration, Tajikistan - New Play on Human Trafficking Marks a New Trend in Theatre (Apr. 11, 2003), at <http://www.iom.int/en/archive/pbn110403.shtml>.

<sup>1401</sup> See *id.*

<sup>1402</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 36; see also LARA PROJECT, *supra* note 876, at 3-6 (2003).

<sup>1403</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126.

<sup>1404</sup> See *id.* at 179; see also 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 138.

<sup>1405</sup> TVPA 2000, *supra* note 206, § 106(a).

<sup>1406</sup> See *id.*

<sup>1407</sup> The Protection Project; Human Rights Reports: Bulgaria, at <http://www.protectionproject.org/>.

and local communities to global best practices and sponsors innovative pilot projects that nourish economically and environmentally sustainable livelihoods mainly focusing upon job creation.”<sup>1408</sup>

- **Compliance:** In June 2004, the U.S. State Department reported that the government of Japan “disbursed \$3 million to UNICEF, ILO, UNDP and the Philippine Government to alleviate poverty, raise awareness of the dangers of trafficking, and promote alternative economic opportunities for women.”<sup>1409</sup>
- **Non-compliance:** One NGO indicates that “war, poverty, and flawed or nonexistent birth registration systems” perpetuates trafficking in countries such as Niger. In June 2005, the U.S. State Department reported that the government of Niger did little to address these causal factors and made limited progress in educating the public about trafficking.<sup>1410</sup>
- **Non-compliance:** In its June 2004 TIP Report, the U.S. State Department described the situation in Rwanda delineating some of the factors that fuel trafficking in persons within that country: “[a]s a consequence of the 1994 genocide and the AIDS epidemic, children comprise 50% of the population; an estimated one million orphans are vulnerable to exploitation. A small number of child victims are trafficked to Burundi and the Democratic Republic of the Congo (D.R.C.). UNICEF estimates that 2,100 child prostitutes are active in Rwanda. Many impoverished children enter prostitution as a means of survival. Former adult prostitutes prey on children from rural areas, recruiting them to work in cities, often under false pretenses.”<sup>1411</sup> These are some of the root causes that the Rwandan government has to fully address.
- **Non-compliance:** In 2003, NGOs indicated that women in Serbia who voluntarily joined escort services earned more money than if they were employed in any other jobs available to women.<sup>1412</sup> The tough economic situation, the overall lack of employment, and growing poverty among women specifically, are all factors that provide traffickers with an opportune environment.<sup>1413</sup>
- **Non-compliance:** Although the Togolese president has recognized that trafficking in persons exists in his country, the Protection Project (US-based NGO) has identified the following contributing factors to the trafficking phenomenon that the government has yet to address: poverty, underdevelopment, lack of equal opportunities in education for girls, preexisting networks of organized crime, and abuse of the cultural practice of “placement,” otherwise known as *Amegbonovei*. “Placement” is a cultural tradition in Togo whereby children from poor rural families are relocated, through extended family contacts, in homes that sponsor the children’s education or pay the families of the children in exchange for domestic work.<sup>1414</sup>

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<sup>1408</sup> See 2004 SOUTH EASTERN EUROPE UPDATE, *supra* note 494, at 200.

<sup>1409</sup> 2004 TIP Report, *supra* note 17, at 97.

<sup>1410</sup> The Protection Project; Human Rights Reports: Niger, at <http://www.protectionproject.org/>; see also 2005 TIP Report, *supra* note 5, at 168.

<sup>1411</sup> 2004 TIP Report, *supra* note 17, at 73.

<sup>1412</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 137.

<sup>1413</sup> See *id.* at 136.

<sup>1414</sup> See The Protection Project; Human Rights Reports: Togo, at <http://www.protectionproject.org/>.

## Article 10: Information Exchange and Training

### Upholding the Rights of Individuals

#### De Jure

- **Compliance:** U.S. trafficking legislation establishes an Interagency Task Force whose duties include “to collect and organize data, including significant research and resource information on domestic and international trafficking”<sup>1415</sup> and “to facilitate cooperation among countries of origin, transit, and destination.”<sup>1416</sup> The law warns that any data that has been collected and shared has to respect the confidentiality of victims of trafficking.<sup>1417</sup>

#### De Facto

- **Non-compliance:** Turkmenistan requires non-citizens who wish to marry Turkmen citizens to pay a tax equivalent to \$50,000. The state indicated that this measure was undertaken in order to prevent women from being smuggled.<sup>1418</sup> However, the imposition of the \$50,000 tax violates the right of women to marry whom they choose.<sup>1419</sup>

### Cooperation and Information Exchange/Identification

#### De Jure

- **Compliance:** In 2003, the government of Qatar adopted an NPA to combat trafficking that calls for, among other things, conducting DNA testing to verify claimed family ties between jockeys and their traffickers, performing retinal scans to prevent identity falsification, and taking X-rays in order to establish the age of camel jockeys.<sup>1420</sup>

#### De Facto

- **Compliance:** The Bulgarian government has concluded bilateral agreements on law enforcement with all of its bordering countries except Serbia and Montenegro and has ongoing cooperation with the Former Yugoslav Republic of Macedonia and Romania. Furthermore, Bulgaria takes part in regional law enforcement initiatives such as the Southeast European Cooperative Initiative (“SECI”).<sup>1421</sup>
- **Compliance:** Czech officials work closely with their counterparts in neighboring countries in order to investigate and prosecute alleged traffickers. The U.S. State Department reported in June 2005 that “Czech law enforcement conducted joint anti-trafficking investigations with Germany, Slovakia, Austria, Poland, and Ukraine in 2004.”<sup>1422</sup>

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<sup>1415</sup> TVPA 2000, *supra* note 206, § 105(d)(3).

<sup>1416</sup> *Id.* § 105(d)(4).

<sup>1417</sup> *See id.* § 105(d)(3).

<sup>1418</sup> *See* The Protection Project; Human Rights Reports: Turkmenistan, at <http://www.protectionproject.org/>.

<sup>1419</sup> *See* CEDAW, *supra* note 35, art. 16(1)(b).

<sup>1420</sup> *See* 2004 TIP Report, *supra* note 17, at 201.

<sup>1421</sup> *See* The Protection Project; Human Rights Reports: Bulgaria, at <http://www.protectionproject.org/>.

<sup>1422</sup> 2005 TIP Report, *supra* note 5, at 94.

- **Non-compliance:** In June 2005, the U.S. State Department reported that, in practice, Hungarian border officials often failed to properly identify victims of trafficking. “Hungarian authorities frequently continued to detain, jail, or deport trafficking victims in 2004; victims were often prosecuted as prostitutes.”<sup>1423</sup>
- **Compliance:** In its 2004 TIP Report, the U.S. State Department noted that Romania made progress in its law enforcement anti-trafficking efforts and that it continued to maintain comprehensive records of trafficking data.<sup>1424</sup>
- **Compliance:** A success in international cooperation to combat trafficking is the regional initiative entitled the Southeast European Cooperative Initiative (“SECI”) headquartered in Romania. This joint operation which involves twelve neighboring countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Macedonia, Moldova, Romania, Serbia and Montenegro, Slovenia, and Turkey) has targeted over 20,000 border crossings, bars, and nightclubs and has identified 696 trafficked victims and 831 suspected traffickers (2003 statistics).<sup>1425</sup>
- **Compliance:** In June 2004, the U.S. State Department reported that the Ministry of Interior and Ministry of Justice in Senegal cooperated with IOM in order to establish computer networks linking regional courts, border posts, and Senegal’s foreign missions to a common data analysis center. This effort was aimed at monitoring the flow of persons across Senegal’s borders.<sup>1426</sup>
- **Compliance:** In Slovakia, the strongest preventive strategy has been to improve the ability of law enforcement to identify potential traffickers and to share information among national agencies as well as agencies in neighboring countries.<sup>1427</sup> In March 2003, Slovakia and Austria concluded an agreement to establish a police liaison center at the border near Bratislava and in November 2003, Slovakia signed an agreement with the Czech Republic to allow pursuit of organized crime cases across their respective borders.<sup>1428</sup>

## Training

### De Jure

- **Compliance:** The Croatian NPA proposes the creation of training sessions for all professionals who are working on trafficking issues with high-risk groups such as women and children or who are likely to come into contact with victims of trafficking.<sup>1429</sup>

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<sup>1423</sup> *Id.* at 122.

<sup>1424</sup> See 2004 TIP Report, *supra* note 17, at 166.

<sup>1425</sup> See Mattar 4, *supra* note 192, at 16; see also The Southeast European Cooperative Initiative, at <http://www.secicenter.org/>.

<sup>1426</sup> See 2004 TIP Report, *supra* note 17, at 75.

<sup>1427</sup> See *id.* at 173-174.

<sup>1428</sup> See *id.* at 174.

<sup>1429</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 126.

## De Facto

- **Non-compliance:** At the end of 2003, representatives of the Armenian government together with members of the local NGO community underwent training on victim identification techniques as well as general assistance. The training, conducted by the OSCE, targeted law enforcement officers, border guards, consular personnel, as well as NGO representatives that are likely to come into contact with victims. Emphasis was placed on the development of practical skills, including non-threatening interrogation techniques and sensitive treatment of victims. However despite this and other training efforts, as of June 2005, the Armenian police still does not have “any formalized or standard operating procedures . . . to follow when encountering possible victims of trafficking.” Furthermore, Armenian officials often fail to shield victims’ identities and to properly apply confidentiality measures.<sup>1430</sup>
- **Compliance:** In June 2004 it was reported that the government of Burkina Faso, in cooperation with the United States, sponsored a twelve month training course for law enforcement officials in all thirteen regions of the country. The course aimed at training police officers to identify and interdict trafficking cases. Furthermore, in order to combat child trafficking, the Burkinabe government established Vigilance and Surveillance Committees consisting of members of regional governments, security forces, transportation companies and the agricultural sector. The committee members were trained on the nature and risks of trafficking as well as on methods of identifying trafficking when it occurs.<sup>1431</sup>
- **Compliance:** In its June 2004 TIP Report, the U.S. State Department reported that “German authorities actively investigate cases of trafficking and employ a full range of investigative techniques including wiretaps, electronic surveillance, undercover operations, and mitigated punishment for cooperating suspects. The Federal Office for Criminal Investigation has a special trafficking-in-persons team that promotes international law enforcement cooperation, offers a two-week seminar on trafficking for police and border patrol officers, and publishes an annual trafficking in persons report.” In June 2005, the U.S. State Department reported that the “Federal Office for Criminal Investigation conducted special training programs for police officers in 2004 in anticipation of . . . new anti-trafficking legislation, and the Federal Justice Ministry provided trafficking awareness training for judges and prosecutors.”<sup>1432</sup>
- **Non-compliance:** In June 2005, the U.S. State Department reported that “Hungarian law enforcement specialists developed specialized training for police on trafficking investigations and victim’s needs.”<sup>1433</sup> However, such training did not seem to improve the ability of officers to identify trafficked victims in a proper manner. “Hungarian authorities frequently continued to detain, jail, or deport trafficking victims in 2004” and “victims were often prosecuted as prostitutes.”<sup>1434</sup>

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<sup>1430</sup> See Press Release, Organization for Security and Co-operation in Europe, OSCE Yerevan Workshop Focuses on Identification of Trafficking Victims (Dec. 22, 2003); 2005 TIP Report, *supra* note 5, at 57.

<sup>1431</sup> See 2004 TIP Report, *supra* note 17, at 46-47.

<sup>1432</sup> *Id.* at 143; 2005 TIP Report, *supra* note 5, at 111.

<sup>1433</sup> See 2005 TIP Report, *supra* note 5, at 122.

<sup>1434</sup> *Id.*

- **Non-compliance:** In Poland, all new members of the police force receive basic trafficking awareness instruction.<sup>1435</sup> In June 2004, the U.S. State Department reported though that “[w]hile increased training has improved some enforcement officials’ capabilities to differentiate between smuggling and trafficking, many victims [were] summarily deported.” This trend continued as of June 2005.<sup>1436</sup>
- **Non-compliance:** In Serbia, during 2001 and 2002, 350 members of the Ministry of Interior participated in seminars on combating trafficking in persons, which were organized by OSCE, IOM, UNFPA, the International Committee for Migration Policy Development (“ICMPD”), domestic NGO, and the Ministry of Interior itself. Despite this and other subsequent trainings, in June 2005 there were reports of certain instances where police and judges improperly questioned victims in front of the traffickers who threatened them. Furthermore, it was reported that the Serbian government maintained an “informal, ad hoc approach to witness protection.”<sup>1437</sup>

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<sup>1435</sup> See 2005 TIP Report, *supra* note 5, at 179.

<sup>1436</sup> 2004 TIP Report, *supra* note 5, at 163; *see also* 2005 TIP Report, *supra* note 5, at 180.

<sup>1437</sup> See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 147, at 138; *see also* 2005 TIP Report, *supra* note 5, at 191.

**APPENDIX B: SANCTIONS FOR THE CRIME OF TRAFFICKING IN PERSONS**

It should be noted that the purpose of this chart is to show how sanctions for the offense of trafficking in persons vary around the world. This chart is *not* intended to highlight examples of “best practices” that are necessarily to be followed when drafting anti-trafficking legislation. The information contained in the chart is updated as of December 2005.

Region	Country	Applicable Law	Sanctions	Aggravated Circumstances
Africa	Eriteria	Criminal Code	Fine + up to 5 yrs. imprisonment	
	Ethiopia	Criminal Code	Fine + up to 5 yrs. imprisonment	Increased to 3-10 yrs. if trafficking is a profession.
	Mali	Criminal Code	Fine + 6 mos. to 3yrs. imprisonment	Increased to 5-20 yrs. if trafficking in children.
Asia	Cambodia	Anti-Trafficking Law	10-15 yrs. imprisonment	Increased to 20 yrs. if victim is a minor (under 15).
	India	Constitution Penal Code Anti-Trafficking Law	Fine + up to 10 yrs. imprisonment	
	Indonesia	Criminal Code	Up to 6 yrs. imprisonment	

Americas	Argentina	Migration Law	Up to 6 yrs. imprisonment	<p>Increased to 2-8 yrs. if crime involves use of force, threat, deception, or abuse of a position of vulnerability.</p> <p>Increased to 3-10 yrs. if trafficker is a repeat offender or a public official.</p> <p>Increased to 5-15 yrs. if victim is a minor or is deceased.</p> <p>Increased to 8-20 yrs. if crime was committed for the purposes of terrorism, drug trafficking, money laundering, or prostitution.</p>
	Panama	Criminal Code	Fine + 5-8 yrs. imprisonment	Increased to a fine + 8-10 yrs. if the victim is a minor.
	Paraguay	Criminal Code	Maximum 6 yrs. imprisonment	
	United States	Anti-Trafficking Act	10-20 yrs. imprisonment	Increased to any term of yrs. or life if death, kidnapping, attempt to kidnap, aggravated sexual abuse, attempt to commit aggravated sexual abuse, or attempt to kill occurs.
Western Europe	Austria	Criminal Code	6 mos.-5 yrs. imprisonment or 1-10 yrs. imprisonment (depending on circumstances)	Increased to 1-10 yrs. if crime committed for profit.
	Germany	Criminal Code	Fine or up to 5 yrs. imprisonment or 1-10 yrs. imprisonment (depending on circumstances)	Increased up to 10 yrs. if crime accompanied by force, deceit, threat of harm, or kidnapping.

	Liechtenstein	Criminal Code	6 mos.-10 yrs. imprisonment	Increased to 1-10 yrs. if crime is committed for profit or accompanied by deception, force, or exploitation.
Central & Eastern Europe	Albania	Criminal Code	5-15 yrs. imprisonment	<p>Increased to a minimum of 15 yrs. if crime is accompanied by maltreatment, physical or psychological threat, serious health impairment, complicity, or when crime is repetitive.</p> <p>Increased to a minimum of 20 yrs. when crime involves kidnapping, hostage-taking, the victim is a minor (under the age of 14), the crime involves physical and psychological torture, or the crime targets several persons.</p> <p>Increased to life imprisonment when crime causes death.</p>
	Croatia	Criminal Code	1-10 yrs. imprisonment	Minimum penalty raised to 5 yrs. imprisonment when the victim is a minor.
	Slovakia	Criminal Code	3-10 yrs. imprisonment	<p>Increased to 5-12 yrs. if crime is committed against the will of another, against a person under the age of 15, by a member of an organized criminal group, or is committed for profit.</p> <p>Increased to 8-15 yrs. if crime causes gross bodily harm, death, or another especially grave consequence, or is committed for profit, or is committed by a member of an organized criminal group operating in several countries.</p> <p>Increased to 12-15 yrs. if the offender is part of an organized criminal group or causes the death of several persons.</p>

Newly Independent States & Russia	Moldova	Criminal Code	7-15 yrs. imprisonment	<p>Increased to 10-15 yrs. if victim is a minor.</p> <p>Increased to 10-20 yrs. if the crime was committed repeatedly, against two or more people, against a pregnant victim, by two or more people, involved physical and psychological threats, or involved torture, rape, physical bondage, use of weapons, or threats to disclose confidential information.</p> <p>Increased to 15-25 yrs. to life if organized criminal group involved or if crime causes serious bodily injury, permanent psychological damage, or death.</p>
	Russia	Criminal Code	Up to 5 yrs. imprisonment	<p>Increased to 3-10 yrs. if crime is committed against two or more persons, a minor, or committed by an official, by transferring the victim across state borders, by unlawfully keeping victims abroad, by using false documents, by seizure, concealment, or destruction of victim's identity documents, by using or threatening the use of force, or for the purposes of removing organs or tissues of the victim.</p> <p>Increased 8-15 yrs. if crime results in death, severe damage to the health of the victim, or other grave consequences, crime is committed by means posing a threat to the lives or health of many persons, or crime is committed by an organized criminal group.</p>
	Ukraine	Criminal Code	3-8 yrs. imprisonment	<p>Increased to 5-12 yrs. and possible confiscation of property if the victim is a minor, if crime is committed by several persons repeatedly, by a group of persons with prior conspiracy, by a public official, or by a person upon whom the victim depended materially or otherwise.</p> <p>Increased to 8-15 yrs. and mandatory confiscation of property if crime is committed by an organized criminal group, involves illegal taking of children abroad or failure to return children from abroad, the victim's organs or tissues are removed, or the crime has severe consequences.</p>

North Africa & Middle East	Israel	Penal Code	Up to 16 yrs. imprisonment	Increased to 20 yrs. if victim is a minor
	Qatar	Penal Code	Up to 10 yrs. imprisonment	
	Syria	Anti-Trafficking Law	Fine +1-5 yrs. imprisonment	

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## APPENDIX C: UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

### *Article 1*

#### *Statement of purpose*

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

### *Article 2*

#### *Use of terms*

For the purposes of this Convention:

- (a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- (i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

### *Article 3*

#### *Scope of application*

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

### *Article 4*

#### *Protection of sovereignty*

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

### *Article 5*

#### *Criminalization of participation in an organized criminal group*

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

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtainin of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

#### *Article 6*

##### *Criminalization of the laundering of proceeds of crime*

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

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

#### *Article 7*

##### *Measures to combat money-laundering*

1. Each State Party:
- (a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

#### *Article 8*

##### *Criminalization of corruption*

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

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic

law and as applied in the criminal law of the State Party in which the person in question performs that function.

#### *Article 9*

##### *Measures against corruption*

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

#### *Article 10*

##### *Liability of legal persons*

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

#### *Article 11*

##### *Prosecution, adjudication and sanctions*

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with

decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

#### *Article 12*

##### *Confiscation and seizure*

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

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

### *Article 13*

#### *International cooperation for purposes of confiscation*

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

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

#### *Article 14*

##### *Disposal of confiscated proceeds of crime or property*

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.
2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
  - (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

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

#### *Article 15*

#### *Jurisdiction*

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

- (a) The offence is committed in the territory of that State Party; or
- (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State Party;
- (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
- (c) The offence is:
  - (i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
  - (ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

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

*Article 16*  
*Extradition*

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

*Article 17*

*Transfer of sentenced persons*

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

*Article 18*

*Mutual legal assistance*

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

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

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

#### *Article 19*

##### *Joint investigations*

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

#### *Article 20*

##### *Special investigative techniques*

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

*Article 21*

*Transfer of criminal proceedings*

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

*Article 22*

*Establishment of criminal record*

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

*Article 23*

*Criminalization of obstruction of justice*

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

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

*Article 24*

*Protection of witnesses*

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

- (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-

disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

#### *Article 25*

##### *Assistance to and protection of victims*

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

#### *Article 26*

##### *Measures to enhance cooperation with law enforcement authorities*

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
4. Protection of such persons shall be as provided for in article 24 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

#### *Article 27*

##### *Law enforcement cooperation*

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:
  - (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
  - (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
    - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
    - (ii) The movement of proceeds of crime or property derived from the commission of such offences;
    - (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
  - (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
  - (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
  - (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances

and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

#### *Article 28*

##### *Collection, exchange and analysis of information on the nature of organized crime*

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

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

#### *Article 29*

##### *Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

- (c) Monitoring of the movement of contraband;
- (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
- (e) Collection of evidence;
- (f) Control techniques in free trade zones and free ports;
- (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
- (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
- (i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

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

#### *Article 30*

##### *Other measures: implementation of the Convention through economic development and technical assistance*

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

- (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

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

#### *Article 31*

##### *Prevention*

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

## *Article 32*

### *Conference of the Parties to the Convention*

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.
2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).
3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:
  - (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
  - (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
  - (c) Cooperating with relevant international and regional organizations and non-governmental organizations;
  - (d) Reviewing periodically the implementation of this Convention;
  - (e) Making recommendations to improve this Convention and its implementation.
4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

## *Article 33*

### *Secretariat*

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.
2. The secretariat shall:

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

#### *Article 34*

##### *Implementation of the Convention*

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

#### *Article 35*

##### *Settlement of disputes*

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

### *Article 36*

#### *Signature, ratification, acceptance, approval and accession*

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

### *Article 37*

#### *Relation with protocols*

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

### *Article 38*

#### *Entry into force*

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

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

*Article 39*  
*Amendment*

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

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

*Article 40*  
*Denunciation*

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

*Article 41*

*Depositary and languages*

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

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

## APPENDIX D: PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

### Preamble

*The States Parties to this Protocol,*

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

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

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

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

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

*Have agreed as follows:*

### **I. General provisions**

#### *Article 1*

#### *Relation with the United Nations Convention against Transnational Organized Crime*

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

## *Article 2*

### *Statement of purpose*

The purposes of this Protocol are:

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

## *Article 3*

### *Use of terms*

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

## *Article 4*

### *Scope of application*

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

## *Article 5*

### *Criminalization*

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

## **II. Protection of victims of trafficking in persons**

### *Article 6*

#### *Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
  - (a) Information on relevant court and administrative proceedings;
  - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - (a) Appropriate housing;
  - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

#### *Article 7*

##### *Status of victims of trafficking in persons in receiving States*

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

#### *Article 8*

##### *Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall

agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### *Article 9*

##### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

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

#### *Article 10*

##### *Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

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

#### *Article 11*

##### *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

## *Article 12*

### *Security and control of documents*

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

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

## *Article 13*

### *Legitimacy and validity of documents*

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

## **IV. Final provisions**

## *Article 14*

### *Saving clause*

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

## *Article 15*

### *Settlement of disputes*

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

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

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

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 16*

##### *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

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

#### *Article 17*

##### *Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

#### *Article 18*

##### *Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

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

#### *Article 19*

##### *Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

*Article 20*

*Depositary and languages*

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

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